



**EXECUTIVE MANAGEMENT COMMITTEE**  
**AUGUST 19, 2015**

**SUBJECT: BOARD OF PODIATRIC MEDICINE (BPM) DRAFT ADMINISTRATIVE PROCEDURES MANUAL**

**ACTION: CONSIDER, DISCUSS AND RECOMMEND ADOPTION OF DRAFT MANUAL**

**7**

**RECOMMENDATION**

Discuss and consider the draft BPM Board Administrative Procedures Manual and recommend for approval and adoption by the full Board.

**ISSUE**

At the March 6, 2015 BPM Board meeting, the Board approved a motion (Attachment A) which directed the Executive Officer to begin drafting a Board Administrative Procedures Manual.

**DISCUSSION**

Until now, BPM has not had a ready reference guide contained in a single easy to use unified document to assist the Board in conveniently identifying all important and critical laws, regulations and Board policies to guide member actions to ensure enhanced Board effectiveness and efficiency in carrying out the mission of consumer protection.

Through systematic and methodical identification of applicable laws, staff has collected all relevant governance principals relevant to the Board in addition to delineating distinct processes and procedures into a single framework for easy member reference. This singular reference work is offered as a helpful guide to assist the policy-making body achieve greater efficiencies as a collective whole.

Committee members reviewed a prior draft of the proposed manual at the last meeting of the executive management committee held on May 20, 2015 and proposed additional recommendations and suggestions for inclusion which have been incorporated as requested.

**FINANCIAL IMPACT**

Approval of this item will have no direct impact on BPM expenditures.

## **ALTERNATIVES**

The Board could chose not to approve the manual which would result in the continuation of Board business based on institutional precedent which may or may not have been in accord with law, regulation or Departmental policy.

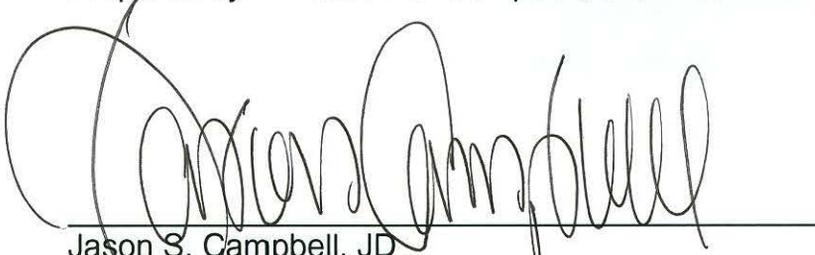
## **NEXT STEPS**

Staff will continue to implement any necessary amendments and revisions in accord with Committee recommendations for presentation and discussion to the full Board at the September 18, 2015 meeting.

## **ATTACHMENTS**

- A. Dixon/Cha Administrative Manual Motion of March 6, 2015
- B. Draft BPM Board Administrative Policy Manual

Prepared by: Jason S. Campbell, JD, Executive Officer



Jason S. Campbell, JD  
Executive Officer

**MOTION BY:****DIRECTOR KRISTINA M. DIXON, MBA & DIRECTOR JOHN Y. CHA, DPM****Board of Podiatric Medicine**

March 06, 2015

**BPM Board Governance Policies  
and  
Procedures Manual**

Article 22 of the Medical Practice Act creates within the jurisdiction of the Medical Board of California the California Board of Podiatric Medicine (the "Board"). It is recognized that through exercise of its licensing, regulatory and disciplinary responsibility, protection of the public remains first and foremost the Board's primary and overriding priority above all other interests to be achieved.

It is also recognized and accepted as a best practice that the creation of Board governance policies and procedures may assist to create a solid framework for efficient and successful achievement of Board policy ends. Good governance necessarily involves improved clarity of the board structure and its committee system in addition to proper delineation of distinct processes and procedures in order to foster stability, effectiveness and continuity within the Board.

Further, governance principles address critical orientation and training obligations in addition to member service expectations that help guide members through the complexities of membership in a policy-making body and to assist bringing clarity to respective roles and responsibilities for enhancing policy-making capability as a collective whole.

Through considered identification of governance principles to guide the body, the Board may sustain continued success in the mission of public protection and enable enhanced effectiveness. Among many additional benefits that may be secured include the ability to achieve greater clarity of purpose and solidify the agency's role for the public and the stakeholders it serves.

Thus, in order to effectively secure the aims mandated by the California Business and Professions Code, enable the Board to operate within a clear governance framework and to augment the mission of public protection,

**WE, THEREFORE, MOVE that the Board of Podiatric Medicine:**

1. Instruct the Executive Officer to begin drafting a Board Administrative Procedures Manual as a ready reference of important and critical laws, regulations and Board policies to guide the actions of members and ensure enhanced Board effectiveness and efficiency and report back to the Executive Management Committee in May 2015.

###

California Board of Podiatric Medicine  
Board Administrative Manual

## Table of Contents

### Chapter 1. Introduction

Overview .....	2
Board Mission & Vision .....	2
Executive Office and Staff .....	2
Executive Officer .....	3
Board General Rules of Conduct.....	4
Board Values .....	4
Board Members .....	5

### Chapter 2. Board Meeting Procedures

Purpose .....	6
Frequency of Meetings .....	6
Member Attendance at Board Meetings.....	6
Public Attendance at Board Meetings .....	6
Quorum .....	7
Agenda Items .....	7
Notice of Meetings.....	7
Notice of Meetings Posted on Internet .....	7
Board Packets.....	7
Record of Meetings.....	7
Audio/Video Recording.....	8
Meeting Rules .....	8
Public Comment.....	8

### Chapter 3. Travel and Salary Policies and Procedures

Travel Approval .....	10
Travel Arrangements .....	10
Out of State Travel .....	10
Travel Claims .....	10
Salary Per Diem .....	10

#### **Chapter 4. Selection of Officers and Committees**

Officers of the Board.....	13
President.....	13
Vice-President.....	14
Nomination of Officers.....	14
Election of Officers.....	14
Officer Vacancies.....	14
Committee Appointments.....	14
Executive Committee.....	15
Enforcement Committee.....	15
Licensing Committee.....	15
Legislative Committee.....	15
Public Education/Outreach Committee.....	15
Attendance at Committee Meetings.....	16
Participation at Committee Meetings.....	16

#### **Chapter 5. Board Administration and Staff**

Board Administration.....	17
Board Budget.....	18
Strategic Planning.....	18
Legislation.....	19
Communication, Other Organizations & Individuals.....	19
Public or News Media Inquiries.....	19
Stationary.....	19
Executive Officer Evaluation.....	20
Board Staff.....	20

#### **Chapter 6. Other Policies and Procedures**

Board Member Orientation.....	21
Board Member Oath of Office.....	21
Board Member Ethics Training.....	22
Board Member Disciplinary Actions.....	22
Removal of Board Members.....	22
Resignation of Board Members.....	23
Conflicts of Interest.....	23

Incompatible Activities .....	23
Contact with Applicants .....	24
Gifts from Applicants .....	24
Requests for Records Access .....	24
Ex Parte Communications .....	24
Sexual Harassment Prevention Training .....	25
Defensive Driver Training.....	25
Statement of Economic Interests – Form 700 .....	26

**Chapter 7. Parliamentary Practice and Procedure**

Calling a Meeting .....	27
Following the Call to Order .....	28
Introduction of Business.....	28
Modification of Motions .....	29
Basic Motion Classifications.....	29
Order of Precedence.....	30
Committees.....	33
Presentation & Reception of Committee Reports/Recommendations.....	34
Debates & Decorum.....	34

**Chapter 8. Board Functions and Responsibilities**

Licensing Function.....	35
Enforcement & Quasi-Judicial Function.....	36
Board Review and Adoption .....	37
Consideration Factors for Adoption or Non-Adoption of Proposed ALJ Decisions .....	37
Helpful Suggestions for Review and Discussion after Non-Adoption.....	38
Court Review of Board Decision .....	40
Office of Administrative hearing Processes and Procedures .....	40
Quasi-Legislative Function .....	41
Mandatory Rulemaking Procedures of the APA .....	42
Undergoing Regulations & Three Step Analysis .....	42
The Rulemaking Process .....	43
Outreach Function .....	46

<b>Abbreviations and Acronyms Glossary .....</b>	<b>47</b>
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**Appendix A**

Oath of Office..... A-1  
Board Member Pledge of Commitment ..... A-2  
Board Member Activity Log ..... A-3  
OAH training Materials for New Board Member Orientation ..... A-4  
California Board of Podiatric Medicine Organizational Chart ..... A-5  
State of California Organizational Chart ..... A-6  
Legislation Life Cycle ..... A-7  
Regulation Process..... A-8  
Enforcement Process Overview ..... A-9

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## Chapter 1. Introduction

The California Legislature has established 25 California Department of Consumer Affairs (DCA) regulatory boards and other additional programs and committees to protect public health and safety through licensing and oversight of various professions.

Collectively, board members are the leaders of the state's licensing agencies. Board members make important decisions on agency policies in addition to disciplinary actions to be taken against professionals who violate state consumer protection laws. In an effort to protect the public, members also approve regulations and help guide licensing, enforcement, public education and consumer protection activities.

Some board members are licensed professionals themselves, while many others are public members. The governor appoints many board members, but the Legislature also makes appointments as well.

Each health care licensing board is created through legislative passage of an enabling statute signed by the Governor. This statute often not only sets forth the agency's mission but also the boundaries of permissible practice for licensees. California law is explicit in its licensing and regulatory mandates that the primary overriding responsibility for all health care boards is to protect the public; not protection of an industry or a profession.

Boards are solemnly charged with preventing harm to patients and ascribed with regulating the profession they are charged with overseeing in order to protect Californians from unqualified, impaired, dishonest or otherwise incompetent providers. These objectives are achieved through the joint efforts of board staff—who execute board directives—and the politically appointed members of the board—who make policy—through execution of various functions including:

- Establishment and enforcement of licensure requirements;
- Promulgation of regulations interpreting scope of practice laws by which licensees are expected to follow and abide;
- Investigation of possible violations of quality and community standards of care in addition to other statutory or regulatory requirements;
- Disciplinary and enforcement decisions to revoke, suspend or restrict a license found to have violated the medical practice act or other laws; and
- Activities intended to educate and protect the public through information sharing, public outreach and engagement.

## Overview

The Board of Podiatric Medicine (the “Board”) has historical roots that can be traced back to as early as 1957 with state licensure of Doctors of Podiatric Medicine (“DPMs”) being separately handled by a legislatively created podiatric examining committee under the auspices of the California Board of Medical Examiners. To this day, functioning semi-autonomously as one of 36 regulatory entities under the aegis of the Department of Consumer Affairs, the Board continues to independently carry out its primary mission of public protection through its close statutory association with the Medical Board of California.

The Board is composed of seven members serving four-year terms with no more than a maximum of two consecutive terms permitted. The Board is overseen by a majority of professional members. Five appointments are made by the Governor who appoints four professional and one public member. The Senate Rules Committee and the Assembly Speaker each appoint one of the two remaining public members of the body, respectively.

Existing solely to serve to the public, the Board’s mission is accomplished through exclusive reliance on fees set by state statute and collected from licensees and applicants. As public servants attending to the people’s business and serving Californians as non-salaried guardians of the public health, welfare and safety, members are remunerated \$100 per day for each meeting day and are reimbursed for travel expenses.

The Board is under the organizational umbrella of the Department of Consumer Affairs (Department) which is part of the Executive Branch of California State Government, and ensures that the public’s health, safety, and welfare are protected while ensuring fair trade within the marketplace.

The Board administrative manual has been created to provide a solid reference framework for carrying out the public protection mission of the Board by fostering enhanced knowledge, stability and continuity within the body. As a ready reference of applicable law, regulations, Department of Consumer Affairs and Board policies, the manual will assist to guide the actions of members of the Board toward greater policy-making efficiency and effectiveness.

### **Board Mission & Vision** (Board Strategic Plan adopted March 6, 2015)

It is the mission of the Board of Podiatric Medicine to protect and educate consumers of California through the licensing, enforcement and regulation of Doctors of Podiatric Medicine. It is the Board’s vision that all licensed California podiatric physicians will provide safe and competent foot and ankle care for the benefit of the citizens and residents of the state.

### **Executive Office and Staff**

The Board appoints the executive officer (EO) to serve as its chief executive, administrative and operational officer, as well as its official custodian of records. By regulation, the Board delegates to the EO to act on its behalf in all enforcement issues and to investigate and

evaluate all applicants for licensure prior to the issuance of a license. Other staff members are civil service employees who operate under the direction of the EO.

The Board's executive office is located at 2005 Evergreen Street, Suite 1300, Sacramento, California 95815. Telephone (916) 263-2647, fax (916) 263-2651. The Board's web address is:

<http://www.bpm.ca.gov/>

**Executive Officer** (Board Policy adopted Dec. 6, 1991)

The chief executive officer reports and is accountable to the full Board. He/she accepts responsibility for the success or failure of all Board operations. The Executive Officer's specific contributions include the following:

- Lead staff planning to achieve Board goals and ensure that implementation adheres to Board policies, and is effective, prudent, ethical, and timely.
- Ensure that the Board is properly informed on the condition of the agency and major factors influencing it, without bogging it down in detailed staff work or with unorganized information.
- Annually evaluate the agency's performance.
- Manage allocated funds to ensure that there is adequate funding to achieve the Board's policies.
- Manage agency's enforcement program so as to ensure both (a) vigorous prosecution of Medical Practice Act violations and (b) fairness, due process, and proper administrative procedures as required under the Administrative Procedure Act.
- See that there is adequate, effective staffing. Motivate staff. Develop training, professional development, and career ladder opportunities. Build teamwork. Delegate responsibilities without abdicating accountability.
- Develop an office climate and organizational culture that attracts and keeps quality people.
- Provide for management succession.
- Develop annual goals and objectives and other appropriate staff policies.
- Serve as the agency's chief spokesperson and see that the Board is properly presented to its various publics.

## **Board General Rules of Conduct (Proposed Policy)**

Collectively, the Board is responsible for good governance of the agency. Appointed as representatives of the public, the Board presses for realization of opportunities for service and fulfillment of its obligations to all constituencies. The Board meets its public protection responsibilities, guards against the taking of undue risks, determines priorities and generally directs organizational activity. While the Board delegates administrative responsibilities to its executive officer as head of the agency, the body remains involved through oversight and policy-making. As a judicial body, the Board serves as a jury and members must be careful to avoid conduct which threatens to jeopardize the impartial and independent role as a neutral arbiter of fact in civil administrative matters involving disciplinary proceedings against a license.

Ultimately members are accountable for the actions of the agency and are expected to fulfill their responsibilities in a manner that is both honorable and above reproach. Accordingly, Board members shall:

- Serve to uphold the principle that the Board's primary mission is to protect the public.
- Act fairly, objectively and remain impartial and unbiased in their role of protecting the public.
- Not use their positions on the Board for personal, familial or financial gain.
- Treat all applicants and licensees fairly and impartially.
- Maintain the confidentiality of Board documents and information.
- Avoid ex parte communications with licensees, attorneys and staff regarding disciplinary actions.
- Recognize the equal role and responsibilities of all members both public lay members and professionals members alike.
- Commit the time to properly prepare for Board responsibilities.

## **Board Values (Board Strategic Plan adopted March 6, 2015)**

In performing the people's business to serve Californians as servants protecting the public health welfare and safety, the members of the body are guided by the adopted values of the Board:

- Consumer Protection
- Transparency
- Professionalism

- Fairness
- Effectiveness
- Service

**Board Members** (Board policy adopted Dec. 6, 1991)

While the Board is responsible for good governance of the agency it is ultimately individual board members that are accountable for all agency actions in the end. To ensure

A Board member's specific contributions include the following:

- Articulate agency mission, values, and policies.
- Review and assure executive officer's performance in faithfully managing implementation of Board policies through achievement of staff goals and objectives.
- Ensure that staff implementation is prudent, ethical, effective, and timely.
- Assure that management succession is properly being provided.
- Punctuate ongoing review of executive officer performance with annual evaluation against written Board policies at a noticed public meeting.
- Ascertain that management effectively administers appropriate staff policies including a code of ethics and conflict of interest statements.
- Ensure staff compliance with all laws applicable to the Board.
- Maximize accountability to the public.

## **Chapter 2. Board Meeting Procedures**

### **Purpose**

Public agencies exist to conduct the “people’s business.” All board meetings are conducted in public under the provisions of the public meetings law, officially called the Bagley-Keene Open Meeting Act. Public agencies such as the Board have two duties under the Bagley-Keene Open Meeting Act:

- To give adequate notice of the meetings to be held; and
- to conduct its meetings in open session except where a closed session is specifically authorized.

### **Frequency of Meetings** (Calif. Business and Professions Code §§ 101.7, 2467 and Board Policy)

For the purposes of transacting business, the Board may convene from time to time as it deems necessary but is required by statute to hold three meetings per year with at least one meeting in Northern California, and one in Southern California. The Board may seek an exemption from the Director of the Department of Consumer Affairs upon a showing of good cause that it is unable to meet at least three times in a calendar year.

- The Board and each of its standing Committees shall meet quarterly.
- Board Meetings shall be held on the first Friday in the third month of each quarter.
- Committee meetings shall convene on a Wednesday at least three weeks preceding the regularly scheduled meeting of the Board.
- The President may call a meeting of the Board or of any duly appointed committee including their specified time and place.
- Special meetings may be held by the Board as permitted by law and may also be called by the Director of the Department of Consumer Affairs as required.

### **Member Attendance at Board Meetings** (Proposed Policy)

Board members shall attend each meeting of the Board. If a member is unable to attend then he or she must contact the Board President and the Executive Officer to advise of the inability to attend the meeting for a specific reason.

### **Public Attendance at Board Meetings** (Government Code § 11120 et seq.)

As mentioned above, meetings of the Board are subject to all provision of the Bagley-Keene Open Meeting Act. The Open Meeting Act governs the meetings of all state regulatory boards and the meetings of the individual committees of those boards. The Open Meeting Act specifies the notice and agenda requirements in addition to prohibiting discussion or action by members on matters not included in the agenda.

If the agenda contains matters which are appropriate for closed session, the agenda shall so state and cite the particular statutory section and subdivision providing authority for meeting in closed session.

**Quorum** (California Business and Professions Code § 2467)

Four members of the Board constitute a quorum for the purposes of transacting business. The concurrence of a majority of those members present and voting at a meeting is necessary to constitute an act, resolution, decision or measure of the Board.

**Agenda Items** (Proposed Policy)

Any Board member may submit items for a Board meeting agenda to the Executive Officer at least 20 days prior to the meeting. Committee members may submit items for a Committee meeting agenda related to the jurisdiction of their respective committees at least 20 days in advance of the meeting. Suggestions for agenda items may also be raised at board and committee meetings during the agenda item designated for that purpose.

**Notice of Meetings** (Government Code § 11120 et seq.)

In accordance with the Bagley-Keene Open Meeting Act, meeting notices—including agendas for Board and/or Committee Meetings—shall be sent to persons on the Board’s mailing list at least 10 calendar days in advance. The notice shall include a staff person’s name, work address and telephone contact for providing further information if needed prior to the meeting.

**Notice of Meetings Posted on Internet** (Government Code § 11125 et seq.)

Notice shall be given and also made available on the internet at least 10 days in advance of the meeting and shall include a staff person’s name, work address and telephone contact for providing further information if needed prior to the meeting.

**Board Packets** (Proposed Policy)

Board and Committee materials will be distributed to members in both electronic and hard copy on the Friday before a scheduled meeting.

**Record of Meetings** (Government Code § 11123 and Proposed policy)

The minutes of Board meetings are a summary, not a transcript, of each Board meeting. They shall be prepared by Board staff and submitted for review and approval to the Board at the next regularly scheduled Board meeting. The minutes shall contain a record of how each member voted on item of business. When approved, the minutes shall serve as the official record of the meeting and shall be posted on the Internet.

**Audio/Video Recording** (Proposed policy)

Meetings may be audio and/or video recorded and/or broadcast live via the Internet as Board and DCA resources allow. Recordings may be disposed of upon an affirmative vote of the Board after the corresponding minutes of the meeting have been approved. Broadcasts of meetings may be available in perpetuity.

**Meeting Rules** (Proposed policy)

The Board will use Robert's Rules of Order as a guide to conduct meetings of the Board and Committees to the extent that they do not conflict with state law such as the Bagley-Keene Open Meetings Act, other statutory provisions or advisory opinions of the Attorney General.

**Public Comment** (Proposed policy)

Due to the important need of preserving the neutrality and maintaining the fairness of the Board when performing its adjudicative functions, the Board shall not receive any information or communication from a member of the public regarding matters that are currently under or subject to investigation or that involve a pending civil administrative action or criminal proceeding.

1. If, during a Board meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or civil administrative action or criminal proceeding, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person shall be instructed to refrain from making such comments. The Board may ask or direct staff to speak with the person directly outside the confines of the meeting room.
2. If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or that involve a pending civil administrative action or criminal proceeding, the Board will address the matter as follows:
  - a. Where the allegation involves errors of procedure or protocol, the Board may designate either its Executive Officer or staff member to review whether the proper procedure or protocol was followed and to report back to the Board.
  - b. Where the allegation involves significant staff misconduct, the Board may designate one of its members to review the allegation and to report back to the Board.

3. Should a person wishing to provide substantive information regarding matters that are currently under or subject to investigation or civil administrative action or criminal proceeding become disruptive at the Board meeting, the Board in its discretion may deny the person the right to address the Board and have the person removed.

DRAFT

### **Chapter 3. Travel and Salary Policies and Procedures**

#### **Travel Approval** (Proposed policy)

Board members shall have the Board President approval for all travel except regularly scheduled Board and Committee meetings to which the Board member is assigned.

#### **Travel Arrangements** (Proposed policy)

Board members should coordinate with the Executive Officer's program support assistant for assistance with travel and lodging accommodations when necessary.

#### **Out of State Travel**

When approved, out-state-travel for Board members will be reimbursed for actual lodging expenses, supported by vouchers and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

#### **Travel Claims**

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. The Executive Officer's program support staff maintains these forms and completes them as needed. It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than two weeks following the trip.

For expenses to be reimbursed, Board members shall follow procedures contained in DCA Departmental Memoranda, which are periodically disseminated by the Director and provided to Board members.

#### **Salary Per Diem** (Business & Professions Code §§ 103, 2016 & 2469) (Proposed Policy)

While all members of the Board are expected to contribute to the functions of the Board and the work of each member is absolutely vital for advancing consumer protection for the benefit of all Californians, board members are not employees of the board or of the State of California. Board service is essentially public sector volunteerism and therefore no member receives salary or benefits for services rendered.

Notwithstanding, compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is provided as regulated by California Business and Professions Code section 103.

Section 103 provides in pertinent part for the payment of Board member salary per diem ***“for each day actually spent in the discharge of official duties,”*** and provides that Board members ***“shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties,”*** and ***“shall be subject to the availability of money.”***

Accordingly, the following general policy guidelines shall be followed in the payment of salary per diem or reimbursement for travel.

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board or Committee meetings, unless a substantial official service is performed by the Board member.
2. The term “day actually spent in the discharge of official duties” shall mean:
  - a. Such time as is expended from the commencement of a Board meeting to the conclusion of the meeting; or
  - b. A cumulative of 8 hours of actual time spent performing Board-specific work authorized by the Board President including:
    - i. Preparation time for Board and Committee meetings; and
    - ii. Review of materials and disciplinary matters such as mail votes as issued by Board staff.
3. Where it is necessary for a Board member to leave early from a meeting or in situations where a member arrives to a meeting late, the Board President shall determine if the member has provided a substantial service during the meeting and if so shall authorize payment of salary per diem and reimbursement for travel expenses. Committee service shall also be reimbursed equally as attendance of an official meeting of the Board.
4. Substantial service at a meeting of the Board shall mean that level of performance in the fulfillment of obligations, responsibilities, duties and requirements of attendance and participation such that any identified deficiency did not materially affect the outcome of the proceeding and is so nearly equivalent that it would be unreasonable to deny remuneration for service rendered.
5. Attendance at gatherings, events, hearings, conferences or meetings other than official Board or Committee meetings in which a substantial official service is performed shall be approved in advance by the Board President according to availability of funds. The Executive Officer shall be notified of the event and approval shall be obtained from the Board President on the appropriate form and prior to the Board member’s attendance.

6. Board members may be compensated for actual time spent performing Board-specific work authorized by the Board President subject to the availability of funds. This work includes preparation time for Board or Committee meetings. Board members cannot claim salary per diem for time spent traveling to and from Board or Committee meetings.
7. For the purposes of recording actual time spent performing official Board-specific work authorized by the Board President that is not considered attendance at an official meeting of the Board, members shall complete forms provided for accounting the actual amount of time spent performing official duties in 10 minute increments on a form authorized to account for time. Said time includes:
  - a. Review of materials and disciplinary matters such a mail vote as issued by Board staff to be performed at the member's residence or business.
  - b. Board work that is authorized and assigned by the Board President to be performed at the member's residence or business.
  - c. Preparation time for Board and Committee meetings.
8. As required by Business & Professions Code section 103, if a member is a public officer or employee, the member may not receive per diem salary on any day when he or she also receives compensation from his or her regular public employment.

## **Chapter 4. Selection of Officers and Committees**

### **Officers of the Board**

The Board shall elect from its members a President and Vice-President to hold office at the pleasure of the Board for one year or until their successors are duly elected and qualified. The President and Vice-President shall serve as members of the Executive Committee.

#### **President** (Board Policy adopted Dec. 6, 1991) (Business & Professions Code § 2467)

The President is responsible for the effective functioning of the Board, the integrity of Board process, and assuring that the Board fulfills its responsibilities for governance. The President instills vision, values, and strategic thinking in Board policy making. She/he sets an example reflecting the Board's mission as a state licensing and law enforcement agency. She/he optimizes the Board's relationship with its executive officer and the public.

The Board President's specific contributions include the following:

- Chair meetings to ensure fairness, public input, and due process.
- Appoint Board committees.
- Support the development and assist performance of Board colleagues.
- Obtain the best thinking and involvement of each Board member. Stimulate each one to give their best.
- Coordinate evaluation of the executive officer.
- Continually focus the Board's attention on policy making, governance, and monitoring of staff adherence to and implementation of written Board policies.
- Facilitate the Board's development and monitoring of sound policies that are sufficiently discussed and considered and that have majority Board support.
- Serve as a spokesperson.
- Be open and available to all, remaining careful to support and uphold proper management and administrative procedure.

The President may call meetings of the Board and any duly appointed Committee at a specified time and place.

### **Vice-President**

The Vice-President of the Board is responsible for familiarity with the responsibilities of the President and shall be ready to preside when called upon. The Vice-President works in cooperation with the President to assist and/or to preside at meetings when the President is absent or if the office becomes vacant. The Vice- President shall also perform other such duties as may be called to fulfill from time to time at the request and discretion of the President.

### **Nomination of Officers**

The Board President shall appoint a Nominations Committee prior to the last meeting of the calendar year and shall give consideration to appointing a public and a professional member of the Board to the Committee. The Committee will be charged with recommending a slate of officers for the following year. The Committee's recommendation will be based on the qualifications, recommendations and interest expressed by Board members. A Nominations Committee member is not precluded from running for an officer position. If more than one Board member is interest in an officer position, the Nominations Committee will make a recommendation to the Board and others will be included on the ballot for a runoff if they desire. The results of the Nominations Committee's findings and recommendations will be forwarded to the Board. Notwithstanding the Nominations Committee's recommendations, Board members may be nominated from the floor at the meeting of the Board.

### **Election of Officers**

The Board shall elect the officers at the last meeting of the year for the following calendar year. Officers shall serve a term of one year, beginning January 1. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

### **Officer Vacancies**

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the President becomes vacant, the Vice-President shall assume the office of the President. Elected officer shall then serve the remainder of the term.

### **Committee Appointments**

The Board President assigns individual Board members to committees or task forces to research issues, develop preliminary policy plans, and to provide the foundation information necessary to discuss issues during the public meetings of the full Board. The Board has five standing Committees and they include: 1) the Executive Committee; 2) the Enforcement Committee; 3) the Licensing Committee; 4) the Legislative Committee; and 5) the Public Education/Outreach Committee. These committees also serve as a means to address succession planning as new

members are often assigned to serve on committees that are chaired by more senior members who are able to share their knowledge and expertise. All committees shall be advisory in nature with the exception of the executive committee which may exercise the authority of the board delegated to it by the body.

### **Executive Committee**

Members of the Executive Committee include the Board's president and vice-president (elected annually), the ranking member of the Board or another member appointed by the Board president for a total of three members. As elected officers, this Committee makes interim (between Board meetings) decisions as necessary. This Committee also provides guidance to administrative staff for the budgeting and organizational components of the Board and is responsible for directing the fulfillment of recommendations made by legislative oversight committees.

### **Enforcement Committee**

Members of the Enforcement Committee are responsible for the development and review of Board-adopted policies, positions and disciplinary guidelines. Although members of the Enforcement Committee do not review individual enforcement cases they are responsible for policy development of the enforcement program, pursuant to the provisions of the Administrative Procedure Act (APA).

### **Licensing Committee**

Members of the Licensing Committee are responsible for the review and development of regulations regarding educational and professional ethics course requirements for initial licensure and continuing education programs. Essentially, they monitor various education criteria and requirements for licensure, taking into consideration new developments in technology, podiatric medicine and current activity in the health care industry.

### **Legislative Committee**

Members of the Legislative Committee are responsible for monitoring and making recommendations to the Board with respect to legislation impacting the Board's mandate. They may also recommend pursuit of specific legislation to advance the mandate of the Board or propose amendments or revisions to existing statutes for advancing same.

### **Public Education/Outreach Committee**

Members of the Public Education/Outreach Committee are responsible for the development of consumer outreach projects, including the Board's newsletter, web site, e-government initiatives and outside organization presentations on public positions of the Board. These

members may act as good will ambassadors and represent the Board at the invitation of outside organizations and programs. In all instances, members must only present positions of the Board and members do not express or opine on matters unless explicitly discussed and decided upon by the Board.

#### **Attendance at Committee Meetings**

If a Board member wishes to attend a committee meeting of which he or she is not a member, the Board member shall obtain permission to attend from the Board President and shall notify the Committee Chair and staff. Board members who are not members of the Committee that is meeting cannot vote during the Committee meeting. If there is a quorum of the Board at a Committee Meeting, the Board members who are not members of the Committee must sit in the audience and cannot participate in Committee deliberations. Two consecutive absences or three absences within a 12-month period is cause for a discussion with the Board President regarding a Committee member's future obligations in serving on a Committee.

#### **Participation at Committee Meetings**

When a majority of the members of the Board are in attendance at an open and noticed meeting of a standing Committee, members of the Board who are not members of the standing Committee may attend only as observers. Board members who are not members of a committee where a majority of the members of the Board are present, cannot ask questions, speak or sit at the dais with the members of the Committee at the meeting.

## Chapter 5. Board Administration and Staff

### Board Administration

Board members should be concerned primarily with the formulation of decisions enacting and affecting Board policies rather than decisions concerning the means or methods for carrying out a specific course of action. For members of the Board of Podiatric Medicine this specifically translates into policies geared toward maintaining and advancing protection of the public relating to the practice of podiatric medicine. No other interest ranks higher in priority and any matter inconsistent with protection of the public is strictly subordinate. Board members therefore are to advance policies to safeguard the public health, welfare and safety of Californians and not the agendas of any special interest group, personal or private agenda. To assist members in this important endeavor there are a number of critical principles that may be referenced as guideposts for carrying out their duties effectively:

- Members are responsible for developing and setting policy and procedures as a State licensing and law enforcement agency.
- Consumers expect that licensees will be qualified to perform at an entry level of competence. They expect a fair method of settling disputes that may arise between a licensed practitioner or business and a consumer.
- Persons wishing to earn a living in an occupation should not be kept out unreasonably. They should have easy access to all information about entering the profession, including testing and/or transferring a license to or from another state.
- Board actions often affect competition within an industry. Public authority should enhance competition whenever possible, and avoid favoring one industry segment over others. Licensees have a right to expect good administrative practices and the elimination of unnecessary and burdensome requirements.
- Members have a responsibility to other board members to listen to them and to consider their views and contributions, to help determine good policy and helpful procedures, to contribute to fair determination of problems, and to help the board operate most effectively and efficiently.
- An effective board member:
  - is able to work with a group to make decisions
  - understands and follows democratic processes
  - is willing to devote time and effort to the work of the board
  - works to find alternative solutions to problems whenever necessary
  - has good communication skills
  - recognizes that the goal of the board is the service and protection of the public

- is aware that authority is granted by the law to the board as a whole, not to any member individually, and can only be used by vote of the majority of board members
- avoids becoming involved in the daily functions of staff
- delays making judgments until adequate evidence is in and has been fully discussed
- doesn't let personal feelings toward others affect decisions
- Public members are not expected to be, indeed are not supposed to be, technically expert or experienced in the licensed occupation. They provide a unique public perspective on licensing and enforcement.
- An effective board member does not disclose details of board activity unless and until they become part of the public record. The investigation procedure, which includes informal hearings or conferences, may not be part of the public record. Any disclosure of such information should be made only after consultation with legal counsel.
- Effective board members remember that they are seen as representatives of the board and the Department when they appear at industry or professional gatherings and must not appear to speak for the board or the Department unless specifically authorized by the board or the Department to do so.

### **Board Budget**

The Board's mission is accomplished without reliance on taxpayer monies from the State's General Fund. Funding for the Board is driven primarily through license, renewal and service fees collected from licensees and applicants. The Legislature establishes the limits of what may be charged for licenses and services and the board may then set specifics through regulation.

Board budget reports shall be presented to the Executive Committee and to the Board at quarterly meetings and shall contain that information determined necessary for the effective oversight and monitoring. The Executive Officer or the Executive Officer's designee will attend and testify at legislative budget hearings and shall communicate all budget issues to the Administration and Legislature as required.

### **Strategic Planning**

The Board shall have overall responsibility for the Board's Strategic Planning Process and shall adopt a Strategic Plan quadrennially. Update reports regarding progress on Board strategic goals and objectives will be made quarterly and may be heard in Executive Committee. The President will serve as the Board's strategic planning liaison with staff and may assist with monitoring and reporting of the strategic plan to the Board. The Board will conduct a quadrennial strategic planning session and may utilize a facilitator to conduct the planning

process. The Board in its discretion may revise and amend the adopted strategic plan if necessary at any time during the four year period from adoption.

### **Legislation**

Recognizing that time constraints can often preclude Board action, the Board may delegate to the Executive Officer and/or the Chair of the Legislative Committee, through adoption of a Program Consensus Document or Policy Compendium that explicitly provides the issue areas that may be addressed or the authority to take action on legislation that would otherwise impact previously established Board policy or affect the Board's mandate to protect the health, welfare and safety of the public. Prior to taking a position on legislation or issues as specifically enumerated in a Policy Compendium, the Executive Officer will consult with the Board President. The Board shall be notified of such action as soon as is practicably possible.

### **Communication, Other Organizations & Individuals**

All communication relating to any Board action or policy to any individual or organization, including but not limited to private medical associations, shall only be made by the President of the Board, his or her designee or the Executive Officer. The Board in its discretion may grant specific authority to any member from time to time as may be necessary in order to speak on behalf of the Board on Board business or other issues. Such authority granted by a vote of the full Board, shall be cautiously exercised and care taken to discuss only those final public positions taken by the Board as a body and shall not be the subject of personal member opinion or position. Any Board member who is contacted by any association should immediately inform the Board President or Executive Officer of the contact and said contact shall be reported at the next regularly scheduled meeting of the Board. All correspondence shall be issued on standard Board letterhead and will be created and disseminated by the Executive office.

### **Public or News Media Inquiries**

All technical, licensing or disciplinary inquiries to a BPM Board or Committee member from applicants, licensees or members of the public should be referred to the Executive office. Contact of a Board or Committee member by a member of the news media should be referred to the Executive Officer and/or the Chief of Public Affairs or Deputy Director of Communications for DCA.

### **Stationary**

- **Business Cards**

Business cards will be provided to each Board member with the Board's name, address,

telephone and fax number and website. A Board member's business address, telephone and fax number and e-mail may be listed on the card at the member's request.

- **Letterhead**

Only correspondent that is transmitted directly by the BPM office may be printed or written on BPM letterhead stationery. Any correspondence from a Board or Committee member requiring the use of BPM stationery or the BPM logo should be transmitted to the BPM office for finalization and distribution.

**Executive Officer Evaluation (DCA Policy)**

Board members shall evaluate the performance of the Executive Office on an annual basis.

**Board Staff (DCA Reference Manual)**

Employees of the Board with the exception of the Executive Officer are civil service employees. Their employment, pay, benefits, advancement, discipline, termination and conditions of employment are governed by the civil service laws, regulations and collective bargaining labor agreements. Because of this complexity, it is appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer. Board members shall not intervene or become involved in specific day-to-day personnel transactions or matters.

## Chapter 6. Other Policies and Procedures

### **Board Member Orientation** (California Business and Professions Code § 453)

As discussed above, the work of the Board is vital to the continued health, well-being, safety and protection of the public. All members of the Board are expected to contribute to the consensus decision-making process of the body to help advance the Board's mission of public protection.

To ensure that Board Members are well-equipped with the knowledge and information necessary to carry out the responsibilities, obligations and functions of membership, each member shall attend and complete a training and orientation program offered by the Department of Consumer Affairs within one year of appointment and again after each successive reappointment.

Additionally, the new appointee will be required to attend a Meet & Greet with the Board President and Executive Officer for a personal introduction and overview of the Board mission, operations, and member duties and responsibilities.

### **Board Member Oath of Office** (California Constitution & Business and Professions Code § 105)

State law requires members of boards in the Department of Consumer Affairs to take an oath of office as provided in the California Constitution and the Government Code. Any member not rendering an oath prior to service on a Board or committee will not be authorized to perform any official function.

The oath shall read in pertinent part:

"I, \_\_\_\_\_, do solemnly swear (*or affirm*) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter...."

Unless otherwise provided, the oath may be taken before any officer authorized to administer oaths including the Board's Executive Officer. The oath, certified by the officer administering the oath, must then be filed with the Secretary of State. Board members should contact the board's Executive Officer to arrange taking the oath of office.

### **Board Member Ethics Training (AB 2179)**

As a result of passage of AB 2179 (1998 Chapter 364), state appointees and employees in exempt positions are required to receive an ethics orientation within the first six months of their appointment and every two years thereafter. The training includes important information on activities or actions that are inappropriate or illegal. For example, generally public officials—like members of consumer protection board—cannot take part in decisions that directly affect their own economic interests. Members are prohibited from misusing public funds, accepting free travel and accepting honoraria. In addition, there are limits on gifts that may be accepted.

To comply with the ethics training directive, Board or Committee members may take the interactive course provided by the Office of the Attorney General which can be found at:

<http://oag.ca.gov/ethics>

Once the training course is completed, a copy of the certificate of completion is to be sent to:

***Department of Consumer Affairs  
SOLID Training Solutions  
1747 N. Market Blvd, Ste. 270  
Sacramento, CA 95834***

### **Board Member Disciplinary Actions (Proposed Policy)**

A member may be censured by the Board if it is determined that the member has acted in an inappropriate manner. In accordance with the Bagley-Keene Open Meetings Act, the censure shall be conducted in open session.

### **Removal of Board Members (Business and Professions Code §§ 106 & 106.5)**

The Governor has the power to remove from office at any time any member of any board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct. The Governor also may remove from office a Board member who directly or indirectly discloses examination questions to an applicant for examination for licensure.

### **Resignation of Board Members (Proposed policy)**

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules or Speaker of the Assembly) with the effective date of the resignation as soon as is practicable after it is known that a member be unable to fulfill his or her responsibilities to the Board in the conduct of the people's business

A copy of this letter shall also be sent to the Director of the DCA, the Board President and the Executive Officer.

**Conflicts of Interest** (Government Code § 87100 and Business and Professions Code § 2465)

No Board member may make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she know or has reason to know that he or she has a financial interest. Any Board member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision. Any Board member who feel he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer of Legal Counsel for the Board. At no time may a member of the Board either directly or indirectly own any interest in any college, school or other institution engaged in podiatric medical instruction, nor shall any member of the Board acquire any said interest while serving as a member of the Board.

**Incompatible Activities** (DCA Policy)

The following is a summary of the employment, activities or enterprises that may result in or create the appearance of being inconsistent, incompatible or in conflict with the duties of state officers:

- Using the prestige or influence of a state office or employment for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- Using state time, facilities, equipment or supplies for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- Using confidential information acquired by virtue of state employment for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- Receiving or accepting money or any other consideration from anyone other than the state for the performance of an act which the officer or employee would be required or expected to render in the regular course or hours of his or her state employment or as a part of his or her duties as a state officer or employee.
- Performance of an act other than in his or her capacity as a state officer or employee knowing that such an act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by such officer or employee of the agency by which he or she is employed. Notwithstanding, this would not preclude a "professional"

member of BPM from performing normal function of her or her medical practice profession.

- Receiving or accepting directly or indirectly any gift, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is seeking to do business of any kind with the state or whose activities are regulated or controlled in any way by the state, under circumstances from which it reasonably could be inferred that the gift was intended to influence him or her in his or her official duties or was intended as a reward for any official action on his or her part.

The aforementioned limitation do not attempt to specify every possible limitation on employee or state officer activity that might be determined and prescribed under the authority of section 19990 of the Government Code. DCA's Incompatible Work Activities Policy Procedures handbook is included in Appendix A.

#### **Contact with Applicants** (Proposed policy)

Board members shall not intervene on behalf of any applicant for licensure for any reason. All contacts or inquiries shall be forwarded to the Executive Officer or board staff.

#### **Gifts from Applicants** (Proposed Policy)

Gifts of any kind to Board members or staff from license applicants shall not be permitted.

#### **Requests for Records Access** (Proposed Policy)

No Board member may access the file or a licensee or applicant without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the BPM's offices.

#### **Ex Parte Communications** (Government Code § 11430.10 et seq.)

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

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

for all parties to participate in the communication.”

Board members are prohibited from ex parte communications with Board enforcement staff while a proceeding is pending.

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members.

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

If a Board member receives a telephone call from an applicant or licensee against who, an action is pending, he or she should immediately tell the person that discussion about the matter is not permitted; that the member will be required to recuse him or herself from any participation in the matter; and continued discussion is of no benefit to the applicant or licensee. The Board member should end the conversation in a firm and cordial manner.

If a Board member believes that he or she has received an unlawful ex parte communication, he or she should contact the Board’s assigned legal counsel.

**Sexual Harassment Prevention Training** (Government Code § 12950.1)

Board members are required to undergo sexual harassment prevention training and education once every two years. Staff will coordinate the training with the Department of Consumer Affairs.

**Defensive Driver Training** (Government Code § 11290, 16378 & 16379)

Pursuant to state law, the State Administrative Manual requires that all State employees who frequently drive a vehicle on official State business successfully complete the DGS approved Defensive Driver Training (DDT) course at least once every four years. The Department of General Services (DGS), Office of Risk and Insurance Management (ORIM) requires all state departments to submit an Annual State Agency Defensive Driver Training Report for tracking and reporting purposes. Accordingly, Board members will complete the required driver training quadrennially. Staff will coordinate the training with the Department of General Services.

**Statement of Economic Interests – Form 700** (Government Code §§ 81000-91014)

The Political Reform Act requires most state government officials and employees to publicly disclose their personal assets and income. They also must disqualify themselves from participating in decisions that may affect their personal economic interests. The Fair Political Practices Commission (FPPC) is the state agency responsible for issuing Form 700, Statement of Economic Interests and for interpreting the law's provisions.

Board members shall comply with filing requirements annually as required by statute and regulation. Staff will coordinate with DCA for distribution of required forms to members annually.

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## Chapter 7. Parliamentary Practice and Procedure

As previously indicated in Chapter 2, the Board uses Robert's Rules of Order as a guide for the conduct of its Board and Committee meetings to the extent that they do not conflict with state law such as the Bagley-Keene Open Meetings Act, other statutory provisions or advisory opinions of the Attorney General.

Rules of parliamentary practice are based on the regard for the rights of participating members or groups within the organization's total membership. This right to be heard is premised on the underlying value that each individual has the right to express his or her opinion to the extent that it can be tolerated in the interests of the whole.

The following chapter is an extremely brief summary of parliamentary practice and procedure and is designed to be a compact overview of reference for the conduct of the Board's deliberative assembly which should enable the body to both establish and empower effective leadership and retain that degree of control over Board business as it chooses to reserve to itself. Members are encouraged toward further individual study in the subject in addition to learning from each other for the benefit of the membership as a whole as it has been said by Gen. Robert himself that "[i]t is difficult to find another branch of knowledge where a small amount of study produces such great results in increased efficiency [...]"

### Calling a Meeting

When the meeting date and start time has arrived, the President will open the meeting. After beginning the meeting, it is determined whether a quorum is present by a calling of the roll. When a quorum is determined to exist, the President will *call the meeting to order*.

If a quorum is determined not to be present, the President may wait until there is a quorum or if there is no prospect for a quorum to develop after a reasonable time period, the President may call the meeting to order and announce the lack of a quorum. Thereafter, the President may fix the time to adjourn, adjourn, recess or take measures to obtain a quorum. In a committee where a quorum has not been met, the Committee Chair may—in addition to the motions just discussed—may forward the business of the Committee to the full Board without recommendation.

The call to order may be followed by opening ceremonies or patriotic exercises. As a state Board mandated with protection of the health, welfare and safety of Californians, it would be wholly appropriate for the Board of Podiatric Medicine to take a moment to briefly reflect on

valued precepts of consumer protection and the mission, vision and values of the Board before the introduction of business.

### **Following the Call to Order**

A Board or Committee may follow the order of business set in the agenda, or it may follow any particular order of business in the agenda at the discretion of the President or Chair presiding over the meeting. However, if agendas contain published estimations of time for the handling of business, then matters should be handled in the order indicated on the agenda in order to allow the public the opportunity to engage in the matter within the planned and estimated time frames.

Generally speaking, however, the following order has traditionally been regarded as the usual order of business: 1) Reading and approval of Minutes; 2) Reports of Officers and Committees; 3) Reports of Special Committees; 4) Special Orders or matters assigned special priority; 5) Unfinished Business; and finally 6) New Business. It is also important to note that the Board or Committee cannot discuss or take action on an item of business not on the agenda, except to decide whether to place the matter on the agenda of a future meeting.

### **Introduction of Business**

Business is brought before the deliberative body through the motions of its individual members. A motion is a formal proposal in a meeting that the body undertake a specified action. The proposed action may be substantive in nature, may express a particular viewpoint, direct the Executive Officer to action or performance, or the like. A motion's most basic form is the main or principal motion which brings business before the body. It should be noted that a motion is for action and is not a suggestion for when carried or approved, presuming it is a valid motion and not null and void, it will be implemented.

Generally, four steps are required to bring a motion before the Board or Committee. First, a member must obtain the floor. That is, the member must be recognized by the President or Chair (presiding officer) as having the right to be heard. The presiding officer must then recognize any member seeking the floor. Second, the member makes the motion. Third, another member must second the motion. Finally, the presiding officer places the motion before the Board or Committee for deliberation. This is termed "stating the question." The action of stating the question by the presiding officer is critical so that all members are clear on exactly what is and what is not under discussion.

After the presiding officer has stated the question, the motion is pending and is on the floor open for debate. Motions or resolutions that are long or technically complex should be

prepared in advance of the meeting and should be put in writing before it is offered. This is ideally done by providing a copy of the motion to the presiding officer for placement on the agenda sufficiently in advance of the meeting in order for staff to appropriately prepare in addition to ensuring compliance with Open Meeting Act notice requirements.

It is the responsibility of the presiding officer to ensure that the motion is put in suitable form that preserves its substance to the satisfaction of its maker before the question is stated.

### **Modification of Motions**

Until the presiding officer states the question, the maker of the motion has the right to modify his or her motion as he or she pleases or may withdraw the matter entirely. Accordingly, all principal motions may be modified. Similarly, all principal motions may also be divided so long as the component parts are not interdependent.

For example: A motion to hire a speedy yellow taxi can be divided into a motion to hire a taxi and a motion to choose the color. A motion to hire a slow limousine instead of a speedy taxi must be in the form of an amendment to the “taxi” motion.

Once on the floor and open for debate, however, the maker of the motion cannot modify the motion until prior to disposition of the motion by the deliberative body. For example, the motion to hire a speedy yellow taxi must be voted on and presuming a failure to carry, before a motion to hire a speedy red taxi can be moved; seconded; stated; and voted on.

### **Basic Motion Classifications**

Apart from the Main or Principal motion briefly discussed above that is used to bring business before the Board on all subjects under its jurisdiction, there are various other secondary motions which may be introduced to dispatch the business of the Board.

Secondary motions may be viewed as sustaining devices used to preserve two underlying principles of parliamentary law:

- Only one question is to be considered before the body at a time; and
- Once a motion is stated before the body, it must either be adopted, rejected, or disposed of in some fashion before other business may be introduced

Accordingly, secondary motions are procedural in nature and applied to main or principal motions for purposes of disposition. They also help clarify their order of precedence.

Descriptions of secondary motion are provided below for convenient reference.

#### 1) Subsidiary Motions

- 2) Incidental Motions
- 3) Privileged Motions

### Subsidiary Motions

Subsidiary motions are applied to main or principal motions for the purpose of treating or disposing of them. Types of subsidiary motions include:

- 1) Postpone (Indefinitely)
- 2) Postpone (to Certain Time)
- 3) Amend
- 4) Refer to Committee
- 5) Limit or Extend Limits of Debate
- 6) Previous Question
- 7) Lay on the Table

### Incidental Motions

Incidental motions are motions that are said to arise out of the main motion being debated and are related to the matter in such a way that they must be decided before further business may proceed. They are often un-debatable. Types of incidental motions include:

- 1) Point of Order
- 2) Appeal
- 3) Objection to Consideration of the Question
- 4) Division of a Question
- 5) Withdrawal of Motion
- 6) Reading of Papers

### Privileged Motions

Finally, unlike the above two classification discussed above, privileged motions are unrelated to pending business but rather deal with especially important matters that must be dealt with immediately without debate. Types of privileged motions include:

- 1) Call for Orders of the Day
- 2) Question of Privilege
- 3) Motion to Recess
- 4) Motion to Adjourn
- 5) Motion to Fix the Time to Adjourn

### **Order of Precedence**

The order of precedence among motions has evolved over years of parliamentary practice and procedure but is directly related to the motion classifications briefly reviewed above. Each of

the 7 subsidiary and 5 privileged motions possesses a rank and position of order which all motions below must yield and those above take precedence. Incidental motions, on the other hand, do not rank and cannot be assigned a position as they each have a relationship which can only be defined in relation to the rules governing individual motions. When in order, they take precedence over main motions and any other pending motions. A basic ordinal summary is provided purely as a guideline and listed below for convenient reference. Members are however encouraged toward further individual study in the subject.

### Privileged Motions

#### *Setting Adjournment Time*

- Takes precedent over all other motions
- Not subject to debate when another motion is on the floor
- Debatable when presented as a principal motion with no other motion on the floor

#### *Motion to Adjourn*

- Takes precedent over all other motions except motion to set adjournment time
- Cannot be made when another member has the floor
- Can be made after a vote has been taken but before results announced
- Not subject to debate

#### *Question of Privilege*

- Takes precedent over all other motions except motion to adjourn and motion to set adjournment time
- Generally pertain to immediate member needs such as open/close windows, water, etc.
- Not to be confused with Privileged Motions as a whole

#### *Orders of the Day*

- Takes precedent over all other motions except the above listed motions
- Moved for reminding the body of the business which was scheduled to be discussed when meetings get of track or “out-of-order” motions or discussion has intervened
- Can be overridden by a majority vote in situations where pending motion before the body is felt to take precedence over orders

### Incidental Motions

#### *Motion to Appeal*

- Takes precedent over the motion to which it refers
- Raises question concerning a point of order within a motion

- Decided by the presiding officer without debate
- Can only be made at the time of decision by presiding officer

#### *Objection to Question Consideration*

- Can only made when a matter is first introduced
- Cannot be debated or amended
- Commonly used to curtail unproductive or irrelevant discussion
- Cannot be used to close debate of relevant issues

#### *Reading Papers*

- Single use motion used for the reading of relevant papers requested for informational purposes
- Cannot be used as a delaying technique

#### *Withdrawal of Motion*

- Granted without debate if moved by maker of motion unless debate is called for

#### Subsidiary Motions

##### *Motion to Table*

- Takes precedent all other subsidiary motions
- Does not supersede Incidental or Privileged Motions
- Temporary postponement of further action on a pending motion

##### *Move to the Previous Question*

- Ends debate and calls for a vote on pending matter
- Cannot be amended
- Can be applied to Questions of Privilege or other Debatable Motions
- If approved then the main motion in addition to subsidiary motions and amendments are voted on in reverse order of proposal

##### *Move to Postpone (to Certain Time)*

- Takes precedent over Motion to Postpone (Indefinitely), Motion to Refer to Committee, and Amendments but yields to all others
- Postpones all aspects of motions and debate until the specified time
- If several motions are postponed and their time for discussion has passed, then all motions are considered in the order postponed

### *Motion to Refer to Committee*

- Takes precedent over Amendments and Motion to Postpone (Indefinitely) but yields to all motions above.

### *Amendments*

- Takes precedent only over the motion to be amended
- May include various forms including:
  - To add certain words
  - To strike certain words
  - To strike certain words and insert other words
  - To substitute one resolution for another that is pending
  - To divide the question into two or more parts for separate votes
  - To Fill in the Blanks – (Member A says 5 days while Member B says 6 days) These are treated as separate amendments that are voted on independently

### *Indefinite Postponement*

- Applies to Principal Motions or Questions of Privilege
- Used to remove from consideration a motion which may not have sufficient votes to kill

## **Committees**

Traditional parliamentary law defines a committee as a body of one or more persons elected or appointed by the main assembly in order to consider, investigate or take action on a specific subject. Standing committees are created to perform a continuing function and to give a task more detailed attention than would be ordinarily possible by the larger assembly. Standing committees also exist perpetually during the existence of the main deliberative body.

Generally speaking a committee entity does not have delegated authority to act independently of the body and functions solely to thoroughly vet and explore a specific project or topic with the intent of submitting a fully informed finding and recommendation to the larger body. In some instances, a standing committee may be granted delegated authority to act independently based on specific instruction given by the body.

In either case, the committee system is a matter of efficiency where the great majority of preliminary work and preparation on a specific task or subject is accomplished. This is especially true for boards where a large volume of business must be completed where it is advisable to have all issues routed to committee before final action is taken on the matter by the Board. Alternately, it also serves as a mechanism to engage membership according to their respective specialties or interests.

The Board of Podiatric Medicine has five standing committees and each is constituted by name. As mentioned in Chapter 4, they are: 1) Executive Management; 2) Enforcement; 3) Licensing; 4) Legislative; and 5) Public Education/Outreach. Each committee, with the exception of Executive Management, is advisory in nature.

### **Presentation & Reception of Committee Reports/Recommendations**

A report or recommendation of a committee is the official statement formally adopted by and submitted to the Board in the name of the committee advising the larger body of its decision on an issue or the information obtained.

Immediately, after receiving a committee recommendation/report, the Board will consider the action that is appropriate to be taken. A motion to adopt, accept or agree to a report (all terms interchangeable) accepts the report as presented. Reports/recommendations that contain strictly factual detail or that are placed on the consent calendar in the interest of time and efficiency and that contain relatively non-controversial matters are unproblematic. Conversely, members of the body may wish to discuss recommendations made by a committee.

In most circumstances, recommendations of committee are presented by a member of the committee by making an appropriate motion to implement the recommendation of the committee at the conclusion of his/her presentation on the matter. A second to the motion is not required in these circumstances as the motion is made on behalf of the committee. If for any reason, the recommendation is presented by a member who is not a member of the committee then the motion must be seconded.

Once the report or recommendation is received and the question to adopt, accept or agree has been stated by the presiding officer, the matter is open for debate and amendment and subject to any subsidiary motions that may be applied to it.

### **Debates & Decorum**

After a motion has been made on an item of business, the floor is opened for debate. The member making the motion has the right of speaking first unless the motion is from a committee, then the committee chair is considered the maker of the motion. Each speaker must be recognized by the presiding officer and is given a time to present his or her views. If desired members may agree to set a time limits for the presentation of views if thought necessary. The maker of the motion calls for closure of debate only after all who wish to have been heard have spoken. Of course, a motion for the Previous Question closes the discussion. It is important to remember that it is the issues that are debated and not individual personalities. Further, improper or inappropriate language is never used.

## **Chapter 8. Board Functions and Responsibilities**

### **Licensing Function**

The broad scope of podiatric licensure requirements has been established by the Legislature. These statutory requirements are codified under Article 22 of the Medical Practice Act or what may be specifically termed as the Podiatric Medical Practice Act. As discussed above, the board may adopt additional detailed requirements for licensure under its licensing function. These licensing requirements are generally reflected in areas of education, experience and examination. The Board of Podiatric Medicine accomplishes its licensing function objectives through the setting of standards and requirements in each area have included:

- Requiring candidates for licensure to possess two years of pre-professional postsecondary education and study in subjects of chemistry, biology or other biological science and physics or mathematics.
- Requiring candidates for licensure to possess a Certificate of Podiatric Medical Education, representing a minimum of 4,000 hours of academic instruction from a Board-approved school.
- Requiring applicants to pass Parts I, II, and III of the national board exam for assessing a candidate's knowledge, competency, and skills.
- Requiring applicants to complete two years of graduate medical education residency for licensure as a podiatric physician rather than just merely one year as is standard for other physicians.
- Performing an annual review of California-based podiatric graduate medical education residency programs.
- Requiring licensed Doctors of Podiatric Medicine (DPMs) to complete 50 hours of approved continuing medical education every two years.
- Requiring DPMs to demonstrate compliance with Board-mandated continuing competency requirements; the only doctor-licensing board in the country to implement such a program over and above continuing education alone.

These requirements are based on sound policy rationales designed to ensure that licensed podiatric physicians and surgeons are competent in their profession before they offer medical services to the public in order to prevent irreparable harm that may often occur if not qualified.

### **Enforcement & Quasi-Judicial Function**

In addition to licensing prospective California podiatric physician and surgeons, the Board is also charged with enforcement of the Medical Practice Act and taking disciplinary action against licensees in appropriate cases in order to prevent future harm to the public.

The Board of Podiatric Medicine contracts with the larger Medical Board of California for enforcement services, including those from Central Complaints and regional offices of investigators. The Board also contracts with the Attorney General's office for prosecution, uses independent Administrative Law Judges (ALJs) from the Office of Administrative Hearings, and follows the State Administrative Procedure Act (APA) just like all other state licensing boards and is intended to ensure that an accused licensee is afforded a fair proceeding and an opportunity to be heard or what is termed due process.

The enforcement process involves several steps including many stages where board members are prohibited from participating. The accompanying diagram in Appendix A maps out the individual steps in the disciplinary process.

Administrative discipline results from the Board's review of complaints submitted by patients, providers, facilities, insurers, and other law enforcement agencies. Approximately 150 complaints a year are received in Central Complaints. If a quality-of-care case is assigned to an investigator, it is reviewed by one of the Board's medical consultants, and then, if they recommend, to one of BPM's approved experts.

If the investigator, after a review, recommends a case be referred to the Attorney General, the board's enforcement coordinator in consultation with the Executive Officer authorizes the transmittal. A Deputy Attorney General (DAG) then reviews the case and, if appropriate, prepares an Accusation. The Accusation is the formal written complaint against the accused licensee. Once signed by the board's Executive Officer, the licensee is notified of the filing of the document, the Accusation becomes a public document, and a hearing is then scheduled before an Administrative Law Judge (ALJ).

Frequently, "the Board" and doctor settle out of court by entering into a Stipulated Agreement. If the case goes to hearing, the ALJ takes the testimony and prepares a proposed decision based on the official record of evidence. Both stipulated agreements and proposed decisions go to the seven board members appointed by the Governor and Legislature for mail ballot vote.

## **Board Review and Adoption**

Board members should review the ALJ's proposed decision thoroughly to determine whether to adopt it as a final decision of the Board. This is the first point in the multi-stage disciplinary process in which board members take an active and involved role in the agency's enforcement function. This stage of the disciplinary process can be time-consuming, but it is crucial to ensuring a fair and objective decision for both licensee and protection of the public alike.

## **Consideration Factors for Adoption or Non-Adoption of Proposed ALJ Decisions**

Most decisions involving proposed disciplinary orders are both significant and complex. In addition, underlying the decision evaluation is no less than the paramount interest sought to be achieved which is protection of the public. In order to assist members to objectively and fairly decide whether or not to adopt a proposed ALJ decision, a number of helpful factors to consider follow below.

### **CONSIDER ADOPTION OF PROPOSED ALJ DECISION WHERE:**

- 1) The summary of the evidence supports the findings of fact and the findings support the conclusions of law.
- 2) The law and standards of practice are interpreted correctly.
- 3) In those cases in which witness credibility is crucial to the decision (such as in sexual misconduct cases), the findings of fact include a determination based substantially on a witness' credibility, and the determination identifies specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
- 4) The penalty fits within the disciplinary guidelines or any deviation from those guidelines has been adequately explained.
- 5) If probation is granted, the terms and conditions of probation provide the necessary public protection and are supported by the facts of the case.

### **CONSIDER NON-ADOPTION OF PROPOSED ALJ DECISION WHERE:**

- 1) The proposed decision reflects the ALJ clearly abused his/her discretion in that the action is not supported by the evidence.
- 2) The ALJ made an error in applying the relevant standard of practice for the issues in controversy at the hearing.
- 3) Witness credibility is crucial to the decision (such as in sexual misconduct cases), the findings of fact include a determination based substantially on a witness' credibility, but the determination does not identify specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
- 4) The ALJ made an error in interpreting the licensing law and/or regulations.

- 5) The ALJ made correct conclusions of law and properly applied the standards of practice but the penalty is substantially more or less than is appropriate to protect the public.

### **Helpful Suggestions for Review and Discussion after Non-Adoption**

When the factual or legal findings of the ALJ are called into question and the members of the Board determine to non-adopt the proposed ALJ decision, staff will then begin preparations for preparing the complete administrative record including the transcript of testimony and all documentary evidence presented in the case. Although this function may be time-consuming, it is essential that Board members review all materials in order to ensure that a licensee is provided due process and that the objectives of consumer protection are met.

The role of each board member in the enforcement process is crucial to fulfilling the Board's mandate of public protection. During enforcement proceedings—where members serve as judges with final Board decision-making power—board members must always remain cognizant that their decision must be based solely on the evidence admitted by the ALJ and must not and cannot be based on personal experience or knowledge, hearsay or ex parte or off the record communications.

The following suggestions are offered to assist members reviewing a case record in an efficient and effective manner.

READ THE FULL ADMINISTRATIVE RECORD – In the following order:

#### **THE ACCUSATION**

Review the written notes of the code sections charged and brief description of what they cover. (B&P Section 2234(b) - gross negligence; B&P Section 2242 - prescribing w/o medical exam.)

Review the facts that are alleged to prove the code violations. The burden to prove the violations by “clear and convincing evidence to a reasonable certainty” is on the Board.

#### **THE PROPOSED DECISION**

If “gross negligence,” “repeated negligent acts,” or “substantially-related” conduct is alleged, expert testimony is necessary to prove the violations. It is important to focus on the three particular areas below.

##### **1. Factual findings**

- Did the ALJ find the facts were proven by clear & convincing evidence? If not, why not?
- Was sufficient evidence introduced to prove the facts?
- Did the witnesses' testimony prove the facts?
- Did the ALJ find some witnesses more credible than others? If so, why?

- To which expert’s testimony did the ALJ give the most weight?
- Was any evidence of mitigation introduced by the respondent?

**Close attention to the ALJ’s factual findings should be paid as board members will need to evaluate them when the transcript is reviewed.**

2. Legal Conclusions (determination of issues)
  - Do the facts proven constitute a violation of the code section?
3. Order
  - Does the Order contain the appropriate penalty given the violations found?
  - Is the Order consistent with the Disciplinary Guidelines and, if not, is there a basis in the record for deviating from the guidelines?

### **THE TRANSCRIPT**

Frequent notes should be taken – “Is the evidence introduced proving the facts and the violations alleged?”

1. Sufficiency of the Evidence  
Has “clear and convincing evidence to a reasonable certainty” been introduced to prove each factual allegation? You must be able to identify clear and convincing evidence in the record to support a finding.
2. Lay Witnesses
  - Does the witness testimony prove the facts? (It is important to keep the ALJ’s credibility findings in mind when evaluating testimony.)
  - If not, what evidence supports your conclusion as to who is more credible?
3. Expert Witnesses
  - Which expert’s testimony was given the most weight by the ALJ? Why?
  - If you do not agree, what evidence in the record supports your conclusion?

### **PREPARATION BEFORE THE ORAL ARGUMENT HEARING**

#### **WRITTEN ARGUMENTS**

The DAG’s argument will contend the facts are clearly proven and constitute a violation of the law. The burden of proof is on the Board. Has that burden (clear and convincing evidence) been met?

The Respondent’s argument will likely focus on the weaknesses of the Board’s case and the strength of the respondent’s case. It will force members to answer hard questions including whether:

- 1) the facts were proven;
- 2) the law was violated; and
- 3) the penalty is appropriate.

#### ADDITIONAL REVIEW OF THE PROPOSED DECISION

You should now have a complete picture of the case. Make notes on the proposed decision where you agree and disagree with the ALJ as to the factual findings, the legal conclusion, and the proposed penalty.

If you disagree, note the specific evidence in the record that supports your conclusion. *You should also note the volume and page number of the transcript.* You must cite “clear and convincing evidence to a reasonable certainty” to make a finding.

#### ORAL ARGUMENT

The oral arguments made by respondent’s attorney and DAG typically highlight points made in the written argument. Board members may ask questions to clarify matters that may be confusing.

***Questions that seek information that is not part of the existing record may not be asked, and an answer that results in new information may not be considered.***

#### SUMMARY AND CONCLUSION

During your review, keep in mind the code sections alleged to have been violated and the facts alleged to have occurred. If you keep this as your focus, your evaluation of all the elements of the case should make your decision much easier. This will also help your decision withstand judicial scrutiny.

#### **Court Review of Board Decision**

It may not be unusual for a licensee to challenge a final decision of the board on a disciplinary decision on appeal to the courts. There is no additional role for Board members to play on appeal unless a court is to reverse and remand a decision for further proceedings in accord with the decision of the tribunal. Additionally, members are generally not asked to appear in proceedings before a court regarding board decisions.

#### **Office of Administrative Hearing Processes and Procedures**

For additional information and guidance with Administrative Hearings, OAH training materials are provided in the Appendix of the Board Administrative Manual for member reference.

### **Quasi-Legislative Function**

Under sections 101.6, 2460 and 2460.1 of the California Business and Professions Code (B&P), the Board of Podiatric Medicine has been charged by the Legislature with the responsibility for regulating the profession of podiatric medicine within the State of California. Additionally, the Board has been delegated the authority by the Legislature under section 2470 B&P to adopt, amend or repeal any regulations necessary to enable the board to execute the laws related to the practice of podiatric medicine.

A regulation is defined in Government Code section 11342.600:

"Regulation means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."

This exclusive charge for the regulation of podiatric medicine is considered the Board's quasi-legislative function. However, not every statute requires the adoption of an implementing regulation. In this regard, it is useful to think about three types of statutory provisions:

- 1) Self-executing;
- 2) Wholly enabling; and
- 3) Susceptible to interpretation.

#### **Self-Executing Statutes**

A self-executing provision is so specific that no implementing or interpreting regulation is necessary to give it effect.

An example is a statutory provision that provides: "The annual licensing fee is \$900."

#### **Wholly Enabling Statutes**

A wholly-enabling statutory provision is one that has no legal effect without the enactment of a regulation.

An example is a statute that provides: "The department may set an annual licensing fee up to \$900." This type of statute cannot be legally enforced without a regulation setting the fee.

#### **Statutes Susceptible to Interpretation**

A statutory provision that is susceptible to interpretation, may be enforced without a regulation, but may need a regulation for its efficient enforcement.

An example is a statute that provides: "Surgery is permitted at the level of the ankle." This type of statute would leave open the question as to what the term ankle is defined to mean or include.

This is not to say that the example above is impossible to administer, but only that such a strategy requires that no rule or standard of general application be used that should have been adopted pursuant to the APA. Conceptually, the statute could be enforced on a case-by-case basis, but such an enforcement posture presents significant difficulties, not the least of which includes the untenable inability to provide accurate and concise guidance to members of the public and/or licensees interested in strict compliance with the law.

### **Mandatory Rulemaking Procedures of the APA**

Accordingly, section 11346 of the California Government Code (GC) provides that every regulation must be subject to the rulemaking procedures contained in the APA. That compliance with the rulemaking requirements of the APA was not optional was made abundantly clear by the 1978 California Supreme Court case *Armistead v. State Personnel Board*. The court noted that "[t]he manner of [noncompliance] takes many forms, depending on the size of the agency and the type of law being administered, but they can all be briefly described as 'house rules' of the agency." Quoting a 1955 legislative report noted the finding that noncompliance with APA rulemaking requirements was common.

"[Underground regulations] consist of rules of the agency, denominated variedly as 'policies,' 'interpretations,' 'instructions,' 'guides,' 'standards,' or the like, and are contained in internal organs of the agency such as manuals, memoranda, bulletins, or are directed to the public in the form of circulars or bulletins." [First Report of the Senate Interim Committee on Administrative Regulations (1955) as cited in *Armistead*, p. 205.]

Plainly stated, if a state agency issues, enforces, interprets or attempts to enforce a statute without following the APA when it is required to, the rule is called an "underground regulation." State agencies are prohibited from enforcing underground regulations under section 11340.5 of the Government Code.

### **Underground Regulations & Three Step Analysis**

In order to determine whether a particular Board policy, procedure or interpretation of law should be adopted pursuant to the APA, it is necessary to first ascertain whether the particular policy or procedure is already set out in an applicable statute or duly adopted regulation.

The adoption of a policy or procedure as a “regulation” pursuant to the APA is not required if the specific policy or procedure is found contained in an applicable statute or duly adopted regulation. Conversely, if it is determined that the policy or procedure (i.e., rule) is not set out in an applicable statute or duly adopted regulation, then the following three-step analysis must be used to determine whether the policy or procedure must be adopted as a regulation pursuant to the requirements and procedures of the APA:

### **Step One**

Is the policy or procedure either:

- a rule or standard of general application, *or*
- a modification or supplement to such a rule?

### **Step Two**

Has the policy or procedure been adopted by the agency to either:

- implement, interpret, or make specific the law?

If the policy or procedure answers the first two steps above affirmatively, then it is a “regulation” as defined in the APA and must be adopted as a regulation pursuant to the APA unless it falls within an express statutory exemption from the requirements of the APA. Generally, all “regulations” issued by state agencies are required to be adopted pursuant to the APA, unless *expressly* exempted by statute. (Government Code section 11346.)

### **Step Three**

Has the policy or procedure been:

- expressly exempted by statute from the requirement that it be adopted as a “regulation” pursuant to the APA?

If the policy or procedure does not fall within an express statutory exemption, then it is subject to the rulemaking requirements of the APA.

### **The Rulemaking Process**

Every board or commission in the executive branch of state government must follow the rulemaking procedures codified in the Administrative Procedures Act (“APA”) found in California Government Code section 11340 et seq. and adopted regulations propounded by the Office of Administrative Law (OAL). This is generally the case unless expressly exempted from these requirements by statute. The APA requirements are specifically created to provide the public with a meaningful opportunity to participate in the adoption of rules that have the force of law by California state agencies in addition to ensuring the creation of an adequate record for the public, OAL and judicial review.

Generally, there are two types of rulemaking procedures that a state agency can pursue: **regular** or **emergency**. The regular rulemaking process requires that a state agency meet certain public hearing and notice requirements. The emergency rulemaking process has different requirements, which generally include a brief public notice period, a finding of emergency, a brief public comment period, review by OAL and an OAL decision. In addition, some agencies have requirements related to regular or emergency rulemakings that are unique to that particular agency. (Please also see either OAL's Regular Rulemaking Checklist or Emergency Rulemaking Checklist.)

For the regular rulemaking process, once a state agency decides to conduct a regular rulemaking action, it develops the documents required to conduct a formal APA rulemaking proceeding. Some agencies involve the public during this stage, while others do not. Government Code section 11346.45 requires an agency to engage in pre-notice public discussions (also called "workshopping") if the proposal is large or complex. The agency develops four documents during the preliminary activity stage which are needed to initiate the formal rulemaking process: (1) the proposed text; (2) the Initial Statement of Reasons; (3) the STD Form 399 Economic and Fiscal Impact Statement; and (4) the Notice of Proposed Regulatory Action (notice).

To initiate a rulemaking action, proposed language or amendments are presented to the board for approval and for authority to commence the rulemaking process. The staff then issues a notice by having it published in the California Regulatory Notice Register, by mailing the notice to those persons who have filed a request for notice of regulatory action, and by posting the notice, text, and Initial Statement of Reasons on the agency's website. See Government Code section 11346.5. Once the notice is published in the California Regulatory Notice Register, the APA rulemaking process is officially started and the agency has one year within which to complete the rulemaking and submit the rulemaking file to OAL.

The APA requires at a minimum a 45-day opportunity to comment to the agency in writing on the proposed regulation. The notice specifies where the comments must be directed and the date this opportunity to comment in writing on the proposal closes. Under the APA, an agency has an option as to whether it will hold a public hearing on a proposed rulemaking action. However, if an agency does not schedule a public hearing, any interested person can submit a written request for one to be held. The written request for a hearing must be submitted at least 15 days prior to the close of the written public comment period, and the agency must give notice of and hold a public hearing. See Government Code section 11346.8.

After the initial public comment period, a rulemaking agency may decide to change its initial

proposal either in response to public comments received or on its own initiative. The agency must then decide whether a change is (1) nonsubstantial; (2) substantial and sufficiently related; or (3) substantial and not sufficiently related. See Government Code section 11346.8(c). A rulemaking agency must make each substantial, sufficiently related change to its initial proposal available for public comment for at least 15 days before adopting such a change. Thus, before a rulemaking agency adopts such a change, it must mail a notice of opportunity to comment on proposed modifications along with a copy of the text of the new proposed changes to each person who has submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. The agency must also post the notice on its website. No public hearing is required. The public may comment on the proposed modifications in writing.

The agency must then consider comments received during the 15-day comment period which are specifically directed to the proposed modifications. An agency may conduct more than one 15-day opportunity to comment on modifications.

A rulemaking agency must summarize and respond on the record to timely comments that are directed at the proposal or at the procedures followed by the agency during the regulatory action. With each comment, the agency must either (1) explain how it has amended the proposal to accommodate the comment, or (2) explain the reasons for making no change to the proposal. The summary and response to comments is included as part of the rulemaking file in a document called a Final Statement of Reasons. See Government Code section 11346.9.

A rulemaking agency must transmit a rulemaking action to OAL for review within one year from the date that the notice was published in the California Regulatory Notice Register.

OAL then has 30 working days to conduct its review. OAL must review the rulemaking record to determine whether it demonstrates that the rulemaking agency satisfied the procedural requirements of the APA and to review the proposed regulations for compliance with the six legal standards set forth in the APA: Authority, Reference, Consistency, Clarity, Nonduplication and Necessity. OAL may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulations. See Government Code section 11349.1.

## **Outreach Function**

Another important function of the Board that cannot be overlooked is the responsibility to conduct outreach and education to the general public through the development of consumer outreach projects. These frontline efforts seek to bring the mission of the Board of Podiatric Medicine directly to consumers that not only inform of the existence of the agency, its jurisdiction and authority but also how to access its critical services.

This function is accomplished through a variety of programs including the Board's newsletter, web site, pamphlets brochures and publications, e-government initiatives and outside organization presentations on public positions of the Board. Members of the public outreach committee may be charged to act as good will ambassadors and represent the Board at the invitation of outside organizations and programs for personal speaking engagements.

In all instances regardless of venue, forum or methodology employed to connect with the people of the State, the basic underlying drive is designed to promote BPM's mission and mandate to consumers while sharing its reputation as an advocate of consumer protection that will educate and empower toward a safer, fairer and competitive marketplace.

## Abbreviations and Acronyms Glossary

**Abuse of Discretion** – of the three main standards of review in California jurisprudence, the abuse of discretion standard is the most deferential to an arbiter’s decision. While many Courts have provided varying definition of the standard, thus making it difficult to define, the California Supreme Court has sometimes described it as “whether the trial court exceeded the bounds of reason.” See *Shamblin v. Brittain*, 44 Cal.3d 474, 478 (1988). Other courts have offered similar definitions; as one appellate court phrased it, an abuse of discretion occurs only when “it can fairly be said that no judge would reasonably make the same order under the same circumstances.” *In re Marriage of Lopez*, 38 Cal.App.3d 93, 114 (1974).

**ALJ Administrative Law Judge** - a judge from OAH who presides over license denial and discipline cases (the trier of fact) and makes a Proposed Decision to the board that includes findings of fact, conclusions of law, and a recommended penalty. **APA Administrative Procedure Act** - the law that sets out the procedure for license denial and license discipline, to meet constitutional requirements for due process of law. **Bagley-Keene** Name of the law that requires public meetings and **Open Meeting Act** distribution of meeting notices and agendas.

**APA Administrative Procedure Act** - the law that sets out the procedure for license denial and license discipline, to meet constitutional requirements for due process of law.

**Bagley-Keene** - Name of the law that requires public meetings and **Open Meeting Act** distribution of meeting notices and agendas.

**Conflict of Interest Laws** - Refers to a number of laws which relate to a person's personal interest which conflicts with the public interest.

**DAG- Deputy Attorney General** - an attorney from the Office of the Attorney General who prosecutes license denial and discipline cases.

**Gross negligence** - An extreme departure from the standard of practice.

**Hearsay** – A statement that is made out of court that is offered in court as evidence to prove the truth of the matter asserted.

**Incompetence** - Lack of knowledge or skills in discharging professional duties.

**Negligence** - A departure from the standard of practice.

**OAH-Office of Administrative Hearings** - the state agency that provides neutral (unaffiliated with either party) judges to preside over administrative cases.

**OAL-Office of Administrative Law** - the state agency that reviews regulation changes for compliance with the process and standards set out in law and either approves or disapproves those regulation changes.

**Petition for Writ Of Mandate** - The name for the type of appeal filed in Superior Court that a licensee files when the licensee wishes to challenge a license disciplinary decision.

**Pro Rata Share** - Usually, a board's share of costs for certain services, usually determined by a proportional, mathematical formula.

**Regulation** - A standard that implements, interprets or makes specific a statute enacted by a state agency. It is enforceable the same way as a statute.

**Stipulation** - A form of plea bargaining in which a disciplinary case is settled by negotiated agreement prior to a hearing.

**Statute** - A law passed by the Legislature.

**TRO-Temporary Restraining Order** - an order issued by a Superior Court judge to immediately halt practice.

DRAFT

## **Appendix A**

Oath of Office

Board Member Pledge of Commitment

Board Member Activity Log

OAH training Materials for New Board Member Orientation

California Board of Podiatric Medicine Organizational Chart

State of California Organizational Chart

Legislation Life Cycle

Regulation Process

Enforcement Process Overview

# OATH

*for the Office of* \_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_, do solemnly swear  
(or affirm) that I will support and defend the Constitution of the  
United States and the Constitution of the State of California  
against all enemies, foreign and domestic; that I will bear true  
faith and allegiance to the Constitution of the United States and  
the Constitution of the State of California; that I take this  
obligation freely, without any mental reservation or purpose of  
evasion; and that I will well and faithfully discharge the duties  
upon which I am about to enter.

*Signature* \_\_\_\_\_

*Term Expires* \_\_\_\_\_

*Subscribed and sworn to before me,*

*this* \_\_\_\_\_ *day of* \_\_\_\_\_

*A. D.* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**OATH OF OFFICE**  
*of*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## **Board of Podiatric Medicine**

### ***Board Member Pledge of Commitment to Serve***

In acknowledgement of the solemn duties and responsibilities which all members of the Board of Podiatric Medicine willingly undertake in selfless sacrifice to their fellow citizens and residents of the State of California in the conduct of the people's business;

In addition to full recognition and mindful appreciation for the expectations of service as a member of the board appointed by the leaders of the State of California;

I, \_\_\_\_\_, understand the important responsibility undertaken as a member of the Board of Podiatric Medicine, and hereby personally pledge to carry out in a trustworthy and diligent manner my role, all the duties and obligations inherent in my position as a member of the Board and model the values embodied in the principles for effective membership on the Board.

### ***My Role***

I acknowledge that my role as a member of the Board of Podiatric Medicine is to contribute to the development of the Board's mission, vision and values and to participate in good policy governance for the achievement of those ends.

Further, I understand that my role is to fulfill the functions of the office of Board Member as recorded in the Board of Podiatric Administrative Manual and as described in the Board Member Position Description. The implementation of this role is expressly limited to those activities and functions not directly or indirectly delegated to management.

### ***My Duties***

I pledge to willingly carry out my duties as a Member of the Board with integrity, high moral and ethical conduct, and strong commitment which include:

1. To establish as a high priority my attendance at all meetings of the Board, and of committees and any task forces to which I have been appointed.
2. To come prepared to contribute to the discussion of issues and business to be addressed at scheduled Board and Committee meetings, having read the agenda and all background support material provided me in advance of each meeting.

***"Boards are established to protect the people of California."  
Section 101.6, B&P Code***



3. To represent the Board of Podiatric Medicine in a positive and professional manner at all times and in all places and only articulating those positions approved by the Board through consensus.
4. To refrain from moving out of the domain of governance into the domain of management.
5. To understand the Board of Podiatric Medicine's funding sources and eligible uses, funding and budgeting cycles, and financial and performance reporting systems.
6. To avoid conflicts of interest between my position as a Board Member and my personal and professional interests accepting that when a conflict of interest presents itself, I will abide by the provisions of Board of Podiatric Medicine's Policies and those set by State law and regulation.
7. To maintain strict confidentiality of all business discussed at meetings of the Board, Committees, and Task Forces, disclosing to others only such information which the Board authorizes as appropriate for dissemination.
8. To support in a positive manner all actions taken by the Board even when I am in a minority position on such actions.
9. To agree to serve on those Committees and/or Task Forces to which I am appointed to ensure fiscal stability of the agency, to assure program quality, and to participate in the accomplishment of all goals and objectives of the strategic plan.
10. To attend and participate in the Board's strategic planning and to attend all orientation sessions and ongoing trainings required of members of the Board.

### ***10 principles for Highly Effective Board Members***

Further, I pledge to sustain and implement the principles and underlying values for effective membership on the body of members as listed herein to the best of my ability including:

1. Explicit recognition that protection of the public shall be my highest priority when serving on the Board and collectively exercising any of the board's licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.
2. I am responsible for developing and setting policy and procedures as a State licensing and law enforcement agency.
3. I understand that consumers expect that licensees will be qualified to perform at an entry level of competence. They expect a fair method of settling disputes that may arise between a licensed practitioner or business and a consumer.

***"Boards are established to protect the people of California."  
Section 101.6, B&P Code***



4. I recognize that a person who wishes to earn a living in an occupation should not be kept out unreasonably and that an individual should have easy access to all information about entering the profession, including testing and/or transferring a license to or from another state.
5. Board actions often affect competition within an industry. Public authority should enhance competition whenever possible, and avoid favoring one industry segment over others. Licensees have a right to expect good administrative practices and the elimination of unnecessary and burdensome requirements.
6. I have a responsibility to other board members to listen to them and to consider their views and contributions, to help determine good policy and helpful procedures, to contribute to fair determination of problems, and to help the board operate most effectively and efficiently.
7. That as an effective board member I will:
  - Work with my other members to make decisions
  - Understand and follow democratic processes
  - Devote time and effort to the work of the board
  - Find alternative solutions to problems whenever necessary
  - Strive to employ and use communication skills with members and staff
  - Recognize that the goal of the board is the service and protection of the public
  - Accept that authority is granted by the law to the board as a whole, not to any member individually, and can only be used by vote of the majority of board members
  - Not become involved in the daily functions of staff
  - Delay making judgments until adequate evidence is in and has been fully discussed
  - Not let personal feelings toward others affect my decisions
8. I recognize that public members are not expected to be, indeed are not supposed to be, technically expert or experienced in the licensed occupation and provide a unique and critical public perspective on licensing and enforcement.
9. I understand that an effective board member does not disclose details of board activity unless and until they become part of the public record and understand that the investigation procedure, which includes informal hearings or conferences, may not be part of the public record. Further, any disclosure of such information should be made only after consultation with legal counsel.



Medical Board of California  
**BOARD OF PODIATRIC MEDICINE**  
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10. I will always remember the Board members are seen as representatives of the board and of the Department when appearing at industry or professional gatherings and must not appear to speak for the board or the Department unless specifically authorized by the board or the Department to do so.

***If, for any reason, I find myself unable to carry out the above duties to the best of my abilities, or if I have two (2) consecutive absences or three (3) absences within a 12-month period, I agree to discuss with the Board President my future obligations in serving on this Board.***

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_



**OAH**  
**TRAINING MATERIALS FOR**  
**NEW BOARD MEMBER ORIENTATION**  
**DEPARTMENT OF CONSUMER AFFAIRS**

Prepared by  
Administrative Law Judges  
David Rosenman &  
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March 2005

## **TABLE OF CONTENTS**

1. Introduction
2. Office of Administrative Hearings
3. Pleadings
  - A. Accusation
  - B. Statement of Issues
  - C. Petition for Reinstatement or Reduction of Penalty
4. Proposed Decision
  - A. ALJ's Action
  - B. Board's Action
5. Settlements
6. Disqualification
7. Ex Parte Communications
8. Hypothetical Questions/Issues
9. Disciplinary Guideline Example
10. Example of Proposed Decision

**1. Introduction:** Most administrative proceedings before the Office of Administrative Hearings are governed by the Administrative Procedure Act, Government Code sections 11370 through 11529, and California Code of Regulations, title 1. [Found at the website for the Office of Administrative Hearings: [www.oah.dgs.ca.gov](http://www.oah.dgs.ca.gov); click the link for “Laws and Programs.”] These Training Materials include summaries and excerpts from these code sections and regulations. (§ = section number)

**2. Office of Administrative Hearings:** The Office of Administrative Hearings (OAH) functions as the state’s internal “court system.” Over forty Administrative Law Judges (ALJ) staff four regional offices—Sacramento, Oakland, Los Angeles and San Diego. OAH conducts hearings for over 100 state agencies and over 500 local agencies and school districts. For the fiscal year July 2003 through June 2004, OAH opened 8,616 cases and held hearings in 4,511 cases.

**3. Pleadings:**

**A. Accusation:** A written statement of charges against the holder of a license or privilege, to revoke, suspend or limit the license, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations. Government Code section 11503.

**B. Statement of Issues:** A written statement of the reasons for denial of an application for a license or privilege, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations. Government Code section 11504.

**C. Petition for reinstatement or reduction of penalty:** A person whose license was revoked, suspended or placed on probation can petition for that license to be reinstated, to have the penalty reduced, or for the probation to be terminated. Many boards have specific statutes or regulations relating to these petitions. Hearings on these petitions usually take place before the board itself at a scheduled board meeting, with an ALJ presiding. The board usually goes into closed session after the hearing to deliberate and decide the outcome. The ALJ usually prepares the Decision, for signature of the board chairperson. Some Boards have the authority to permit the ALJ sitting alone to hear petitions and render a proposed decision to the Board. This may also happen when the board does not have a quorum at a board meeting. Government Code sections 11517, 11522.

**4. Proposed Decision:**

**A. ALJ’s action:** After the hearing, the ALJ will issue a Proposed Decision that includes the factual and legal basis for the decision. The factual basis for the decision must be based exclusively on the evidence in the hearing record, that is, the testimony and all exhibits received into evidence. The proposed decision will also include a recommended order that will (1) uphold the discipline or license denial the Board’s attorney and/or staff have advocated, (2) modify the

discipline or denial to include something less or more than Board staff and/or attorney advocated, or (3) dismiss the case in its entirety. Penalties in the decision's order may not be based on any guidelines or policy memos that have not been adopted as regulations. Government Code section 11425.50.

**B. Board's action:** OAH will forward the Proposed Decision (PD) and the exhibits from the hearing to the board. The board has several options upon receipt of the PD: adopt all of the PD; reduce the penalty and adopt the rest of the PD; make technical or minor corrections and adopt the PD; reject the PD, order a transcript, and remand the matter back to the ALJ to take further evidence and write a new PD; or reject the PD, order a transcript (or not, if the parties agree), and decide the case itself based on the record. Government Code section 11517.

**5. Settlements:** The licensee/applicant and agency may decide to settle at any time during the administrative process. Usually, settlements are entered into before an administrative hearing is held to avoid the expense of the hearing. The settlement is reduced to a written stipulation and order which sets forth the settlement terms and proposed disciplinary order. The written stipulation and order is forwarded to the Board for its consideration. During the settlement process the Deputy Attorney General has been advised by the agency's executive officer or head of enforcement regarding acceptable terms. The Deputy Attorney General may advocate before the Board for approval of the settlement. The Board may accept the settlement and issue its decision and order based on the settlement. If the Board rejects the settlement, the case will return to the disciplinary process. A new settlement may be submitted to the Board at a later time or the case may proceed to an administrative hearing before an ALJ. Government Code section 11415.60.

**6. Disqualification:** With some limited exceptions, a board member cannot decide a case if that board member investigated, prosecuted or advocated in the case or is subject to the authority of someone who investigated, prosecuted or advocated in the case. A board member may be disqualified for bias, prejudice or interest in the case. Government Code sections 11425.30, 11425.40.

**7. Ex Parte Communications:** "Ex parte" technically means "by or for one party only." In practice, it is a limitation on the types of information and contacts that board members may receive or make when considering a case. While a case is pending, there are only limited types of communications with board members that are allowed if all parties are not aware of the communication and do not have a chance to reply. For example, a board member can accept advice from a staff member who has not been an investigator, prosecutor or advocate in the case; but that person/staff cannot add to, subtract from, alter or modify the evidence in the record. Or, a board member can accept information on a settlement proposal or on a procedural matter. Most other communications may need to be disclosed to all parties, and an opportunity will be provided to the parties make a record concerning the communication. Disclosure may also apply to communications about a case received by a person who later becomes a board member deciding the case. Receipt of some ex parte communications may be grounds to disqualify a board member.

Government Code section 11430.10:

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

*(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.*

*(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.”*

Government Code section 11430.20:

*A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:*

*(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.*

*(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.*

Government Code section 11430.30:

*“ A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:*

*(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.*

*(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.*

*(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:*

(1) *The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.*

(2) *The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.”*

Government Code section 11430.40:

*“If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50.”*

Government Code section 11430.50:

*“(a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:*

*(1) If the communication is written, the writing and any written response of the presiding officer to the communication.*

*(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.*

*(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.*

*(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:*

*(1) The party shall be allowed to comment on the communication.*

*(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.”*

Government Code section 11430.60:

*“Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.”*

Government Code section 11430.80:

*“(a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.*

*(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.”*

## 8. Additional Hypotheticals/Issues

*The responses to these hypothetical questions are not intended to be definitive. Rather, they are intended to sensitize Board members to the variety of situations they may face, and suggest the process Board members should follow in formulating a response when they find themselves in similar situations.*

- A. A Board member discovers during the Board's consideration of a case that his/her spouse served as the Board's expert witness during the administrative hearing before the ALJ. The Board member was not appointed to the Board until after the administrative hearing took place and the proposed decision was issued. What should the Board member do? Do other members of the Board have any obligations?
- The Board member whose spouse served as the expert should disqualify (recuse) himself/herself from the case and should not be privy to any further Board deliberations regarding the case. Nor should the member discuss the case with any other member.
  - The reason for the Board member's recusal should probably be disclosed to the parties in the case, reduced to writing, and sealed as part of the record in the case in the event the decision is appealed (although technically there may not be a legal requirement to take these steps).
  - Other Board members may continue to serve as long as they are unbiased with respect to the case.
- B. An ALJ is sitting with the entire Board during a hearing on a licensee's petition to have his license reinstated. As the licensee is testifying, a Board member's cell phone rings, the Board member answers the call, gets up from the table, and goes to another room to talk to the caller. Later, when the Board is considering whether or not to grant the petition, the Board member takes part in deliberations and seeks to have his/her vote counted when voting on whether or not to grant the petition. Should the Board member participate and vote on the petition?
- No. The Board member should disqualify him/herself from further participating and voting in this case. The Board member must be present when evidence in the form of the licensee's testimony is presented.

- C. A Board is considering whether or not to adopt a proposed decision that recommends revocation of a license on the basis of evidence establishing that the licensee has been convicted five times in the recent past of driving under the influence of alcohol. The proposed decision finds that the licensee has admitted to being an alcoholic with a serious drinking problem, but has been receiving treatment for his alcoholism in a residential facility for one year. Two years earlier, a participating Board member announced at a news conference that he would ensure that licensees with substance abuse problems were not allowed to practice the licensed activity. Should this Board member participate in the consideration of this case?
- Probably Not. This is a gray area. On the one hand, if the Board member can decide this case in an unbiased manner based solely on the evidence in the case, he may not be required to disqualify himself. On the other hand, the Board member's previous statement may be evidence of an appearance of bias and it may provide a basis for challenging the Board's decision if the Board member does not recuse himself. It might be best if the Board member recuses himself.
- D. A Board member is told by a close friend that the friend has been called to be a witness for the respondent in a disciplinary proceeding against a Board licensee. The best friend tells the Board member that she had nothing but good things to say about the licensee. What should the Board member do?
- The Board member should disclose to the executive officer or an appropriate enforcement staff person the conversation with the friend as an *ex parte* communication. The name of the friend, the substance of the communication, any response by the Board member and the date and time of the communication must be written in a memorandum and made a part of the record. All parties in the case must be given notice and an opportunity to be heard regarding the communication.
  - The Board member should consider whether he/she can be unbiased in considering the case should it come before the Board for consideration. If not, the Board member would be subject to disqualification.
- E. The Board of Taxidermy is hearing a petition for reinstatement. A former licensee whose license was revoked is seeking reinstatement. After taking evidence about the original charges against, and the rehabilitation of, the petitioner, one of the Board members asks about an unrelated incident. The member had read in the papers that the petitioner had been arrested, but later released, after some local high school students told police that the petitioner had tried to sell them drugs and was saying "creepy things" to them about dead animals. No charges were brought. The Board member becomes persistent and angry in questioning the petitioner about the incident. Should the Board member be permitted to ask the question in the first instance and should the continued persistent and angry questioning continue?

- While asking the first question may be appropriate, the primary purpose of the hearing is to determine the petitioner's rehabilitation from the charges that resulted in his license revocation. The petitioner's arrest, without charges being brought or any conviction, is not part of the record in the case and it would not necessarily be a basis to deny the petition. This is also a situation in which Board members should look to the overriding rule of fairness. After a reasonable inquiry has been made, care needs to be taken so as not to appear biased or unable to review and vote upon the petition in a fair and neutral way. Petition hearings are also a forum where Board members must comport themselves as judges, and they must be fair and appear fair.
- The holdings in two recent cases are also illustrative on the subject of Board hearings: In *Lacy Street Hospitality Services v. City of Los Angeles* (2004) 125 Cal.App.4<sup>th</sup> 526, the court held that failure of city council members to pay attention during a quasi-judicial hearing on proposed modifications to zoning conditions for an adult cabaret, was a violation of due process and an abuse of discretion. In *Nasha L.L.C. v. City of Los Angeles*(2004) 125 Cal.App.4<sup>th</sup> 470, a city planning commission's rejection of a real estate project was set aside because a commissioner authored an article attacking the project while it was under consideration, thereby establishing "an unacceptable probability of actual bias" of the commissioner that was sufficient to disqualify him.

## **Disciplinary Guidelines Example**

Speech-Language Pathology and Audiology Examining Committee

### **DISCIPLINARY GUIDELINES**

#### **SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS**

Section 1399.178 is added to Division 13.4 of Title 16, Article 6 entitled "Disciplinary Guidelines" of the California Code of Regulations to read:

#### **Article 6. Disciplinary Guidelines**

1399.178. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the Committee shall consider the disciplinary guidelines entitled "Disciplinary Guidelines Revised September 3, 1997," that are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Committee, in its sole discretion, determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; and evidentiary problems.

Note: Authority cited: Section 2531.95, Business and Professions Code, Section 11425.50(e), Government Code. Reference: Sections 2533 and 2533.1 Business and Professions Code; Section 11425.50(e), Government Code.

## DISCIPLINARY GUIDELINES

The Committee recognizes that these penalties and conditions of probation are guidelines, and that each disciplinary case must be assessed individually. If individual circumstances exist that justify omissions or deviations from these guidelines, the Committee asks that these be explained by the Administrative Law Judge hearing the case. This will help the Committee to better evaluate proposed decisions and to make decisions that accurately reflect the facts of each specific disciplinary matter.

### STANDARD TERMS AND CONDITIONS OF PROBATION (1-13)

#### 1. OBEY ALL LAWS:

Respondent shall obey all federal, state, and local laws, including all statutes and regulations governing the practice of the licensee.

Further, respondent shall, within five (5) days of any arrest, submit to the Committee in writing a full and detailed account of such arrest.

#### 2. COMPLY WITH PROBATION PROGRAM

Respondent shall fully comply with the probation program established by the Committee and shall cooperate with the representatives of the Committee.

#### 3. CHANGE OF ADDRESS NOTIFICATION

Respondent shall, within five (5) days of a change of residence or mailing address, notify the Committee in writing of the new address.

#### 4. OUT-OF-STATE RESIDENCY

Respondent shall notify the Committee immediately in writing if he or she leaves California to reside or practice in another state.

Respondent shall notify the Committee immediately upon return to California.

The period of probation shall not run during the time respondent is residing or practicing outside California.

#### 5. SUBMIT QUARTERLY WRITTEN DECLARATIONS

Respondent shall submit to the Committee quarterly written declarations and verification of actions signed under penalty of perjury. These declarations shall certify and document compliance with all the conditions of probation.

#### 6. NOTIFY EMPLOYER OF PROBATION TERMS AND RESTRICTIONS

When currently employed or applying for employment as a speech-language pathologist or audiologist, respondent shall notify his or her employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision placing respondent on probation. The respondent shall notify any prospective health care employer of his or her probationary status with the Committee prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Committee's Decision placing respondent on probation.

Respondent shall cause each employer to submit quarterly written declarations to the Committee. These declarations shall include a performance evaluation.

Respondent shall notify the Committee, in writing, of any change in his or her employment status, within ten (10) days of such change.

#### 7. INTERVIEWS WITH COMMITTEE REPRESENTATIVES

Respondent shall appear in person for interviews with the Committee, or its designee, upon request at various intervals and with reasonable notice. An initial probation visit will be required within sixty (60) days of the effective date of the Decision. The purpose of this initial interview is to introduce Respondent to the Committee's representatives and to familiarize Respondent with specific probation conditions and requirements. Additional meetings may be scheduled as needed.

#### 8. EMPLOYMENT LIMITATIONS

While on probation, Respondent may not work as a faculty member in an accredited or approved school of speech-language pathology or school of audiology.

## 9. EDUCATIONAL COURSE

Respondent shall take and successfully complete course work substantially related to the violation. The Committee shall, within sixty (60) days of the effective date of the Decision, advise the Respondent of the course content and number of contact hours required. Within thirty (30) days thereafter, Respondent shall submit a plan to comply with this requirement. Respondent must obtain approval of such plan by the Committee prior to enrollment in any course of study.

Respondent shall successfully complete the required remedial education no later than the end of the first year of probation. Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Committee immediately.

## 10. FUNCTION IN LICENSED CAPACITY

During probation, Respondent shall work in his or her capacity in the State of California. If respondent is unable to secure employment in his or her capacity, the period of probation shall be tolled during that time.

## 11. MAINTAIN A VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Committee, including any period during which suspension or probation is tolled.

Should Respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement, Respondent's license shall be subject to any and all terms of this probation not previously satisfied.

## 12. VIOLATION OF PROBATION

If Respondent violates probation in any respect, the Committee may seek to revoke probation and carry out the disciplinary order that was stayed. The Respondent shall receive prior notice and the opportunity to be heard. If an Accusation or Petition to Vacate Stay or other formal disciplinary action is filed against Respondent during probation, the Committee shall have continuing jurisdiction and the period of probation shall be extended until the matter is final.

### 13. COMPLETION OF PROBATION

Respondent's license will be fully restored upon successful completion of probation.

### **OPTIONAL TERMS AND CONDITIONS OF PROBATION (14-26)**

### 14. SUBMIT TO EXAMINATION BY PHYSICIAN

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician of his or her choice who meets minimum criteria established by the Committee. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine, or a related specialty. The purpose of this examination shall be to determine Respondent's ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Committee's Decision prior to the examination. Cost of such examination shall be paid by Respondent.

Respondent shall cause the physician to complete a written medical report. This report shall be submitted by the physician to the Committee within ninety (90) days of the effective date of the Decision. If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Committee within three (3) working days. The Committee shall notify the respondent in writing of the examining physician's determination of unfitness to practice and shall order the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Committee is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Committee.

### 15. PSYCHOLOGICAL EVALUATION

Respondent shall participate in a psychiatric or psychological evaluation. This evaluation shall be for the purpose of determining Respondent's current mental, psychological and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Committee's Decision prior to the evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in

psychiatry or by a clinical psychologist licensed in California approved by the committee.

Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Committee the name of one or more proposed evaluators for prior approval by the Committee.

Respondent shall cause the evaluator to submit to the Committee a written psychiatric or psychological report evaluating Respondent's status and progress as well as such other information as may be requested by the Committee. This report shall be submitted within ninety (90) days from the effective date of the Decision. Cost of such evaluation shall be paid by the Respondent.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Committee within three (3) working days. The Committee shall notify the Respondent in writing of the evaluator's determination of unfitness to practice and shall notify the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Committee is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Committee.

If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Committee's discretion. Cost of such therapy shall be paid for by Respondent.

## 16. PSYCHOTHERAPY

Respondent shall participate in ongoing psychotherapy with a California licensed psychiatrist, Board certified in Psychiatry, clinical psychologist, marriage, family, and child counselor, or licensed clinical social worker approved by the Committee. Counseling shall be at least once a week unless otherwise determined by the Committee. Respondent shall continue in such therapy at the Committee's discretion. Cost of such therapy shall be paid for by Respondent.

Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Committee the name of one or more proposed therapists for prior approval. Upon approval by the Committee, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Committee's Decision no later than the first counseling session.

If the therapist finds that Respondent is not psychologically fit to practice safely,

or can only practice with restrictions, the therapist shall notify the Committee within three (3) working days. The Committee shall notify the Respondent in writing of the therapist's determination of unfitness to practice and shall notify the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Committee is satisfied of Respondent's fitness to practice safely and has so notified the Respondent.

Respondent shall cause the therapist to submit quarterly written declarations to the Committee concerning Respondent's fitness to practice and progress in treatment.

#### 17. REHABILITATION PROGRAM

Within thirty (30) days of the effective date of the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the Committee. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Committee.

Components of the treatment contract shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs.

The cost for participation in this program shall be paid for by Respondent.

#### 18. ATTEND CHEMICAL DEPENDENCY SUPPORT AND RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous). Documentation of attendance shall be submitted by the Respondent with each quarterly written report. Respondent shall continue attendance in such a group for the duration of probation.

#### 19. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined in Section 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for

a bonafide illness.

#### 20. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

#### 21. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing paid for by Respondent, at the request of the Committee or its designee. Positive test results will be immediately reported to the Committee.

#### 22. TAKE AND PASS LICENSURE EXAMINATION

Before resuming practice, Respondent shall take and pass the licensure examination currently required of new applicants prior to resuming practice. Respondent shall pay all examination fees.

#### 23. SUPERVISION

The Committee shall be informed and approve of the type of supervision provided while the Respondent is functioning as either a licensed speech-language pathologist or licensed audiologist.

Respondent may not function as a supervisor for any required professional experience (RPE) candidate during the period of probation or until approved by the Committee.

#### 24. RESTRICTIONS ON LICENSED PRACTICE

Respondent shall practice only with a restricted patient population, in a restricted practice setting, or engage in limited practice procedures. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in the manner required by the Committee.

#### 25. RECOVERY OF COSTS

Where an order for recovery of costs is made, the Respondent shall make timely payments as directed in the Decision.

26. ACTUAL SUSPENSION OF LICENSE

As part of probation, respondent is suspended from practice for \_\_\_\_ months beginning the effective date of this decision. Respondent shall be responsible for informing his or her employer of the Committee's decision, the reasons for the length of suspension. Prior to the lifting of the actual suspension of license, the Respondent shall provide documentation of completion of educational courses or treatment rehabilitation if required.

**PENALTIES FOR  
DISCIPLINARY ACTIONS**

**UNPROFESSIONAL CONDUCT (GENERAL)**

Sections 480 & 2533 of the Business and Professions Code  
Section 1399.180 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13) If warranted: Supervision (23) Psychological Evaluation (15) Restricted Practice (24) Suspension (26)

**UNPROFESSIONAL CONDUCT -- CONVICTION OF A CRIME OR  
ACT INVOLVING DISHONESTY, FRAUD, OR DECEIT**

Sections 480(a)(1), 480(a)(2), 490 & 2533(a) of the Business and Professions  
Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13) If warranted: Supervision (23) Psychological Evaluation (15) Restricted Practice (24)



**UNPROFESSIONAL CONDUCT -- USE OF ANY DANGEROUS DRUGS SPECIFIED IN SECTION 4211 OF BUSINESS AND PROFESSION CODE, OR USE OF ALCOHOLIC BEVERAGES EXTENT IMPAIRS ABILITY TO PRACTICE SAFELY**

Section 2533(c)(2) of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms of Probation (1-13) Physician Exam (14) Support and Recovery Group (18) Abstain from Drugs and Alcohol (19-20) Submit Biological Fluids (21) Supervision (23) If warranted: Psychological Evaluation (15) Psychotherapy (16) Drug and Alcohol Rehabilitation (17) Restricted Practice (24) Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of rehabilitation, denial of problem, unstable employment history, significant diversion of patients' medications, prior disciplinary action, multiple violations and patient harm.

**UNPROFESSIONAL CONDUCT -- MORE THAN ONE MISDEMEANOR OR ANY FELONY INVOLVING USE, CONSUMPTION, OR SELF-ADMINISTRATION OF ANY CONTROLLED SUBSTANCES, ALCOHOL, OR DANGEROUS DRUG**

Section 2533(c)(3) of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13) Support and Recovery Group (18)

Abstain from Drugs and Alcohol (19-20)

Submit Biological Fluids (21)

If warranted:

Physical Examination (14)

Psychological Evaluation (15)

Drug and Alcohol Rehabilitation (17)

Supervision (23)

Restricted Practice (24)

Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to consider are: conviction of possession of drugs for sale, contribution to delinquency of minors, and other similar offenses.

### **UNPROFESSIONAL CONDUCT -- FALSE OR MISLEADING ADVERTISING**

Section 2533(d) of the Business and Professions Code

Section 1399.185 of the California Code of Regulations, Title 16

MAXIMUM

Revocation or Denial

MINIMUM

18 Months Probation

Standard Terms (1-13)

If warranted:

Supervision (23)

### **UNPROFESSIONAL CONDUCT -- COMMITTING A DISHONEST OR FRAUDULENT ACT SUBSTANTIALLY RELATED TO QUALIFICATIONS, FUNCTIONS, OR DUTIES OF LICENSEES (Non-Drug Related)**

Section 2533(e) of the Business and Professions Code

MAXIMUM

Revocation or Denial

MINIMUM

18 Months Probation

Standard Terms of Probation (1-13)

Supervision (23)

If warranted:

Physician Examination (14)

Psychological Evaluation (15)

Restricted Practice (24)

Suspension (26)

### **UNPROFESSIONAL CONDUCT BY SPEECH-LANGUAGE PATHOLOGY CORPORATION OR AUDIOLOGY CORPORATION**

Section 2537.2 of the Business and Professions Code

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation  
Standard Terms of Probation (1-13)

**DISCIPLINARY ACT BY FOREIGN JURISDICTION**

Section 141 of the Business and Professions Code

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation  
Standard Terms of Probation (1-13)  
If warranted:  
Support and Recovery Group (18)  
Abstain from Drugs and Alcohol (19-20)  
Submit Biological Fluids (21)  
Physical Examination (14)  
Psychological Evaluation (15)  
Drug and Alcohol Rehabilitation (17)  
Supervision (23)  
Restricted Practice (24)  
Suspension (26)

**SEXUAL MISCONDUCT**

Section 726 of the Business and Professions Code

MAXIMUM Revocation or Denial

MINIMUM 3 Years Probation  
Standard Terms of Probation (1-13)  
Supervision (23)  
If warranted:  
Psychological Evaluation (15)  
Psychotherapy (16)  
Restricted Practice (24)  
Suspension (26)

**VIOLATION OF REQUIRED PROFESSIONAL EXPERIENCE  
(RPE) REGULATIONS**

Sections 1399.162, 1399.163, 1399.164, 1399.166, & 1399.169  
of the California Code of Regulations, Title 16

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation  
Standard Terms of Probation (1-13)

**VIOLATION OF LAWS AND REGULATIONS RELATING  
TO SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AIDES**

Section 2530.6 of the Business and Professions Code  
Sections 1399.171-1399.175 of the California Code of Regulations, Title 16

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation  
Standard Terms of Probation (1-13)

**UNPROFESSIONAL CONDUCT-AIDING AND ABETTING IN  
THE COMMISSION OF A VIOLATION OF  
AN ACT OR REGULATION**

Section 1399.180(a) of the California Code of Regulations, Title 16

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation  
Standard Terms of Probation (1-13)

**UNPROFESSIONAL CONDUCT-CORRUPT OR ABUSIVE  
ACT AGAINST A PATIENT**

Section 1399.180(b) of the California Code of Regulations, Title 16

MAXIMUM Revocation or Denial

MINIMUM 3 Years Probation  
Standard Terms of Probation (1-13)  
Supervision (23)  
If warranted:  
    Psychological Evaluation (15)  
    Psychotherapy (16)  
    Restricted Practice (24)  
    Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of

rehabilitation, denial of problem, prior disciplinary action, multiple violations and patient harm.

## **UNPROFESSIONAL CONDUCT- INCOMPETENCE OR NEGLIGENCE**

Section 1399.180 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms of Probation (1-13) Supervision (23) If warranted: Psychological Evaluation (15) Psychotherapy (16) Restricted Practice (24) Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of rehabilitation, denial of problem, prior disciplinary action, multiple violations and patient harm.

### **RECOMMENDED LANGUAGE FOR ISSUANCE AND PLACEMENT OF A LICENSE ON PROBATION FOR INITIAL LICENSURE AND REINSTATEMENT OF LICENSE**

In order to provide clarity and consistency in its decisions, the Speech-Language Pathology and Audiology Examining Committee recommends the following language in proposed decisions or stipulated agreements for applicants who hold a license in another state and for petitioners for reinstatement who are issued a license that is placed on probation.

Suggested language for applicants who are placed on probation:

"The application of respondent \_\_\_\_\_ for licensure is hereby granted. Upon successful completion of all licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of \_\_\_\_\_ years on the following terms and conditions:"

Suggested language for applicants who are licensed in another state and are placed on probation:

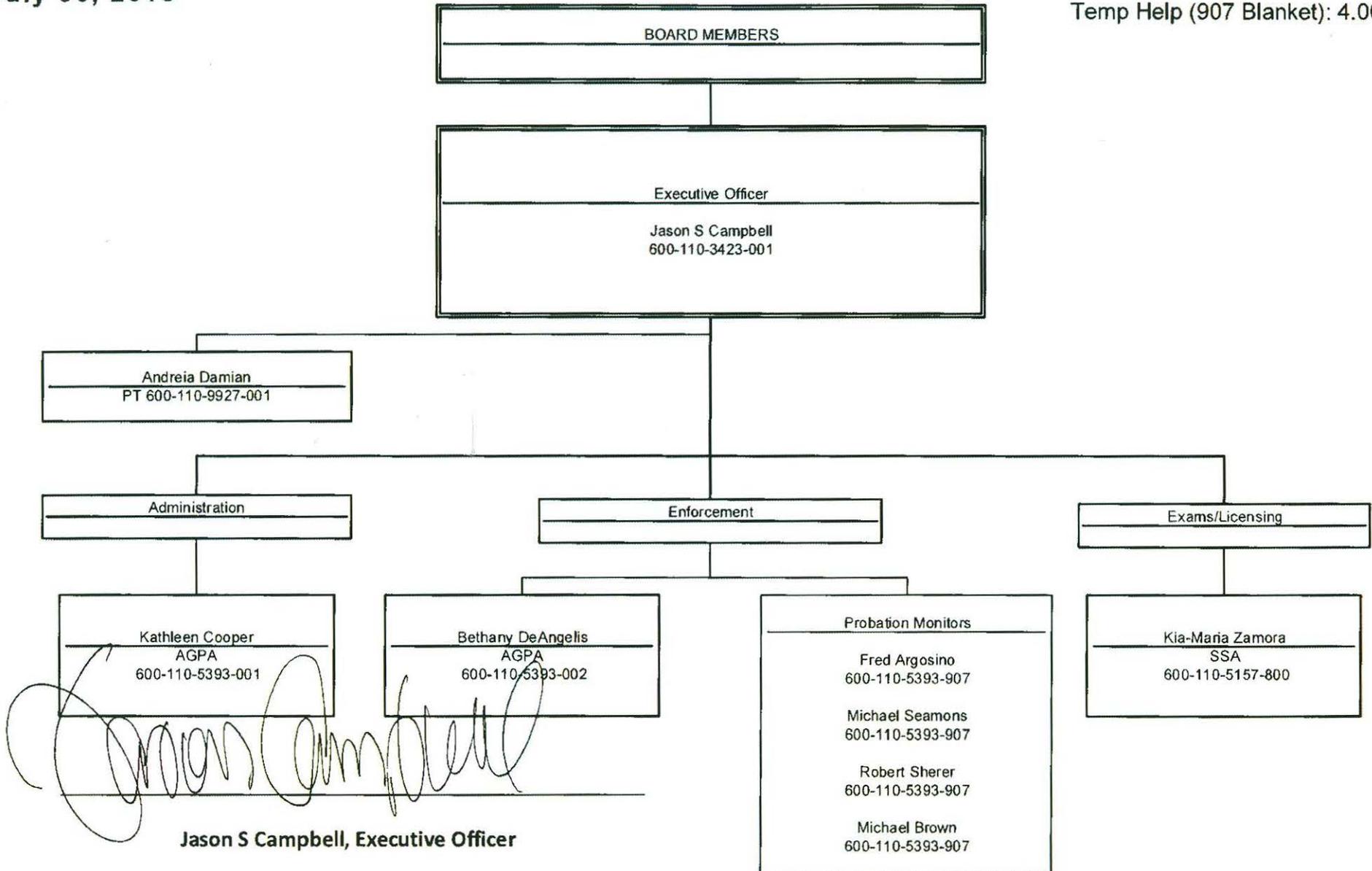
"The application of respondent for licensure is hereby granted and a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of \_\_\_\_ years on the following terms and conditions:"

Suggested language for reinstatement of licensure with conditions of probation:

"The application of respondent \_\_\_\_\_ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of \_\_\_\_ years on the following terms and conditions:"

Department of Consumer Affairs  
Board of Podiatric Medicine  
July 30, 2015

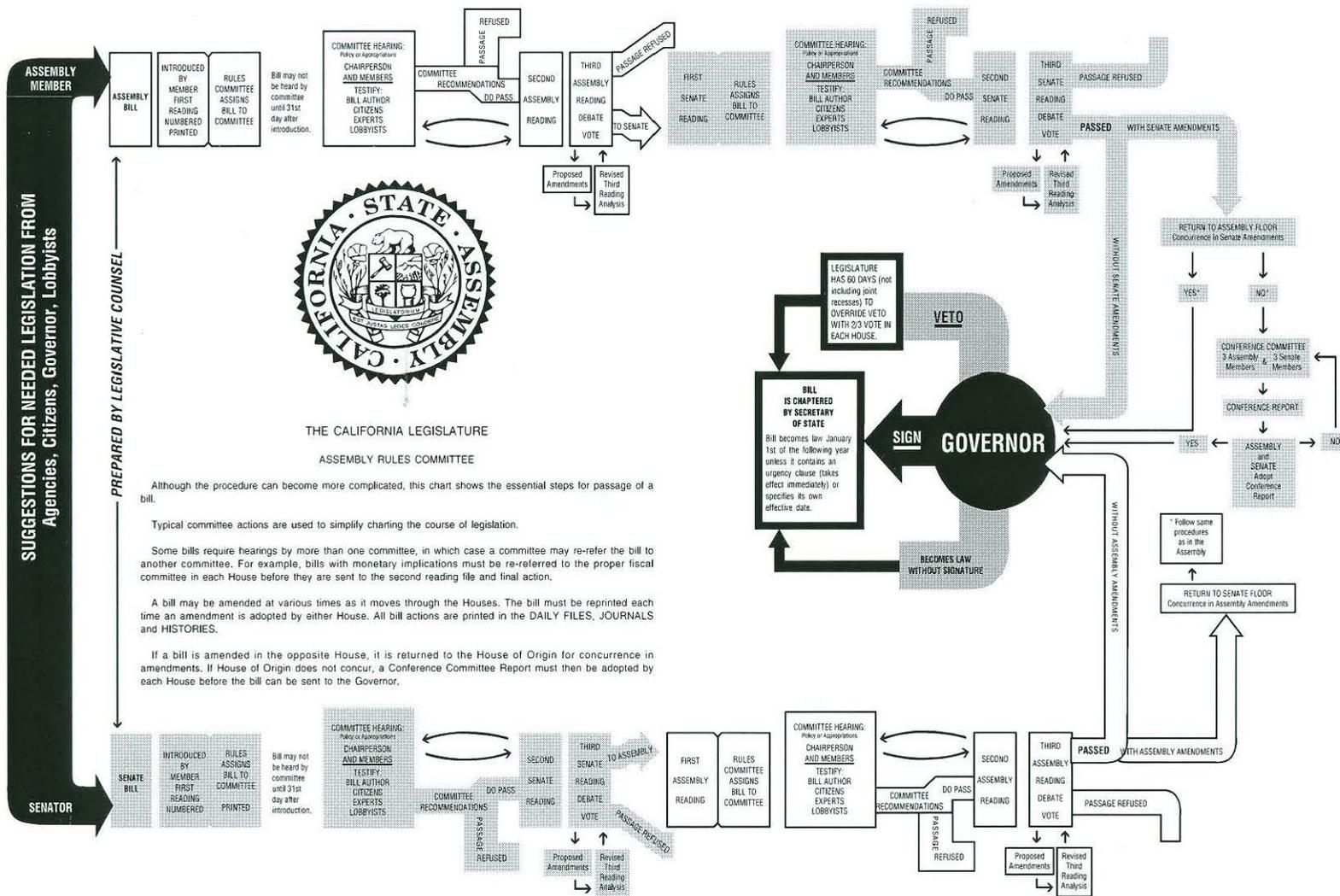
**CURRENT**  
FY 2015-16  
Authorized Positions: 5.00  
Temp Help (907 Blanket): 4.00



Korey Landry, Personnel Analyst



# THE LIFE CYCLE OF LEGISLATION —From Idea into Law



Although the procedure can become more complicated, this chart shows the essential steps for passage of a bill.

Typical committee actions are used to simplify charting the course of legislation.

Some bills require hearings by more than one committee, in which case a committee may re-fer the bill to another committee. For example, bills with monetary implications must be re-referred to the proper fiscal committee in each House before they are sent to the second reading file and final action.

A bill may be amended at various times as it moves through the Houses. The bill must be reprinted each time an amendment is adopted by either House. All bill actions are printed in the DAILY FILES, JOURNALS AND HISTORIES.

If a bill is amended in the opposite House, it is returned to the House of Origin for concurrence in amendments. If House of Origin does not concur, a Conference Committee Report must then be adopted by each House before the bill can be sent to the Governor.

## Chapter IX

# The Legislative Process

## Bills and Bill Titles

In California, all laws are enacted by the passage of bills. A bill either proposes a new law or amends or repeals the existing law.

The Constitution provides that every act shall only embrace but one subject and that subject must be expressed in the title of the measure.<sup>1</sup>

The courts have been very liberal in their construction of what must be contained in the title of a bill.

“Where the body of the act embraces provisions germane to the general subject stated in the title, or when the title suggests the field of legislation which is included within the text of the act, the title will be held to be sufficient.”

“The title should be liberally construed so as to uphold the statute if a reasonable reference to the subject matter included therein may be ascertained from the language employed.”<sup>2</sup>

Every law must contain the enacting clause: “The people of the State of California do enact as follows:”<sup>3</sup>

A bill becomes a statute when it is signed by the Governor and given a final chapter number by the Secretary of State. The Governor’s office works in conjunction with the Secretary of State’s office to ensure that signed bills are enacted in the order intended by the Legislature and the Governor. Before a bill becomes law, it must be read by title on three different days in each house unless the house itself dispenses with this constitutional requirement by a two-thirds vote of the membership of the house. No bill may be considered for final passage by either house of the Legislature until the bill, with any amendments that may have been adopted, has been printed and distributed to the members. The vote on the passage of the bill must be entered in the Journals of the respective houses.

Non-urgency statutes enacted in the regular session before the Legislature adjourns for the “interim study recess” in the first year of the biennium shall go into effect on January 1 of the following year. For example, a non-urgency bill passed on September 5, 2005 would take effect on January 1, 2006. A non-urgency measure, however, that is enacted in the second year of the two-year session takes effect on January 1, following a 90-day period from the date of enactment.<sup>4</sup> For example, a bill that is enacted on or before October 2, 2006 would take effect on January 1, 2007. In contrast, a bill

<sup>1</sup> Constitution, Article IV, Section 9.

<sup>2</sup> *People v. Oreck*, 74 Cal. App. 2d 215. Reaffirmed in *People v. Horner*, 137 Cal. App. 2d 615; *Orange County Water Dist. v. Farnsworth*, 138 Cal. App. 2d 518; *People v. Oosterveen*, 154 Cal. App. 2d 620; *San Joaquin Helicopters v. Dept. of Forestry et al.*, App. 3 Dist. 2003.

<sup>3</sup> *Government Code*, Section 9501.5. The *Constitution of 1849*, Article IV, Section 1, provided that the enacting clause of every law be as follows: “The people of the State of California, represented in Senate and Assembly, do enact as follows:” a similar provision remained in the Constitution until the adoption of *Proposition 1-a* in 1966, which removed it from the Constitution. However, it was subsequently enacted as part of the *Government Code*.

<sup>4</sup> *Constitution*, Article IV, Section 8(c). A bill is “enacted” when signed by the Governor or when a vetoed bill is overridden by the Legislature. See also, *People v. Cargill (1995)* 38 Cal. App. 4th 1551. Court held that a citizen arrested only 7 hours after Governor signed urgency legislation was still subject to the new law: “[n]othing in the clear language of the statute indicates that ‘immediately’ should be construed as ‘the next day.’”

enacted on October 3, 2006 would not take effect until January 1, 2008. However, the likelihood of a regular statute (non-urgency, non-tax levy, etc.) being enacted any time after August 31 in the second year is remote. In fact, the only regular (non-urgency, non-tax levy, etc.) legislation that can be enacted after August 31 in the second year would be a “regular” bill that was vetoed by the Governor and then overridden by the Legislature during Final Recess. In other words, if the Governor vetoed a bill September 28, 2006, and the Legislature were to override the veto on November 3, 2006, the bill would go into effect January 1, 2008. This delay is imposed by operation of the Constitutional requirement that dictates a statute’s effective date as occurring on January 1 *next following a 90-day period from enactment*.

This provision does not apply to statutes calling elections, for tax levies or appropriations for the usual and current expenses of the state or if the bill itself contains an urgency section which consists of a statement of the facts constituting the necessity for its immediate effectiveness. The facts constituting an urgency in this instance require that they be related to and necessary for the immediate preservation of the public peace, health or safety. Such a statute may not have an immediate effect unless the urgency section and the bill each receive, upon a separate rollcall vote entered in the Journals, a two-thirds vote of the membership of both houses.<sup>5</sup>

In California, the Budget Bill is introduced simultaneously in both houses. Unlike the Federal Constitution, the California Constitution does not require that appropriation measures be introduced only in the lower house; they may originate in either the Assembly or the Senate.

### Bills in the Early Sessions

Many of the bills and amendments to bills in the early sessions of the Legislature were written in longhand. This did not present a difficult or serious problem as few bills were introduced in the First Legislature or during the early sessions.

Bills enacted into law were translated into Spanish by the State Translator, since the California Constitution of 1849 provided that “all bills, decrees, regulations and provisions which from their nature require publication shall be published in English and Spanish.”<sup>6</sup>

In accordance with this constitutional provision, the First Legislature provided that 1,050 copies of each law be printed in English, and 350 copies be printed in Spanish.<sup>7</sup>

The new Constitution adopted in 1879 provided that all laws shall be published in the English language.<sup>8</sup> Notwithstanding this law, the publication of official proceedings in both English and Spanish continued to be a long-standing practice into the early 1900s. As late as 1909, the Legislature provided that 240 copies of “laws, resolutions and memorials as may be designated by the Legislature” shall be printed in Spanish.

<sup>5</sup> *Constitution*, Article IV, Section 8(d).

<sup>6</sup> *Constitution of 1849*, Article XI, Section 21.

<sup>7</sup> *Statutes of 1850*, Chapter 24.

<sup>8</sup> *Constitution of 1879*, Article IV, Section 24. Repealed by Proposition 1-a 1966.

There has been a material change in legislative procedure and parliamentary practice over the years. One example is the following Assembly rule which was repealed more than 75 years ago:

“No amendment shall be received for discussion at the third reading of any bill, but it shall at all times be in order, before the final passage of such bill, to move its commitment to a Select Committee, under special instructions to amend.”<sup>9</sup>

Conforming to this rule, the Speaker would appoint a member to act as a Select Committee of One, who would sit down at his desk in the Chamber, write the amendment, insert it in the bill, and report to the House according to its instructions. The House would then adopt or reject the amendment.

The current rules require that floor amendments be prepared and approved as to form by the Legislative Counsel. Additionally, all substantive floor amendments are analyzed by a Committee Consultant in conjunction with the Assembly Floor Analysis Unit in the Chief Clerk's Office. A copy of the amendments and analyses are distributed to each Member's desk and available on each Member's laptop computer prior to the commencement of floor debate.<sup>10</sup> There is, however, no requirement that the bill and the proposed floor amendment be re-referred to committee. The amendments are presented, debated and adopted or defeated on the floor. The Speaker may, at his or her discretion, re-refer substantially amended bills to a policy or fiscal committee for further analysis, debate, and vote.<sup>11</sup>

### **Governor's Message to the Legislature and the Budget**

The Governor shall, on or before January 10 of each year, submit to each house, with an explanatory message, a budget containing a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by him or her and of all estimated revenues, for the ensuing fiscal year. The Budget shall also contain a statement of cash-flow for the preceding fiscal year and an estimate of the cash-flow for the current and the succeeding fiscal year and shall show for each month the income, expenditures and borrowing from individual funds.<sup>12</sup>

### **The Budget Bill**

After the Governor has submitted his or her Budget, an appropriation bill, known as the Budget Bill, which reflects the Governor's proposed Budget, is introduced in each house of the Legislature and referred to the Assembly Budget Committee and the Senate Budget and Fiscal Review Committee, respectively. The Constitution requires that the Legislature pass the Budget Bill by midnight, June 15. Until the Budget Bill has been enacted, neither house shall send to the Governor any other appropriation bill, except

<sup>9</sup> *Assembly Rule 37*, 1925 Regular Session. Repealed in 1929. For example, see *Journal of the Assembly, 1925 Session*, March 30, 1925, p. 1373.

<sup>10</sup> *Assembly Rule 69*.

<sup>11</sup> *Assembly Rule 77.2*.

<sup>12</sup> *Constitution*, Article IV, Section 12(a); *Government Code*, Section 12021.

emergency bills recommended by the Governor, or appropriations for the salaries, mileage and expenses of the Legislature.<sup>13</sup>

All other bills may contain only one item of appropriation, and that expenditure must be for only one certain and expressed purpose. No bill that appropriates money from the General Fund, except appropriations for public school purposes, shall be operative unless passed by a two-thirds rollcall vote of the membership of each house.<sup>14</sup>

At regular sessions, no bill, other than the Budget Bill, may be heard by any committee or acted upon by either house until the 31st day after the bill is introduced, unless this provision is dispensed with by a three-fourths vote of the house.<sup>15</sup>

The 2005–06 fiscal year State Budget, as chaptered, totaled \$90 billion. When all special and bond funds are included, the total Budget for 2005–06 exceeded \$113 billion.

Of the \$113 billion General Fund budget, approximately \$21.9 billion was allocated to support the operation of state government, and \$67.7 billion was allocated for assistance to local programs, government, and school districts. From the amount made available from the General Fund, about \$27.1 billion was for health and public assistance programs, and \$46.8 billion for education. The health, public assistance and educational expenditures comprised 82.1 percent of the General Fund budget.<sup>16</sup>

The Budget Bill and any other appropriation measures which come before the Legislature are considered by the fiscal committees of the respective houses, the Budget and Fiscal Review or Appropriations Committees in the Senate and the Budget or Appropriations Committees in the Assembly.

The items eliminated or reduced (item vetoed) by the Governor in the Budget Bill are reconsidered separately and this “item veto” may be overridden in the same manner as bills.<sup>17</sup> The Governor may approve or veto one or more items of appropriation in a bill containing several items of appropriation. The Governor, however, may not change a proposed law by striking out parts of a bill.<sup>18</sup>

### ***History of the Item Veto***

In California, the Constitution of 1849 included a gubernatorial veto provision similar to that contained in the United States Constitution.<sup>19</sup> The Constitution of 1879 added the item veto power, allowing the Governor to “object to one or more items” of appropriation in a bill which contained “several items of appropriation.”<sup>20</sup> By constitutional initiative in 1922 (Proposition 12), the Governor was empowered not only to eliminate “items of appropriation” but to reduce them, while approving other portions of a

<sup>13</sup> *Constitution*, Article IV, Section 12(c).

<sup>14</sup> *Constitution*, Article IV, Section 12(d). Appropriations for the public schools may be passed by a majority vote of the membership of each house.

<sup>15</sup> *Constitution*, Article IV, Section 8(a).

<sup>16</sup> This information supplied by the Assembly Budget Committee.

<sup>17</sup> *Constitution*, Article IV, Section 10(e).

<sup>18</sup> *Harbor v. Deukmejian*, 43 Cal. 3d 1078.

<sup>19</sup> *Constitution of 1849*, Article IV, Section 17.

<sup>20</sup> *Constitution of 1879*, Article IV, Section 16.

bill.<sup>21</sup> The 1922 amendment also directed the Governor to submit a budget to the Legislature containing his recommendation for state expenditures.<sup>22</sup>

### **Constitutional Amendments** <sup>23</sup>

Constitutional amendments proposed by the Legislature require a two-thirds affirmative vote of the members of each house, and must be submitted to a direct vote of the people, and adopted and ratified by a majority vote of the qualified voters, before they become a part of our State Constitution.<sup>24</sup>

Prior to its being voted upon by the people, the Legislature may amend or withdraw the proposal.<sup>25</sup>

Although all proposed constitutional amendments are usually submitted to the people at the direct primary or the general election, a special election may be called by the Governor to be held throughout the state for the adoption or rejection of constitutional amendments or other measures.

### **Resolutions**

Legislative constitutional amendments are, in fact, resolutions which propose to the people of the State of California amendments to the State Constitution.

There are three other kinds of resolutions used in the Legislature. Two of these, concurrent resolutions and joint resolutions, require consideration and adoption by both houses of the Legislature before they can take effect. House (Assembly) and Senate resolutions are adopted by the house of origin only. All resolutions require a majority vote for passage.

#### ***Joint Resolutions***

Joint resolutions are those which relate to matters connected with the federal government.<sup>26</sup> These resolutions are used almost exclusively for the purpose of memorializing Congress—that is, expressing approval or disapproval by the California Legislature of legislation pending or proposed in Congress or programs and activities of the federal government. Additionally, the California Legislature utilizes joint resolutions to ratify amendments to the United States Constitution. (See also Chapter 2.)

Joint resolutions take effect upon their being filed with the Secretary of State.<sup>27</sup>

#### ***Concurrent Resolutions***

Concurrent resolutions relate to matters to be treated by both houses of the Legislature, and are used for a variety of purposes, such as adopting the Joint Rules, creating joint committees, directing executive departments to make

<sup>21</sup> *Constitution of 1879*, Article IV, Section 10(b).

<sup>22</sup> *Constitution of 1879*, Article IV, Section 12(a).

<sup>23</sup> Amendments to the United States Constitution must be proposed by a two-thirds vote of both houses of Congress, or, upon application of the legislatures of two-thirds of the several states, Congress must call a convention for proposing amendments. In either case, the amendments become a part of the Constitution only when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. *United States Constitution*, Article V.

<sup>24</sup> *Constitution*, Article XVIII, Sections 1 and 4. For amendment of the Constitution by the initiative, see Chapter III, *supra*, p. 38.

<sup>25</sup> *Constitution*, Article XVIII, Section 1.

<sup>26</sup> *Joint Rule 5*.

<sup>27</sup> *Government Code*, Section 9602.

specific reports to the Legislature, and memorializing the death of a Member or a former Member of the Legislature or their immediate families.<sup>28</sup>

Concurrent resolutions take effect upon their being filed with the Secretary of State.<sup>29</sup>

### ***House and Senate Resolutions***

House (Assembly) and Senate resolutions are the expression of one house of the Legislature and take effect upon their adoption. These resolutions are normally used to amend the house rules, to create committees, or to request a committee of the house to study a specific problem.

House resolutions and Senate resolutions are printed as separate documents in the same manner as bills. Resolutions, however, are not subject to the same 30-day waiting period that applies to bills. After a resolution is referred to committee, it may be acted upon. The previous practice in the Assembly of printing the text of house resolutions in the Journal of the Assembly was discontinued at the beginning of the 1991–92 Regular Session as a cost-saving measure.

### **Introduction of Bills**

In the Assembly, the first bills are introduced on the first day of a biennial session. On that day, during the order of business “Introduction and Reference of Bills,” the Reading Clerk calls the roll from A to Z and, as each Member’s name is called, the Member may introduce one bill or resolution.<sup>30</sup> In the Senate, and in the Assembly following the initial roll call, Members may introduce bills by presenting them at the Secretary of the Senate or the Chief Clerk’s desk in their respective chambers.

Within the meaning of the Rules and usage and custom, the word “bills” includes house, concurrent and joint resolutions and constitutional amendments, unless joint and concurrent resolutions are specifically exempted by the language of a particular rule.<sup>31</sup>

Before the convening of each session, the respective houses provide the Legislative Counsel with printed covers for use in the preparation of bills for introduction.

The Joint Rules provide that “No bill shall be introduced unless it is contained in a cover attached by the Legislative Counsel and unless it is accompanied by a digest, prepared and attached to the bill by the Legislative Counsel, showing the changes in the existing law which are proposed by the bill.”<sup>32</sup> In addition to providing a summary of the changes in the existing law, the digest also contains the number of votes required to pass the bill, and indicates whether or not the bill contains an appropriation or a state-mandated local program.

<sup>28</sup> *Joint Rules 5 and 34.2.* In practice, most memorials are done by a motion to “adjourn in the memory” of a prominent deceased citizen or elected official. Such memorial adjournments are printed in the journal. See *Assembly Rules 40, 45.5 and 54.*

<sup>29</sup> *Government Code*, Section 9602.

<sup>30</sup> *Assembly Rule 47; see also Senate Rule 22.*

<sup>31</sup> See *Joint Rule 6. See also Senate Rule 19; Assembly Rules 46, 66 and 73.*

<sup>32</sup> *Joint Rule 8.5.*

When the bill is drafted, its text is placed in Legislative Counsel computer storage and identified by a “request number.” A typewritten copy of the bill and three copies of the digest are placed in a bill cover supplied by the house in which the bill is to be introduced. The title of the bill is typed on the cover, and the bill is then delivered to the author for introduction.

When the author wishes to introduce the bill, he or she delivers it to the Chief Clerk or Secretary who gives the bill a number. The Chief Clerk or Secretary notifies the Legislative Counsel that a bill bearing a particular request number has been introduced as Assembly Bill No. \_\_\_\_ or Senate Bill No. \_\_\_\_\_. The Legislative Counsel then extracts the text, adds the bill number and electronically transmits the text, digest and number to the Office of State Publishing.

One copy of the digest is retained by the author, one copy accompanies the bill to the printer, and one copy is retained by the Chief Clerk or the Secretary who provides additional copies for the press.

The Assembly Rules provide that the bill must be signed by the author and coauthors, if any, before it may be accepted for introduction.<sup>33</sup>

If any bill which does not comply with the foregoing requirements is presented to the Secretary of the Senate or Chief Clerk of the Assembly for introduction, the Secretary or Chief Clerk returns it to the member who presented it.

After the bill and its accompanying digest is placed across the desk and it has been numbered, the bill is read for the first time and referred to a committee.<sup>34</sup> The bill’s number, the date of its introduction and first reading, the committee to which it is referred, the dates it is sent to and received from the printer, as well as any other clerical notations made necessary by a deviation from the ordinary procedure, are shown on the bill cover.

During a regular session, the date of the 31st day after the introduction of the bill is stamped by a clerk on the bill cover. No bill other than the Budget Bill, or a bill introduced in an Extraordinary Session, or a resolution, may be heard by any committee or acted upon by either house until 30 calendar days have elapsed following the date the bill was introduced. This provision, however, may be dispensed with by a vote of three-fourths of the members of the house which is considering the measure.<sup>35</sup> The front section of each Senate and Assembly Daily File charts the 31st day after each bill’s introduction, providing the public, staff and clerks with a quick reference as to when the bill may be heard.

Upon introduction Assembly bill covers are white, while those used by the Senate are goldenrod. Covers for concurrent and joint resolutions and constitutional amendments are each of a different and distinctive coloring. The different colored covers provide the clerks with an easy method of identifying the various types of proposed legislation.

<sup>33</sup> *Assembly Rule 47.*

<sup>34</sup> In the Assembly, the Chief Clerk, after notifying the Legislative Counsel of the new bill number assigned to the particular Legislative Counsel request number, sends the bill to be printed. The Rules Committee, at an open public meeting, then formally refers the bill to a policy committee. *Assembly Rule 51.* This introduction procedure is essentially the same in the Senate. *See Senate Rule 22.*

<sup>35</sup> *Constitution, Article IV, Section 8(a).* The bill must also have been in print for 30 days prior to being heard and acted upon. This provision of the Constitution may be dispensed with by a three-fourths vote of the House in which it is being heard (60 votes in the Assembly; 30 votes in the Senate). *See also, Joint Rule 55.*

A bill shall not contain any indication that it is introduced at the request of any person, state agency, or officer.<sup>36</sup> In addition, no bill may embrace more than one subject, which must be expressed in its title.<sup>37</sup>

Immediately after introduction, a computer printout is produced which provides several copies of the title of each bill. These titles are used to produce the legislative journals and histories.

The Assembly bills are sent to print immediately and, upon being returned, are delivered to the Assembly Rules Committee (see example on page 115). These bills are assigned to the appropriate standing committees at the Rules Committee's next meeting. After assignment, the bills are returned to the Chief Clerk who advises the appropriate Assembly committees that bills may be "picked up" at the Assembly Desk. Senate bills are assigned to committees prior to being printed and after printing are delivered to the Senate committees by the Secretary of the Senate. After receiving the necessary information, the Office of State Publishing produces copies of each bill for public distribution and review.<sup>38</sup>

At the same time bills become available in print, they are also available to staff through the Legislature's computer system, the Legislative Inquiry System (LIS). LIS is administered by the Legislative Data Center, which is under the direction of the Legislative Counsel. LIS provides an electronic version of the text of each bill upon introduction and at each stage of the amending process, as well as history actions and vote information. Most of this same information is also available to the public, free of charge, on the Internet.<sup>39</sup>

For convenience, bills are referred to or designated as AB for Assembly bills and SB for Senate bills. Concurrent resolutions are indicated by ACR or SCR, joint resolutions carry the letters AJR or SJR, and constitutional amendments are identified as ACA or SCA. A single house resolution in the Assembly is designated HR (House Resolution) and SR (Senate Resolution) in the Senate.

### ***Restriction on Bill Introduction***

Prior to the adoption of Proposition No. 9 at the 1958 general election, amending Article IV, Section 2, of the Constitution, almost all bills during the general sessions were introduced before the constitutional recess. The Constitution provided that no bills could be offered after the recess without the consent of three-fourths of the elected membership, and in no case could a member offer more than two bills subsequent to the recess. As a result, literally thousands of bills were introduced in the days preceding the recess. In 1957, for instance, more than 6,700 bills were introduced in the Legislature during the 19 days before the recess.

The budget session (even-numbered years), until it was abolished in 1966, was limited to the consideration of the Budget Bill, revenue acts necessary therefor, and the approval or rejection of charters and charter amendments of

<sup>36</sup> *Joint Rule 10.7.*

<sup>37</sup> *Constitution*, Article IV, Section 9.

<sup>38</sup> For provisions relative to the manner of printing of bills on their introduction, see *Joint Rules 8.5, 10, 10.7 and 12.*

<sup>39</sup> *Government Code*, Section 10248 (added by *Statutes of 1993*, Chapter 1235).

cities, counties, and cities and counties, and acts necessary to provide for the expenses of the session. There was no limitation on the number of bills that could be introduced in a Budget Session, as long as they pertained to the above subjects.

With the advent of the regular annual sessions beginning in 1967, there was no limitation on the number or type of bills that could be introduced at each regular session of the Legislature. The only limitation on bill introduction was contained in the Joint Rules. These Rules provided for unlimited bill introduction until March 15, after which date a Member was permitted to introduce three additional bills. If the Member desired to introduce an additional bill it was necessary to petition the Rules Committee, secure their favorable recommendation, and then offer and have a resolution adopted by a two-thirds vote of the members granting him or her permission to introduce the bill.

The rules in each house presently place a limit on the number of bills that can be introduced in a two-year session. A Senator may introduce a total of 50 and an Assembly Member no more than 40 bills in the regular session.<sup>40</sup> Assembly Members are also limited to five resolution introductions per session.<sup>41</sup> These limits are, in turn, subject to the Joint Rule deadline for bill introduction. After this deadline only committee bills, constitutional amendments, resolutions, Assembly bills approved by the Speaker, and Senate bills approved by the Senate Committee on Rules may be introduced.<sup>42</sup>

During extraordinary sessions, the Legislature has no power to legislate on any subjects other than those specified in the Governor's Proclamation which convenes it into extraordinary session, but it may provide for the expenses of the session and other matters incidental thereto.<sup>43</sup> There is no restriction on the number of bills which may be introduced, if they come within the purview of the items in the proclamation.

### ***Governor's Reorganization Plans (GRP)***

In California, the Legislature has the sole power to introduce bills. Although the Governor is required to draft a state budget plan by January 10 of each year, the actual legislation is introduced by state legislators and then substantially amended in each house. In addition, the Constitution grants the Governor, subject to the Legislature's approval, the authority to "assign and reorganize functions among executive officers and agencies and their employees."<sup>44</sup> These proposals to reorganize the Executive Branch are called "Governor's Reorganization Plans," or "GRP's."<sup>45</sup>

<sup>40</sup> *Assembly Rule 49; Senate Rule 22.5.* House Resolution 4 of the 1993–94 session established the original limit of 50 bills. House Resolution 36, 1995–96 Regular Session, reduced the bill limit per member from 50 to 30. This 30-bill limitation first took effect during the 1997–98 Regular Session (House Resolution 1, 1997–98 Regular Session). In 2003, the Senate reduced from 65 to 50 the number of bills a Senator may introduce (Senate Resolution 8, 2003–04 Regular Session).

<sup>41</sup> This limitation includes House, Concurrent, and Joint Resolutions, but does not include resolutions for the organization of the house or resolutions introduced by the Speaker as part of a session honoring a retiring Assembly Member. *Assembly Rule 49.* These resolution introduction limitations were first implemented in the 2005–06 Regular Session.

<sup>42</sup> *Joint Rules 54(a) and 61.*

<sup>43</sup> *Constitution*, Article IV, Section 3(b). See also *Extraordinary Sessions*, Ch. VI, *supra*, p. 76.

<sup>44</sup> *Constitution*, Article V, Section 6.

<sup>45</sup> Two examples of GRP's: Governor Deukmejian submitted GRP No. 1 in 1984. This plan transferred functions from the State Personnel Board to the Department of Personnel Administration as it related to the official roster of civil service employees. GRP No. 1 took effect June 11, 1984. Governor Wilson submitted GRP No. 1 in 1995, transferring authority from the California State Police to the California Highway Patrol. This plan took effect July 12, 1995.

GRP's are prepared by the Governor in bill form and language submitted to both Houses of the Legislature. The plan is assigned a number (e.g., GRP No. 1) and upon receipt each respective House assigns it to a Standing Committee for study and report.<sup>46</sup> The Legislature has 60 calendar days to act on the plan. It takes effect on the 61st day unless a resolution rejecting the plan is adopted by both the Senate and Assembly by a majority vote.

At least 10 days prior to the 60-day period, the Senate and Assembly Standing Committee in each House must submit a report in their respective Houses. The committee report may include a recommendation with respect to a resolution. Moreover, the resolution is only in order after a committee report is submitted or during the last 10 days prior to the 60th day.<sup>47</sup>

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<sup>46</sup> *Government Code*, Section 12080.2.

<sup>47</sup> *Id.*

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL****No. 392****Introduced by Assembly Member Chan**

February 11, 2005

An act to amend Sections 18986.86 and 18986.87 of, and to repeal Section 18986.88 of, the Welfare and Institutions Code, relating to county integrated health and human services.

## LEGISLATIVE COUNSEL'S DIGEST

AB 392, as introduced, Chan. County integrated health and human services.

(1) Existing law authorizes Humboldt, Mendocino, and Alameda Counties, and any additional county or counties, as determined by the Secretary of the California Health and Human Services Agency, with the assistance and participation of the appropriate state departments, within the existing resources of those departments, to implement a pilot program, upon approval of the county board of supervisors, for the funding and delivery of services and benefits through an integrated and comprehensive county health and human services system.

This bill would instead authorize any county, with the assistance and participation of the appropriate state departments, within the existing resources of those departments, to implement a program, upon approval of the county board of supervisors, for the funding and delivery of services and benefits through an integrated and comprehensive county health and human services system.

(2) Existing law authorizes the integrated system to include specified health and human services.

This bill would authorize the integrated system to include, but not be limited to, those existing specified services and additional services and programs.

**Example of a Bill (as introduced)  
from the 2005–06 Regular Session**

## Bills and Standing Committees

After introduction, bills are referred to the standing committees of the respective houses.

Though the rules of both houses provide that their committees must hold hearings and act upon bills referred to them as soon as practicable after they have been referred to them, certain requirements must first be met.

First, standing committees and their subcommittees are proscribed from taking action on a bill at any hearing held outside of Sacramento or during a joint recess. However, a committee may hear the subject matter of a bill during a period of recess, provided notice is published in the Daily File four days prior to such hearing.<sup>48</sup>

Next, during a regular session, committees must wait for a period of 30 days after a bill has been introduced and in print<sup>49</sup> before they may take action on it. These prohibitions may be dispensed with by an extraordinary vote in the house considering the measure.<sup>50</sup> This waiting period permits proponents and opponents to review the provisions of the bill and to prepare testimony for presentation to the committee.

Finally, a schedule or calendar of bills set for hearing is proposed by each committee. Publication of this list in the Daily File must occur at least four days in advance of a hearing by the first committee and two days in advance by subsequent committees of the same house.<sup>51</sup> For instance, a Senate or Assembly bill first referred to the Assembly Committee on Transportation must be noticed at least four days prior to hearing; if the bill is subsequently rereferred to the Assembly Appropriations Committee, the bill must then be noticed two days prior to hearing in that committee. If a committee wishes to hold an informational hearing on a general topic, a four-day notice is also required.

Publication of the lists of bills set for hearing gives notice to interested parties, including the general public, of the date and time when they may wish to appear before the committee to offer arguments for or against a bill. Occasionally, when a bill is of statewide importance or of a highly controversial nature, the date for its hearing is set a week or more in advance, to allow ample time for the attendance of those who live a considerable distance from the Capitol.

A bill may be set for hearing in a committee only three times. In order to be counted as one of the three "sets," notice of the hearing on the bill must be placed in the Daily File for at least one day. If the hearing of the bill is postponed at the committee's request, or if "testimony only" is to be taken, the hearing is not counted as one of the three times a bill may be set.<sup>52</sup>

<sup>48</sup> *Joint Rule 60.*

<sup>49</sup> *Constitution*, Article IV, Section 8(a); *Joint Rule 55.*

<sup>50</sup> The vote required for dispensing with the constitutional provision is three-fourths of the house considering the bill; the joint rule may be dispensed with by a vote of two-thirds of the house but is usually suspended in conjunction with the constitutional provision, *Constitution*, Article IV, Section 8(a); *Joint Rules 10.8 and 55.*

<sup>51</sup> *Joint Rule 62(a).*

<sup>52</sup> *Id.*

The members of the various committees spend many long and studious hours considering the measures which have been referred to them. It is not unusual for a committee meeting begun during the day to continue well into the night.

Many times, opposition to bills can be overcome by amendments submitted in committee. Amendments proposed by the committees are seldom opposed by the house, since these amendments generally are offered to correct an error in the bill or to remove opposition.

Also, upon request of the author of a bill, the chair of the committee to which it has been referred may, without a committee meeting, cause the bill to be reported to the Assembly with the recommendation that the author's amendments be adopted and the bill be rereferred to the committee.<sup>53</sup> This procedure, known as author's amendments, permits the author to correct any errors in the original bill and to get his or her bill in the exact form he or she wishes it to be before presenting it to the full committee.

It must be noted that the standing committees of the Legislature have only the power to submit, recommend, or propose amendments to legislative measures. Amendments endorsed by a committee must be adopted by the house by a majority of the Members present and voting on second reading before they may become part of the bill. The general practice is that the House unanimously ratifies committee recommendations by adopting committee amendments on second reading. The adoption of amendments by the house does not mean that there will be no opposition to the amended bill when it comes up for final passage.

The Joint Rules of the Senate and Assembly are explicit regarding the conduct of the meetings of standing committees. A quorum must be present in order for a bill to be passed out of committee. When a committee takes action on a bill, the vote must be by rollcall. Further, all rollcall votes must be recorded by the committee secretary and transmitted to the Chief Clerk of the Assembly or the Secretary of the Senate for publication as part of the Journals of the respective houses. Committee actions are also published in a manner prescribed by each house.<sup>54</sup> Committee votes are also available at the official legislative information website ([www.leginfo.ca.gov](http://www.leginfo.ca.gov)). In the event a bill fails to receive the necessary votes to pass it out of committee and reconsideration is not granted within 15 legislative days, it is returned to the Chief Clerk of the Assembly or the Secretary of the Senate, as the case may be, and may not be considered further during the session.<sup>55</sup>

When a bill is reported out of a committee, the committee chairperson submits a report to the house indicating what recommendation the committee makes to the house, such as "do pass," "do pass, as amended," or any other determination made by the committee. The original bill accompanies this report. After the bill has been reported from committee, read a second time,

<sup>53</sup> *Assembly Rule 68; Senate Rule 27.5.*

<sup>54</sup> *Joint Rule 62(c); Assembly Rule 58.5.* In the Assembly the committee votes are published periodically as an appendix to the Assembly Journal. In the Senate they are printed weekly as part of the Senate Journal.

<sup>55</sup> *Joint Rule 62(a).*

and reported correctly engrossed,<sup>56</sup> the engrossed copy of the printed bill is inserted in a newly created bill cover (or “jacket”), and used instead of the original typewritten bill. Engrossed bill covers are green for Assembly bills and yellow for Senate bills unless the measures include an urgency clause where Assembly bill jackets are red and those for Senate bills are orange. Under the direction of the Chief Clerk of the Assembly or Secretary of the Senate, the original bill is filed in the respective Engrossing and Enrolling office along with other legislative documents and amendments.

The biennial session is governed by constitutional deadlines for bills to be acted upon. The first occurs on January 31 of the second year of the biennium (2006), at which time those bills introduced in the first year of the biennium (2005) and still in the house of origin may no longer be acted upon by the house, and they are filed with the Chief Clerk or the Secretary of the Senate.<sup>57</sup> No bill may be presented to the Governor after November 15 of the second year of the session (2006). Another deadline occurs at the end of the second year, following adjournment *sine die*<sup>58</sup> (November 30, 2006), when all bills remaining in committee are returned to the Chief Clerk or Secretary.

After final adjournment, the Chief Clerk of the Assembly and the Secretary of the Senate file all the bills of the respective houses in the archives of the Secretary of State's office.

## Second Reading and Engrossment of Bills

All bills reported out of committee are placed on the second reading file for the next legislative day. They may not be read a second time except under that order of business, and they must be read the second time in the order of their appearance upon the second reading file.<sup>59</sup>

After a bill has been reported from a committee without amendments, it is read the second time, and then sent to the Engrossing and Enrolling office in the Chief Clerk's office (if it is an Assembly bill), or to the Committee on Rules in the Senate (if it is a Senate bill). There, the printed bill is compared with the original bill and, after comparison, the bill is returned to the Assembly or Senate third reading file.<sup>60</sup>

This comparison of the printed bill with the original bill is called engrossing.<sup>61</sup> Both the Assembly and Senate have an Engrossing and Enrolling Clerk and each house engrosses its own bills. During this engrossment process the Engrossing and Enrolling Clerk is authorized to make technical corrections and changes in the printed bill and may also send “queries” to the Legislative Counsel Bureau when, in his or her professional estimation, there is a drafting error in the text of, or amendments to, a bill.

<sup>56</sup> An engrossment is a proofreading and verification in order to be certain that the bill before the house is identical with the original bill as introduced, with all amendments which have been adopted correctly inserted. *Mason's Manual of Legislative Procedure*, Section 735.

<sup>57</sup> *Constitution*, Article IV, Section 10(c); *Joint Rule 56*.

<sup>58</sup> *Constitution*, Article IV, Section 3(a).

<sup>59</sup> *Assembly Rules 63 and 66; Senate Rule 29*.

<sup>60</sup> *Assembly Rules 66 and 67; Senate Rule 32*.

<sup>61</sup> *Assembly Rule 79; Senate Rules 32 and 33*. The engrossing and enrolling process is an ancient one; Blackstone in his *Commentaries*, published in 1765, states that when the house agreed or disagreed with the committee amendments or had added its own amendments the bill was ordered engrossed which literally meant written in a strong *gross* hand. See Cooley's Blackstone, *Commentaries on the Laws of England*, Callaghan and Company, 1899 (4th Ed.), Vol. I, p. 166.

In the event that the bill has been reported out of committee with amendments, and these committee amendments, or amendments offered from the Floor, have been adopted on second reading, it is reprinted, showing such amendments by the use of ~~strikeout type~~ for matter omitted, and *italic type* for the new matter.<sup>62</sup> Thereafter, the bill is referred to as of the date of last amendment, e.g., Senate Bill No. 406, as amended in the Senate April 19, 2005 (see example on page 122). Each time that the bill is amended it is reprinted; and after each reprinting, if the amendments were adopted in the house of origin, it is re-engrossed and a new bill cover and report are prepared to reflect the last amended version of the bill.<sup>63</sup> Any amendments made by the other house are proofread before the bill is enrolled.

In the Assembly, bills amended on second reading, whether by committee amendment or amendment from the Floor, shall be ordered reprinted and returned to the second reading file.<sup>64</sup> There is no such requirement in the Senate. In the Senate, a bill that is amended upon its second reading, whether by a committee amendment or an amendment from the Floor, is reprinted and is not returned to the second reading file, but is placed upon the third reading file and is eligible for passage the day after the adoption of the amendment.

### Third Reading and Passage of Bills

The next step in the progress of the bill is its third reading. On the Floor of each respective chamber, immediately after the third reading of the bill, and prior to the final vote, the members present their arguments for and against the measure.

No bill may be considered or acted upon on the Floor of the Assembly unless and until a copy of the printed bill as introduced, a printed copy of each amended form of the bill, and an analysis of the bill edited and distributed by the Assembly Floor Analysis Unit of the Chief Clerk's Office, have been placed upon the desks of the members.<sup>65</sup> In addition, both caucuses provide partisan third reading analyses to their respective members.

Bills on third reading may be amended by motion from the Floor, and, if the motion to amend carries by a majority vote of those present, the bill is reprinted, engrossed, and returned to its original position on the third reading file. Each house has a waiting period for bills amended on third reading. Assembly Rule 69(d) requires that any bill amended on the third reading file must wait one calendar day after being amended before it is eligible for final passage. This waiting period provides more time to analyze the bill in its newly amended form before being voted on. Budget related bills are exempt from this waiting period. In the Senate, a bill amended on third reading is

<sup>62</sup> *Joint Rule 11*. If the amendments delete the entire contents of the bill, the matter deleted is not reprinted in "strikeout type" in the amended version of the bill. Instead, a brief statement is attached at the end of the bill identifying the previously printed version of the bill containing the deleted material. *Joint Rule 11*.

<sup>63</sup> *Assembly Rules 66, 67, 69 and 79; Senate Rule 32*. If the bill is amended in the other house it is not again read and checked until it has been passed by that house and returned to the house of origin, where it is read and checked. This final reading and checking of a bill after its passage by both houses is called enrolling the bill. *Joint Rules 24 and 26; Assembly Rule 79; Senate Rule 33*. See also *Government Code*, Sections 9502-9509.

<sup>64</sup> *Assembly Rule 67*.

<sup>65</sup> *Constitution*, Article IV, Section 8(b); *Assembly Rules 64, 68.6 and 69.5; Senate Rule 29.8*. Now that each Member has a computer on his or her chamber desk, the Assembly Rules provide that an electronic copy of bills, amendments, analyses, and conference reports meets any print requirements. Printed bills are still available in the chamber should any Assembly Member or member of press request a copy.

returned to second reading pursuant to Senate Rule 29.3, providing a similar waiting period before it returns to third reading for final debate and passage.

The Assembly Rules provide that amendments are not in order until a copy of the amendments are placed on the desks of the Members.<sup>66</sup> The Rules also require that the author draft the amendments in Legislative Counsel form. In addition, amendments from the Floor during a bill's third reading, which would make a substantive change in the bill, shall have an analysis prepared by the committee of origin in conjunction with the Assembly Floor Analysis Unit (a division of the Chief Clerk's office). A hard copy of the analysis is then distributed to the Members and also made available via the Assembly Floor System.<sup>67</sup>

The Senate requires that the Office of Senate Floor Analysis prepare an analysis of all bills on third reading. Additionally, any bill amended on the Senate Floor is not eligible to be taken up for passage until it has been in print for at least one legislative day.<sup>68</sup>

After any floor amendments have either been taken or rejected and the bill has been reprinted to reflect its final form, and after all debate on the bill has been concluded, a vote is taken by rollcall, and the bill is either passed or refused passage. It requires a majority vote of the membership of the Assembly (41 votes) to pass most bills. Certain measures, i.e., urgency bills, bills appropriating money from the General Fund (except money for the public schools), changes in state taxes for the purpose of increasing revenue, and Constitutional Amendments must receive a two-thirds vote (54 votes).<sup>69</sup> In the Senate, the vote required is proportionately the same—21 affirmative votes are required to pass most bills, and 27 affirmative votes are necessary to pass the others.

### ***The Consent Calendar***

During the 1959 Regular Session, the Legislature adopted joint rules permitting the establishment of consent calendars in the respective houses.<sup>70</sup>

A bill must conform to three basic requirements before it may be placed upon the consent calendar. First, the bill cannot be a revenue measure nor a bill upon which the 30-day constitutional waiting period has been dispensed with; second, the bill must receive a "do pass" or a "do pass, as amended" recommendation by a unanimous vote of the committee members present; third, the bill, in its final version as approved by the committee, cannot have had any opposition expressed to it by anyone present at the committee meeting.<sup>71</sup>

Having met these prerequisites, the bill may be reported out of the committee with the recommendation that it be placed on the consent calendar. The bill is then read the second time, the committee amendments, if any, are adopted, and the bill placed upon the consent calendar by the Chief

<sup>66</sup> Assembly Rule 69.5 allows for electronic distribution of bill text in the Assembly.

<sup>67</sup> Assembly Rule 69. The Senate has a similar rule. See *Senate Rule 38.6*.

<sup>68</sup> *Senate Rules 29.3 and 29.8*.

<sup>69</sup> *Constitution*, Article IV, Sections 8(d) and 12(d), Article XVIII, Section 1, *Constitution*, Article XIII A, Section 3.

<sup>70</sup> *Joint Rules 22.1–22.3*.

<sup>71</sup> *Joint Rule 22.1*. The Assembly has added the additional requirement that the bill must not have received any "no" votes in any Assembly standing committee before it is eligible for Assembly Consent Calendar consideration. See *Assembly Rule 71*.

Clerk of the Assembly or the Secretary of the Senate. No consent calendar bill may be considered for adoption until the second legislative day following the day of its placement on the consent calendar.

If any member objects to the placement or retention of any bill on the consent calendar at any time before its final passage, the bill is returned to the third reading file.

Also, if any bill on the consent calendar is amended from the Floor, it automatically ceases to be a consent calendar bill, and is returned to the third reading file.<sup>72</sup>

Immediately prior to voting on the first bill on the consent calendar, the presiding officer in either house calls to the Members' attention that the next rollcall will be on the first bill on the consent calendar. Though consent calendar bills are not debatable, a reasonable time is allowed for questions from the Floor.<sup>73</sup>

Following the pause for questions, each bill on the consent calendar is read the third time, and voted upon.

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<sup>72</sup> *Joint Rule 22.2.*

<sup>73</sup> *Joint Rule 22.3.*

AMENDED IN SENATE APRIL 19, 2005

**SENATE BILL**

**No. 406**

**Introduced by Senator Dutton**

February 17, 2005

An act relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 406, as amended, Dutton. Workers' compensation: *medical* expenses and indemnity payments report.

Existing law requires every employer except the state to secure the payment of workers' compensation either by being insured against liability by one or more insurers duly authorized to write compensation insurance in this state or by securing a certificate of consent to self-insure from the Director of Industrial Relations.

This bill would require the ~~director~~ *Commission on Health and Safety and Workers' Compensation*, on or before June 30, 2006, to prepare a report to the Legislature regarding the feasibility of collecting and providing, ~~through the director's Internet Web site, online, cumulative,~~ statewide *public agency* data related to *medical and indemnity costs and payments made to vendors and service providers, and indemnity payments to workers, by the state* and by employers ~~under that are self-insured programs.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) ~~The Director of Industrial Relations shall~~
- 2 ~~prepare a report regarding the feasibility of collecting and~~
- 3 ~~providing, through the director's Internet Web site, online,~~

**Example of an Amended Bill  
from the 2005-06 Regular Session**

## Members Required to Vote

Whenever a rollcall is required by the Constitution or by rule (demanded by three Members, or ordered by the Speaker) every Member in the Assembly Chamber must record his or her vote openly and without debate, unless the Assembly shall, by a majority vote of the members present, excuse him or her from voting.<sup>74</sup>

The Senate Rules provide that a member answer “Aye” or “No” whenever a rollcall is required by the Constitution or by rule (ordered by the Senate, or demanded by three members).<sup>75</sup>

An electronic rollcall system has been installed in the Assembly Chamber for the recording of votes in the Assembly, but the Senate retains the method of orally calling the roll of Senators in alphabetical order.

The Assembly and Senate Rules both provide that no member shall be permitted to vote or change his or her vote after the announcement of the vote by the presiding officer.<sup>76</sup>

Both the Senate and the Assembly, by rule, have provided for the procedure to be followed in the event that a member refuses to vote.<sup>77</sup>

## Absence of Quorum

At any time during the session of either house a member may rise to a point of order that there is an absence of a quorum. It is then the duty of the presiding officer to ascertain whether a quorum is present. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members. A quorum is defined as one-half plus one of the duly elected and qualified members of the house (41 in the Assembly; 21 in the Senate).<sup>78</sup>

## Call of the House

The reason for a “call of the house” is different from that for a “quorum call.” A call of the house is placed in order to compel the attendance of absent members and to require them to vote upon the matter before the house, even though those members necessary to constitute a quorum are physically present in the house at the time the call of the house is placed. A quorum call, on the other hand, is used to compel the attendance of the minimum number of members required to permit the house to conduct its business, and is not related to a specific matter before the house.

“After the roll has been called, and prior to the announcement of the vote, any member may move a call of the Assembly. The members present may order a call of the Assembly by a majority vote of the members present and voting, and the Speaker shall immediately order the Sergeant at Arms to lock all doors and shall direct the Chief Clerk to prepare a list of absentees as disclosed by the last rollcall. The list of absentees shall be furnished to the

<sup>74</sup> Constitution, Article IV, Section 7(b); Assembly Rules 104 and 105.

<sup>75</sup> Senate Rule 44.

<sup>76</sup> Assembly Rules 104 and 106; Senate Rule 44. As a practical matter, Members of the Assembly are routinely allowed to “add on” to, or change their votes on, any rollcall, provided the addition or change doesn’t affect the result of the vote as announced by the presiding officer.

<sup>77</sup> Assembly Rule 104; Senate Rule 45.

<sup>78</sup> Constitution, Article IV, Section 7(a); Assembly Rule 4; Senate Rules 2 and 3; and, *Mason’s Manual of Legislative Procedure*, Section 500(2).

Sergeant at Arms. Thereupon no members shall be permitted to leave the Assembly Chamber except by written permission of the Speaker. No person shall be permitted to enter except members, Senators, or officers, attachés, or employees of the Legislature in the official performance of their duties.

“Those members who are found to be absent, and for whom no leaves of absence have been granted, shall be forthwith taken into custody wherever found by the Sergeant at Arms or his or her assistants or any person designated by the Sergeant at Arms, including members of the California Highway Patrol, and sheriffs or their deputies, and brought to the Assembly Chamber.

“No recess or adjournment shall be taken during a call of the Assembly. Additional business may be conducted and calls placed regardless of the number of calls in effect. A call of the Assembly may be dispensed with at any time upon a majority vote of the members present, such action to become effective upon the completion of the rollcall and the announcement of the vote upon the matter for which the call was ordered . . . .”<sup>79</sup>

The rule governing the call of the Senate, while different in some particulars, has a similar effect as the call of the Assembly, i.e., it compels the attendance of absent members for the purpose of requiring them to vote on the item under call.<sup>80</sup>

### Reconsideration of Bills

When a bill has been passed by either house it shall be transmitted promptly to the other house with a message signed by the Secretary of the Senate or by the Chief Clerk of the Assembly, as the case may be, unless a motion to reconsider has been made or it is held pursuant to some rule or order of the house.<sup>81</sup>

In the Assembly, a motion to reconsider on the next legislative day the vote whereby any bill was passed or refused passage, or the vote whereby any motion, amendment, concurrence, Assembly resolution or proposition other than a bill was passed or refused passage, must be made on the same day the vote to be reconsidered was taken.

In the Assembly, no motion to reconsider shall be adopted unless it receives an affirmative recorded vote of 41 members. A motion to reconsider may be voted on without a second.

A motion to reconsider a vote must be made by a member voting on the question, and shall take precedence over all motions, except a motion to adjourn. The motion is: “I notice reconsideration on Assembly Bill \_\_\_\_.”

Upon such motion being made, the matter to be reconsidered is placed upon the unfinished business file, and no further action can be taken prior to the next legislative day. When a motion to reconsider has once been made, it becomes the property of the Assembly, and, with the consent of the house, may be continued from day to day. A motion to reconsider which is neither taken-up nor continued lapses. Once a reconsideration motion has lapsed, the

<sup>79</sup> *Assembly Rule 101.*

<sup>80</sup> *Senate Rule 42.*

<sup>81</sup> *Joint Rule 21; Assembly Rule 100; Senate Rule 43.*

question or measure returns to the same position it held prior to the motion being made (e.g., if a motion to reconsider was made on a bill that had already passed, and on a subsequent legislative day the motion was allowed to lapse, the bill would be deemed passed).

Any member voting on any motion, amendment, Assembly resolution or proposition other than a bill or concurrence may move to take up on the same day the motion to reconsider such a question, previously made by another member. The motion to take up the reconsideration on the same day takes precedence over the motion to reconsider, and upon demand of any member, the motion to take up the reconsideration on the same day must be put to an immediate vote. If the motion to take up the reconsideration on the same day is adopted, the motion to reconsider becomes the next order of business before the house.

When reconsideration is granted, the matter to be reconsidered resumes its exact position before the Assembly voted on the question. The author may take it up immediately after reconsideration is granted.<sup>82</sup>

In the Senate, the procedure differs slightly. A motion to reconsider any question may be made by any member on the day on which the vote was taken. The motion may be considered on the day it is made, or on the succeeding legislative day, but may not be further postponed without the concurrence of 30 Senators.<sup>83</sup>

In the Senate, bills may be reconsidered by a majority vote (21) even though the bill required a two-thirds vote (27) for passage. Constitutional amendments that are adopted can be reconsidered by 14 votes, while constitutional amendments that have been defeated require a two-thirds vote (27) for reconsideration.<sup>84</sup>

### **Amendments by the Other House**

After a bill has been passed by the house of origin, transmitted to the other house, and amended in the second house, it is immediately reprinted, as amended, by the house which adopted the amendment or amendments. A copy of the amendments are stapled inside the bill cover and endorsed as being “adopted.” When the bill is passed by the second house, the bill with the amendments attached is returned to the house of origin, where it is placed on the unfinished business file. Every time a bill is amended by the other house it is reprinted in its entirety, unless the amendment affects the bill’s title only. Such an amendment must still be concurred-in by the house of origin.<sup>85</sup>

### **Concurrence in Amendments of Other House**

When the Senate amends and passes an Assembly bill, or the Assembly amends and passes a Senate bill, the Senate (if it is a Senate bill) or the Assembly (if it is an Assembly bill) must either “concur” or “refuse to concur” in the amendments. If the Senate concurs (if it is a Senate bill), or the

<sup>82</sup> *Assembly Rule 100*. There are special provisions governing the motion to reconsider on the last two legislative days preceding the Interim Study Recess, January 31st of the even-numbered year, and the Final Recess. See *Assembly Rule 100(b)(1), (2) and (3)*.

<sup>83</sup> *Senate Rules 43 and 47(2)*.

<sup>84</sup> *Senate Rules 47(12), (20), (21) and (26)*.

<sup>85</sup> *Joint Rule 25*.

Assembly concurs (if it is an Assembly bill), the Secretary or Chief Clerk notifies the house making the amendments and the bill is ordered to enrollment.<sup>86</sup>

If the bill up for a concurrence vote was substantially amended in the other house, there are procedures in the rules in each house for re-referring the bill to the appropriate committee for further review.<sup>87</sup> Absent such a referral, the concurrence vote proceeds and requires the same vote as is required for the passage of the bill. Assembly Rule 77 requires that an Assembly bill returning to the body for concurrence in Senate amendments must wait one calendar day before it is eligible to be taken up on the floor. This waiting period gives the Members, staff, and public ample time to analyze any changes the Senate made to the bill.

If the amendments add an urgency clause to the bill, the house must first adopt the urgency clause section by a two-thirds vote of the elected members, and then concur in the amendments by a two-thirds vote. If the affirmative vote on either of these questions is less than two-thirds, the bill goes to a conference committee.<sup>88</sup>

### Conference Committees

If the Senate or the Assembly refuses to concur in the other house's amendments, the Senate Committee on Rules (if it is a Senate bill) or the Speaker of the Assembly (if it is an Assembly bill) appoints a Committee of Three (3) on Conference and the Secretary or the Chief Clerk shall immediately notify the other house of the action taken and request the appointment of a like committee.<sup>89</sup>

Two of the members of such conference committee from each house must have been chosen from those voting with the "majority" (i.e., larger vote) and the other member from each house from the "minority" (i.e., smaller vote), if there is a minority vote, on the question in dispute.

The first Senator named on the conference committee acts as chairperson of the committee from the Senate, and the first Assembly Member named on such committee acts as chairperson of the committee from the Assembly. The chairperson of the committee on conference of the house in which the bill originated (the Assembly chairperson, if it is an Assembly bill, or the Senate chairperson, if it is a Senate bill) arranges for the times and places of the conference meetings, and directs the preparation of the conference committee report.<sup>90</sup>

All conference committees, including the conference committee on the Budget Bill, must be open and accessible to the public. All other conference committees must hold open public meetings which are noticed in the Daily File one calendar day prior to the meeting.<sup>91</sup>

<sup>86</sup> Joint Rule 26.

<sup>87</sup> Joint Rule 26.5; Senate Rules 28.5, 29.8 and 29.10; Assembly Rule 77.2.

<sup>88</sup> Joint Rule 27.

<sup>89</sup> Joint Rule 28.

<sup>90</sup> Joint Rules 28.1 and 29.

<sup>91</sup> Joint Rule 29.5(a). See also Government Code, Section 9027; Constitution, Article IV, Section 7(c)(1).

The committee on conference reports to both the Senate and the Assembly. It requires the affirmative vote of not less than two of the Senate members and two of the Assembly Members of the committee to agree upon a report.

The report of the conference committee must be prepared in writing and signed by two Members of the Assembly and two Senators who agree to the report. Provision is also made for a dissenting conference committee member to file a minority report. Two signed copies of the report must go to the house of origin of the bill, and one signed copy must go to the other house. The conference committee's proposed amendments are inserted and the bill is reprinted in the form as proposed by the conference committee.

After the proposal has been in print and noticed in the Daily File for not less than one legislative day and in print for two calendar days, it may be voted upon. The report of the committee on conference is not subject to amendment, and if either house refuses to adopt the report, the conferees are discharged, and new conferees are appointed. However, no member may serve upon more than one conference committee on the same bill, and there can be no more than three conference committees on any one bill.<sup>92</sup> If the third conference committee fails to agree, or if either house fails to adopt its report, the bill is dead.

The vote required for adoption of the conference report is the same as the vote required for passage of the bill. If the amendments in the conference report add an urgency section to the bill, the urgency section must first be put to a vote. If adopted by a two-thirds vote of the elected members, the vote is then taken on the adoption of the conference report, which also requires a two-thirds vote. If the affirmative vote is less than two-thirds of the elected membership of the house, the report is refused adoption.<sup>93</sup> Both houses must agree on the conference report before it becomes effective.

When a conference committee is unable to agree upon a report (a vote of not less than two of the conferees of each house is required), a letter from the chairperson of the committee indicating that the committee is unable to submit a report is sent to the Chief Clerk of the Assembly and the Secretary of the Senate. Upon such notification, the conferees are discharged and other conferees appointed.<sup>94</sup>

The conference committee on the Budget Bill must report within 15 days after the bill has passed both houses. If they fail to do so, the Chief Clerk and the Secretary are notified and a new conference committee appointed in accordance with the Joint Rules.<sup>95</sup>

## Enrollment of Bills

After a bill has passed both houses, it is returned to the house of origin. If the bill has not been amended by the other house, it is immediately sent to the

<sup>92</sup> *Joint Rules 29 and 30; Senate Rule 29.9; Assembly Rule 68.8.*

<sup>93</sup> *Joint Rule 30.5.*

<sup>94</sup> *Joint Rule 30.7.*

<sup>95</sup> *Joint Rules 29.5(b) and 30.7.*

Engrossing and Enrolling office of the Chief Clerk's office (if it is an Assembly bill), or to the Committee on Rules in the Senate (if it is a Senate bill), to be enrolled. If, however, the other house has amended the bill, such amendments must be concurred in before the bill may be sent to enrollment. If the amendments have not been concurred in, and the bill has gone to conference, the conference committee report must have been adopted by both houses before the bill is enrolled. Each house enrolls its own bills.

The bill is printed in enrolled form, omitting symbols indicating amendments, and compared by the Engrossing and Enrolling Clerk of the house where it originated to determine that it is in the form approved by the houses. The enrolled bill is thereupon signed by the Secretary of the Senate and the Chief Clerk of the Assembly, or their designees, and presented without delay to the Governor. After receipt by the Governor, the Chief Clerk and Senate Rules Committee must report to their respective houses of origin the time of presentation of the bill to the Governor, and the record must be entered in the Journal.

After enrollment and signature by the Secretary of the Senate and the Chief Clerk of the Assembly, or their designees, constitutional amendments, concurrent and joint resolutions are filed without delay in the office of the Secretary of State, the time of filing is reported to the house of origin, and the record is entered in the Journal.<sup>96</sup>

For example, during the 2003–04 Regular Session, there were 1,405 Assembly bills and 828 Senate bills enrolled and presented to the Governor, and a total of 360 constitutional amendments, joint and concurrent resolutions enrolled and filed with the Secretary of State, making a total of 2,593 enrolled measures for that session.<sup>97</sup>

Enrollment is the final legislative action taken on a bill before it is presented to the Governor. When the enrolled bill is delivered to the Governor, it shall be endorsed as follows: "This bill was received by the Governor this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_." The endorsement shall be signed by the Private Secretary of the Governor or by some other individual designated by the Governor, whose identity the Governor must make known to the Speaker and the President pro Tempore.<sup>98</sup>

### **Bills Signed by the Governor**

The Governor, after receiving a bill from the Senate or Assembly, has 12 days in which to sign or veto it. Should the Governor fail to take any action, the bill becomes law without a signature.

The 12-day "signing" period is applicable to all bills that are presented to the Governor 12 or more days prior to the date the Legislature adjourns for a joint recess in the first year of the biennium, and on or before August 20th of the second year of the biennium. The applicable calendar date in the first year is based on the date both houses of the Legislature "consent" to adjourn for the interim recess and is subject to change. For example, in 1995, the

<sup>96</sup> *Government Code*, Sections 9507 and 9508; *Joint Rule 24*.

<sup>97</sup> See, *Final Histories of the Assembly and Senate, 2003–04 Regular Session*.

<sup>98</sup> *Government Code*, Section 9509.

Legislature adjourned for the interim recess on September 15th. The Governor had until October 15th to act upon any bill that passed the Legislature on or before September 14th and was presented to him on or after September 4, 1995.

In contrast, the recess date in the second year of the biennium is fixed by the State Constitution. Bills that are passed before September 1st in the second year of the biennium and which are in his or her possession on or after September 1st must be signed or vetoed by September 30th of that year or they become a statute without his or her signature.<sup>99</sup>

Any bill passed by the Legislature at a special session which is in his or her possession on or after the adjournment of the session becomes a statute unless the Governor vetoes the bill within 12 days by depositing the veto with the office of the Secretary of State.<sup>100</sup> Prior to 1973, the Governor could “kill” (i.e., defeat) a bill in his possession after the adjournment of a special session simply by refusing to sign it.<sup>101</sup>

When the Governor approves a bill, he or she signs it, dates it and deposits it with the Secretary of State. This copy is the official record and law of the state. The Secretary of State assigns the bill a number known as the chapter number. The bills are numbered consecutively in the order in which they are received, and the resulting sequence is presumed to be the order in which the bills were approved by the Governor.<sup>102</sup>

There is only one sequence of bill chapter numbers maintained for each year of the regular session of the Legislature. A separate set of chapter numbers is maintained for each extraordinary session.<sup>103</sup>

If a bill presented to the Governor contains one or several items of appropriation, he or she may eliminate or reduce any or all of them while approving the other portions of the bill. When the Governor executes this “item veto,” he or she appends to the bill, at the time of signing it, a statement of the items to which he or she objects and his or her reasons therefor. A copy of this statement is then transmitted to the house in which the bill originated. The items then may be separately reconsidered and the vetoes sustained or overridden in the same manner as bills which have been vetoed by the Governor.<sup>104</sup> (See also page 108.)

### **Governor's Veto**

When the Governor vetoes a bill, he or she returns it, with his or her objections, to the house of origin. The house may consider the veto immediately or place it on the “unfinished business file.”

<sup>99</sup> *Constitution*, Article IV, Section 10(b)(2). *Government Code*, Section 9516.

<sup>100</sup> *Constitution*, Article IV, Section 10(b)(4).

<sup>101</sup> This practice is commonly referred to as the “pocket veto.”

<sup>102</sup> *Government Code*, Section 9510. This numerical sequence becomes extremely important, as the bill with a higher chapter number prevails over a bill with a lower number. For example, if the language of Section 400 of the *Government Code* as contained in Chapter 100 conflicts with the language of Section 400 of the *Government Code* as contained in Chapter 99, the language in Chapter 100 will prevail and the conflicting provisions of Chapter 99 are said to be “chapters out.”

<sup>103</sup> *Government Code*, Section 9510.5. Constitutional amendments and joint and concurrent resolutions adopted by both houses and enrolled during the session are designated as Resolution Chapter 1, et seq.

<sup>104</sup> *Constitution*, Article IV, Section 10(e). *Government Code*, Section 9511.

The Legislature has 60 calendar days, days in joint recess excluded, to act upon the veto.<sup>105</sup> If no action has been taken during this time, the measure is deleted from the file and the veto is effective.

Theoretically, the ability to override the Governor's veto gives the Legislature the ultimate control over exactly what is to become the law. Veto overrides are rare.

In 1979, the Legislature overrode the Governor's veto of two bills and eight items in the Budget Bill.<sup>106</sup> Prior to these overrides, the Governor's veto had been overridden on only two occasions since 1973.<sup>107</sup> The Legislature has not overridden a Governor's veto since 1979.

The result of sustaining the Governor's veto or failing to consider it in the time allotted is to "kill" the bill or to reduce or eliminate the appropriation as recommended.

If two-thirds of the elected members of each house disagree with the Governor, the bill as passed by the Legislature becomes law notwithstanding his or her objections.<sup>108</sup>

When the Legislature successfully overrides a Governor's veto, the bill, or items are authenticated as having become law by a certificate.

"The certificate shall be endorsed on or attached to the bill, or endorsed on or attached to the copy of the statement of objections. It shall be in the following form: 'This bill having been returned by the Governor with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, has become a law this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_'; or, 'The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority, have become a law this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.' A certificate signed by the President of the Senate and the Speaker of the Assembly is a sufficient authentication thereof."<sup>109</sup>

The bill or statement so authenticated is then delivered to the Governor, and by him or her deposited with the laws in the office of the Secretary of State. Bills so deposited in the office of the Secretary of State are given a chapter number in the same manner as bills approved by the Governor.<sup>110</sup>

## When Laws Go Into Effect

With the exception of measures which take effect immediately, bills enacted in the first year of the regular session before the Legislature adjourns for the "interim study recess" shall go into effect on January 1 of the

<sup>105</sup> *Joint Rule 58.5.*

<sup>106</sup> Governor Brown's veto of SB 91 (1979–80 Regular Session), *Journal of the Senate, 1979–80 Regular Session*, p. 5196; *Journal of the Assembly, 1979–80 Regular Session*, p. 7565. Governor Brown's veto of AB 580 (1979–80 Regular Session), *Journal of the Assembly, 1979–80 Regular Session*, p. 6393; *Journal of the Senate, 1979–80 Regular Session*, p. 5677.

The Legislature also overrode Governor Brown's vetoes of eight items in the Budget Bill, SB 190 (1979–80 Regular Session), *Journal of the Senate, 1979–80 Regular Session*, pp. 6027, 6028, 6029; *Journal of the Assembly, 1979–80 Regular Session*, pp. 8318, 8319, 8333, 8334, 8351.

<sup>107</sup> Governor Reagan's veto of AB 855 (1973–74 Regular Session), *Journal of the Assembly, 1973–74 Regular Session*, p. 9831; *Journal of the Senate, 1973–74 Regular Session*, p. 7722 and Governor Brown's veto of SB 155 (death penalty) (1977–78 Regular Session), *Journal of the Senate, 1977–78 Regular Session*, p. 3895; *Journal of the Assembly, 1977–78 Regular Session*, p. 6553.

<sup>108</sup> *Constitution*, Article IV, Section 10. Prior to the ratification of Proposition No. 4 at the 1972 General Election (Assembly Constitutional Amendment 95), the Legislature recessed for at least 30 days upon concluding their work and then returned for up to five days for the specific purpose of reconsidering the Governor's objections to bills passed during the session. This provision was deleted in 1972.

<sup>109</sup> *Government Code*, Section 9513.

<sup>110</sup> *Government Code*, Section 9514.

following year.<sup>111</sup> For example, a non-urgency bill passed on September 5, 2005 would take effect on January 1, 2006. A non-urgency measure, however, that is enacted in the second year of the two-year session would go into effect on January 1 following a 90-day period from the date of enactment.<sup>112</sup> For example, a bill that is enacted on or before October 2, 2006 would take effect on January 1, 2007. In contrast, a bill enacted on October 3, 2006 or later would not take effect until January 1, 2008. However, the likelihood of a regular statute (non-urgency, non-tax levy, etc.) being enacted any time after August 31 in the second year is remote. In fact, the only regular (non-urgency, non-tax levy, etc.) legislation that can be enacted after August 31 in the second year would be a “regular” bill that was vetoed and then overridden by the Legislature during Final Recess. In other words, if the Governor vetoed a bill on September 28, 2006, and the Legislature were to reconvene and override the veto on November 3, 2006, the bill would go into effect January 1, 2008. This delay is imposed by operation of the Constitutional requirement that dictates a statute’s effective date as occurring on January 1 *next following a 90-day period from enactment*.

By contrast, statutes enacted at a special session do not take effect until the 91st day after the adjournment of the session at which they were passed.<sup>113</sup> The delays in the effective dates of the statutes enacted at regular and special sessions provide a 90-day interval between the enactment and the effective date of the statute as is required by the Constitution in order to permit the circulation and presentation of a referendum petition requesting that the statute, or a part of it, be submitted to the electorate.<sup>114</sup>

Any amendment to or revision of the Constitution, proposed by the Legislature, must be submitted to the people for ratification. The amendment or revision is effective the day following its approval by a majority of those voting on the question at the election.<sup>115</sup>

Any measure or constitutional amendment submitted to the electorate through either an initiative or referendum petition, which is approved by a majority of the votes cast on the proposition, takes effect the day after the election, unless the measure itself provides for a different effective date.<sup>116</sup>

## Adjournment

The regular session of the Legislature is adjourned “sine die”<sup>117</sup> by constitutional provision as of midnight on November 30 of the even-numbered year (e.g., 2006).<sup>118</sup>

The Constitution prohibits the Legislature from presenting the Governor with a bill after November 15 of the second year of the biennium. Thereafter, the Legislature will presumably recess, thereby enabling them to return to consider any bill vetoed by the Governor after that date. This would mean

<sup>111</sup> *Constitution*, Article IV, Sections 8(c)(2) and 8(d).

<sup>112</sup> *Constitution*, Article IV, Section 8(c)(1).

<sup>113</sup> *Id.*

<sup>114</sup> *Constitution*, Article II, Section 9(b).

<sup>115</sup> *Constitution*, Article XVIII, Section 4. *See also* p. 18.

<sup>116</sup> *Constitution*, Article II, Section 10(a).

<sup>117</sup> From the Latin meaning “without day” and is commonly used to designate the final adjournment of a legislative body.

<sup>118</sup> *Constitution*, Article IV, Section 3(a).

that the Governor would have until midnight November 27 to veto the bill, thus providing at least three days for the Legislature to take action before the two Houses are adjourned *sine die*.<sup>119</sup>

Prior to 1973, the annual regular sessions were not adjourned *sine die* on a specified date. A concurrent resolution, adopted by both houses, set the adjournment time. At the time appointed the presiding officers of each house announced that the time for final adjournment had arrived and declared the house adjourned *sine die* in accordance with the provisions of the resolution.

At the present time, the Joint Rules provide that the Legislature may recall itself from joint recess and reconvene the regular session. Upon reassembling it may consider any type of legislation, with the exception that when it is recalled on September 1 or after in the even-numbered year, it may consider only Governor's vetoes or urgency bills, bills calling elections, levying taxes or appropriating moneys for the usual and current expenses of the state.<sup>120</sup>

### Final Disposition of Legislative Records

The Secretary of State is the custodian of the public archives of the state. The documents required by law to be filed, items ordered filed by the Department of General Services and any material the Secretary deems to have historical value are filed, indexed and preserved in vaults maintained by this office.<sup>121</sup>

These archives contain the original and official records of the State Legislature for all its sessions since 1849.

### The Committee System

With the volume of legislation that is introduced and considered, it is impossible for each Member of the Legislature to review in detail all of the changes, additions and deletions that are proposed. In the course of a regular session, the Legislature will consider approximately 7,000 bills in addition to numerous constitutional amendments and other resolutions. To cope with the multitude and the variety of the subject matter contained in these bills, it has been necessary to devise and utilize a system of policy committees.

There are currently over 25 standing committees in the Assembly and over 20 standing committees in the Senate.<sup>122</sup> They may best be described as the basic working components of the Legislature. The total number of standing committees may fluctuate in a two-year session, but generally averages between 20 and 29 total committees in each respective House. Assembly Committees are created by House Resolution, and the memberships are appointed by the Speaker. Senate Committees are created by Senate resolution, with committee memberships appointed by the Senate Rules Committee.

<sup>119</sup> *Constitution*, Article IV, Section 10(a).

<sup>120</sup> *Constitution*, Article IV, Section 10(a); *Joint Rule 52*. This authority to reconvene the Legislature should not be confused with the Governor's power to call a special session of the Legislature. The authority to reconvene may be exercised by the Speaker and President pro Tempore jointly or by petition of 10 or more Members of the Legislature.

<sup>121</sup> *Government Code*, Sections 12221, 12224 and 12227.

<sup>122</sup> *Assembly Rule 11*; *Senate Rule 12*.

The committees specialize in specific subject matter areas and are designed to treat the proposed legislation relating to their specialty. By referring the bills to committee it is possible to study, in depth, all the bills which have been introduced.

After the bill has been referred to a committee it is scheduled for hearing. At this point, the private citizen, the lobbyist and any other interested party may testify in favor of or in opposition to the bill. It is at this stage that many of the important policy decisions are made.

As a result of the manner in which the committee is appointed and the house's reliance upon the members' and the staff expertise in the area affected, the house usually concurs in the committee's recommendation. It should be borne in mind, however, that the house does have the final word on all legislation, and should it choose to disregard the committee's recommendation, it may do so. When the committee has completed its deliberations it returns the bill with its recommendation to the house.

In addition to standing committees of each house, the Legislature also establishes joint committees. The committees, composed of an equal number of Senators and Assembly Members, study subjects of mutual interest to both houses. These committees are established by statute, concurrent resolution, or the Joint Rules, and the membership and chairpersons are appointed by the Speaker and the Senate Rules Committee, respectively, unless the statute or resolution specifies otherwise.<sup>123</sup>

During the joint recess, the standing and joint committees of the Legislature conduct hearings throughout the state.<sup>124</sup> While they are not permitted to act upon bills during this time, they do elicit information and data leading to the eventual formulation of legislation.<sup>125</sup>

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<sup>123</sup> See also *Joint Rules 36.5 and 36.7*.

<sup>124</sup> *Joint Rule 51*. This rule specifies the mandatory joint recesses for each biennium.

<sup>125</sup> *Joint Rule 60(c)*.



An Assembly Rules Committee Meeting During 1969 Session

Shown from left to right: Assembly Members Ketchum, Mobley, Gonsalves, Chief Administrative Officer V. G. Neilsen, Chairman Chappie, Secretary Hazel Lombardo, Chief Clerk James D. Driscoll, Assembly Members R. Johnson, Burton, and Quimby.

### *The Rules Committees*

There is in each house of the Legislature a Committee on Rules which acts as the executive committee of the house.<sup>126</sup>

At the beginning of each two-year session the practice is that the “majority party” proposes new House Rules, including the size of the Rules Committee membership. For example, the composition of the Assembly Rules Committee has varied from nine during the 1993–94 Regular Session to 12 during the second year of the 1995–96 Regular Session to 10 upon organization of the 1997–98 Regular Session. Since 2000, the Assembly Rules Committee’s membership has consisted of 8 members. In the Assembly, the Speaker appoints the Chair, Vice Chair, and membership of the Rules Committee under the existing rules.

Within two days after the November general election in each even-numbered year, the majority and minority caucuses meet for the purpose of selecting their officers for the upcoming two-year session.<sup>127</sup>

The Senate Committee on Rules consists of the President pro Tempore of the Senate, who is chairperson of the committee, and four other Members of the Senate who are elected by the Senate.<sup>128</sup>

The rules of each house provide that the Rules Committee shall continue in existence during any recess of the Legislature, after final adjournment, and until the convening of the next regular session with the same powers and duties as while the Legislature is in session.<sup>129</sup> A very important function of the Rules Committees is to refer all bills and resolutions to the appropriate standing committees.<sup>130</sup>

The Rules Committees make studies and recommendations designed to promote, improve, and expedite the business and procedure of their respective houses and committees. Amendments to the rules are proposed by the committees when they are deemed necessary.<sup>131</sup>

Some of the important powers and duties the Rules Committees perform for their respective houses are: To authorize the appointment of employees, set their salaries, and adopt rules and regulations limiting the amount, time, and place of expenses and allowances to be paid to committee employees;<sup>132</sup> to approve all claims for expenses incurred by the house’s committees, and to approve all proposed expenditures before the expenses are incurred;<sup>133</sup> and to assign the subject matter of bills recommended for study to the appropriate committees.<sup>134</sup>

<sup>126</sup> *Assembly Rule 13; Senate Rule 11.*

<sup>127</sup> *Assembly Rule 13.1.*

<sup>128</sup> *Senate Rule 11.*

<sup>129</sup> *Assembly Rule 15; Senate Rule 13.*

<sup>130</sup> *Assembly Rules 14, 45 and 51; Senate Rules 12 and 22.*

<sup>131</sup> *Assembly Rule 14; Senate Rule 13.*

<sup>132</sup> *Assembly Rules 14 and 20; Senate Rules 13 and 13.1.*

<sup>133</sup> *Assembly Rule 20; Senate Rule 13.1.*

<sup>134</sup> *Assembly Rule 59.*

## CHAPTER 38

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 2005. Filed with Secretary of State July 11, 2005.]

I object to the following appropriations contained in Senate Bill 77.

Item 0250-111-0001—For transfer by the Controller to the Trial Court Trust Fund. I reduce this item from \$1,453,866,000 to \$1,386,566,000.

I am reducing this item by \$57,500,000 as a one-time base veto of a portion of the General Fund transfer to the Trial Court Trust Fund. This veto decreases the reserve in the Trial Court Trust Fund from \$67,500,000 to \$10,000,000, leaving a sufficient reserve in case revenues fall short of expected levels. The Trial Court Trust Fund does not need a large reserve since, pursuant to recent legislation, its primary fund sources now receive a statutory annual adjustment based on the increase in the State Appropriations Limit.

I am also reducing this item by \$9,800,000. The Legislature adopted Uniform Civil Filing Fees trailer bill language that would bring in increased revenue of \$14,750,000 in 2005–06 to the Trial Court Trust Fund. Of this amount, \$4,950,000 will be available as additional expenditure authority to the Trial Court Trust Fund for the facilities program and the remaining \$9,800,000 will offset the General Fund transfer. Since the Uniform Civil Filing Fee will not be implemented until January 1, 2006, the above amounts are for a half-year only and will be annualized in 2006–07. As such, the ongoing offset to the General Fund transfer will be \$19,600,000.

Item 0520-001-9329—For support of Secretary for Business, Transportation and Housing. I delete this item.

I am deleting the \$2,000,000 legislative augmentation that would provide loans to chrome plating businesses. This augmentation is associated with pending legislation and I am opposed to the appropriation of funds for legislation that has not yet been approved by the Legislature and the Administration.

Item 0540-001-0140—For support of Secretary for Resources. I revise this item by reducing:

- (1) 10-Administration of Resources Agency from \$8,378,000 to \$8,362,000, and by deleting:
- (5.5) Amount payable from the River Protection Subaccount (Item 0540-001-6015) (–\$16,000).

I am revising this item to conform to the action I have taken in Items 0540-490 and 0540-001-6015.

Item 0540-001-6015—For support of Secretary for Resources. I delete this item.

I am deleting this item to conform to the action I have taken in Items 0540-490 and 0540-001-0140.

Item 0540-490—Reappropriation, Secretary for Resources. I revise this item as follows:

“Notwithstanding any other provision of law, the period to liquidate encumbrances of the following citations are extended to June 30, 2006:

0001—General Fund

- (1) Item 0540-101-0001, Budget Act of 1999 (Ch. 50, Stats. 1999)
- (2) Item 0540-101-0001, Budget Act of 2000 (Ch. 52, Stats. 2000)
- (3) Item 0540-101-0001, Budget Act of 2001 (Ch. 106, Stats. 2001)

Page one of the 694-page Budget Bill of 2005 (SB 77) as chaptered. Historically, each house conducts hearings and crafts its own version of the budget, subsequently finalizing the budget language in a two-house conference committee and in negotiations among legislative leaders and the Governor.

To incur and pay expenses not otherwise provided for as they deem reasonably necessary, including the repair, alteration, improvement, and equipping of the respective chambers and offices through a process governed by competitive bidding.<sup>135</sup>

To assist the committee with its administrative, fiscal and business affairs, the Assembly Rules Committee employs a staff of secretaries and administrators, headed by the Chief Administrative Officer who is appointed by the Chair of the Rules Committee.<sup>136</sup> The Senate Rules Committee employs a similar staff, supervised by an Executive Officer, to assist it in the performance of its duties.

The Senate Rules Committee appoints members to Senate standing committees; the Speaker performs this function in the Assembly.<sup>137</sup>

### ***The Fiscal Committees (Appropriations and Budget Committees)***

The Assembly Budget Committee and the Senate Budget and Fiscal Review Committee are among the hardest working and most powerful committees of the Legislature. They are charged with forging a consensus out of the myriad demands made upon a State Budget which is now in excess of \$100 billion.

Within the first 10 days of each calendar year,<sup>138</sup> these committees are the recipients of budget bills introduced simultaneously in each house. These identical bills are the result of many months of effort by the executive branch to establish the financial requirements of the state for the forthcoming fiscal year. Initially, then, the priorities reflect the determinations of the Governor. Once introduced, the budget bills immediately come under the scrutiny of the staffs of the fiscal committees of the Legislature and the office of the Legislative Analyst. Opinions are sought regarding every possible service and capital outlay imaginable and are reviewed at numerous hearings by various budget subcommittees.

So important is the attention to a balanced budget that the Constitution expressly prohibits the Legislature from sending to the Governor "any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor . . .".<sup>139</sup> Thus, every bill appropriating money from the General Fund which is passed by the Legislature prior to the enactment of the Budget Bill requires the Governor's request via a letter before being presented to him or her for signature.

<sup>135</sup> *Assembly Rule 18; Senate Rule 13.2.*

<sup>136</sup> *Assembly Rule 14(e).*

<sup>137</sup> *Senate Rules 11 and 12.5; Assembly Rule 26(a)(6).*

<sup>138</sup> *Constitution*, Article IV, Section 12(a).

<sup>139</sup> *Constitution*, Article IV, Section 12(c).

### ***Appropriations Committees***

Any bill which: appropriates money; imposes new responsibilities or duties on the state; liberalizes any state function, program or responsibility; or results in substantial loss of revenue or reduction of state expenditures, must be heard by the Appropriations Committees in the Assembly and the Senate before it can be voted upon by the respective houses.<sup>140</sup> This means that any bill implicitly or explicitly touching upon one or more of the above criteria must pass through both policy and fiscal committees of both houses. The application of this rule requires these committees to review an estimated 80 percent of all bills considered by the Legislature.

The fiscal committees are generally not thought of as policy committees except for the Budget, although some measures are occasionally referred directly to these committees. The distinction is noted by the Joint Rules which establishes different deadlines for policy committee and fiscal committee action.<sup>141</sup> These staggered deadlines recognize the problem faced by authors of bills which must come under review by the fiscal committee after clearing the policy committee to which they were previously referred.

### ***The Joint Rules Committee***

The Joint Rules Committee consists of the Members of the Assembly Committee on Rules, the Assembly Majority and Minority Leaders, the Speaker of the Assembly, and four members of the Senate Committee on Rules. An additional number of Senators may be appointed by the Senate Rules Committee to maintain equality in the number of Assembly Members and Senators on the committee.<sup>142</sup>

The committee has a continuing existence and may meet and conduct business while the Legislature is in recess as well as during the time the Legislature is in session.<sup>143</sup>

The committee ascertains facts and reports its recommendations to the Legislature. Specifically, the committee concerns itself with the relations between the two houses and making recommendations to improve that relationship; changes in the law to cure defects affecting the Legislature; adjustments in legislative procedures governing the processing of proposed legislation; coordination of the work of the Assembly and Senate and their committees by eliminating duplication of effort.

The committee also is empowered to gather data and statistics it deems useful to the houses or the Members. It permits and approves the involvement of the Legislative Counsel in litigation.<sup>144</sup> The committee is also authorized to participate in the work of the National Conference of State Legislative Leaders.<sup>145</sup>

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<sup>140</sup> *Joint Rule 10.5. See also, Senate Rule 12(2).*

<sup>141</sup> *Joint Rule 61.*

<sup>142</sup> *Joint Rule 40.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Government Code, Section 9111.*

All space in the State Capitol Building Annex, except the first floor of the annex, is allocated from time to time by the Joint Rules Committee in accordance with its determination of the needs of the Senate and Assembly and for facilities and agencies dealing with the Legislature as a whole, including press quarters, bill room, offices for the Legislative Counsel and for committees created by the two houses jointly.

The space thus allocated to the Senate and to the Assembly is allotted from time to time by the Senate Rules Committee and the Assembly Rules Committee, respectively.<sup>146</sup>

The committee appoints and employs the chairpersons and employees of all joint committees except those of the Joint Legislative Budget and the Joint Legislative Audit Committees. It employs its own staff headed by a Chief Administrative Officer.<sup>147</sup>

In summary, the committee's function is to facilitate and promote the joint legislative and committee functions of the two houses and to report to them on matters of mutual concern.

### ***The Joint Legislative Budget Committee***

In the 1930s, it became painfully obvious that the Legislature lacked the capacity to adequately analyze and review the fiscal implications and administrative effects of the Governor's proposals. The Chief Executive had at his command a sizable staff to collect data to substantiate and press for his programs. The Legislature found itself unable to initiate a positive program. It was in the position of reacting to the Governor's proposals rather than acting in an independent or affirmative manner by utilizing its own sources of information.

Recognizing the state of affairs, the Legislature, in 1941, passed a bill establishing a Legislative Audit Bureau.<sup>148</sup> This bill was subsequently vetoed by the Governor. Reacting to the Governor's veto, the Legislature promptly amended the Joint Rules creating the Joint Legislative Budget Committee.<sup>149</sup> The committee immediately employed the first Legislative Analyst.

The committee was reconstituted at each successive session by the adoption of the Joint Rules, until 1951, when it was established on a permanent basis by statute.<sup>150</sup>

The committee consists of eight Assembly Members and eight Senators appointed by the Speaker and the Senate Rules Committee, respectively. The chairperson is elected by the committee from its membership.<sup>151</sup>

The rules of the committee require that a quorum consists of at least four members from each house. Its duties are to ascertain facts and to make recommendations to the Legislature and to each of the houses concerning the State Budget, the revenues and expenditures of the state, the organization and

<sup>146</sup> *Government Code*, Section 9108.

<sup>147</sup> *Joint Rules 40(i) and 40(j)*.

<sup>148</sup> *1941 Regular Session*, Assembly Bill 1129.

<sup>149</sup> *Statutes of 1941*, Resolution Chapter 117.

<sup>150</sup> *Government Code*, Sections 9140–9143.

<sup>151</sup> *Government Code*, Section 9141; *Joint Rule 37*.

functions of the state, its departments, subdivisions, and agencies, and such other matters as may be provided for in the Joint Rules of the Legislature.

The committee may also render services to any other investigating committee of the Legislature pursuant to contract between it and the committee for which the services are to be performed.<sup>152</sup>

### ***The Joint Legislative Audit Committee***

California's Legislature established the Joint Legislative Audit Committee by statute in 1955. In establishing the committee, the Legislature recognized the need for a postaudit independent of the audit performed by the executive branch of the state government. Through its own audits and investigations, the Legislature can test the reliability of the financial and operating information that is used in the decisionmaking process.<sup>153</sup>

The Joint Legislative Audit Committee consists of seven Senators and seven Assembly Members. Four Assembly Members and four Senators constitute the quorum necessary to conduct the committee's business.<sup>154</sup> Members of the committee are appointed under the provisions of the Joint Rules of the Senate and Assembly. Senate members of the committee are appointed by the Senate Committee on Rules, and Assembly Members are appointed by the Speaker; the chairperson of the committee is selected by the membership of the committee.<sup>155</sup>

The committee is a factfinding and investigative committee which transmits its reports and recommendations to the Senate and Assembly for further action by the policy committees.

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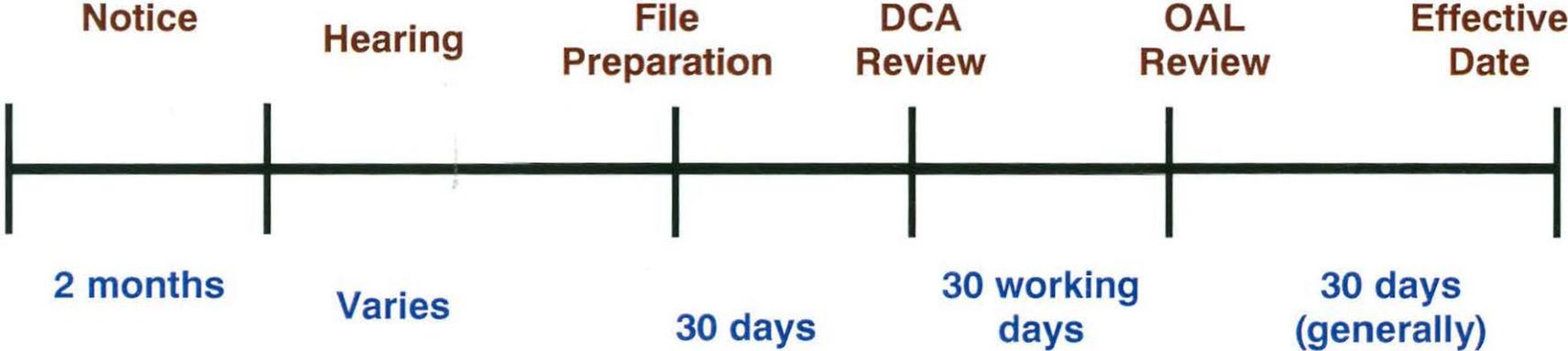
<sup>152</sup> *Government Code*, Section 9142; *Joint Rule* 37.

<sup>153</sup> *Government Code*, Sections 10500–10504.1.

<sup>154</sup> *Joint Rule* 37.3.

<sup>155</sup> *Joint Rules* 36.5 and 37.3.

# Formal Regulatory Process



**COMPLAINT RECEIVED FROM:**

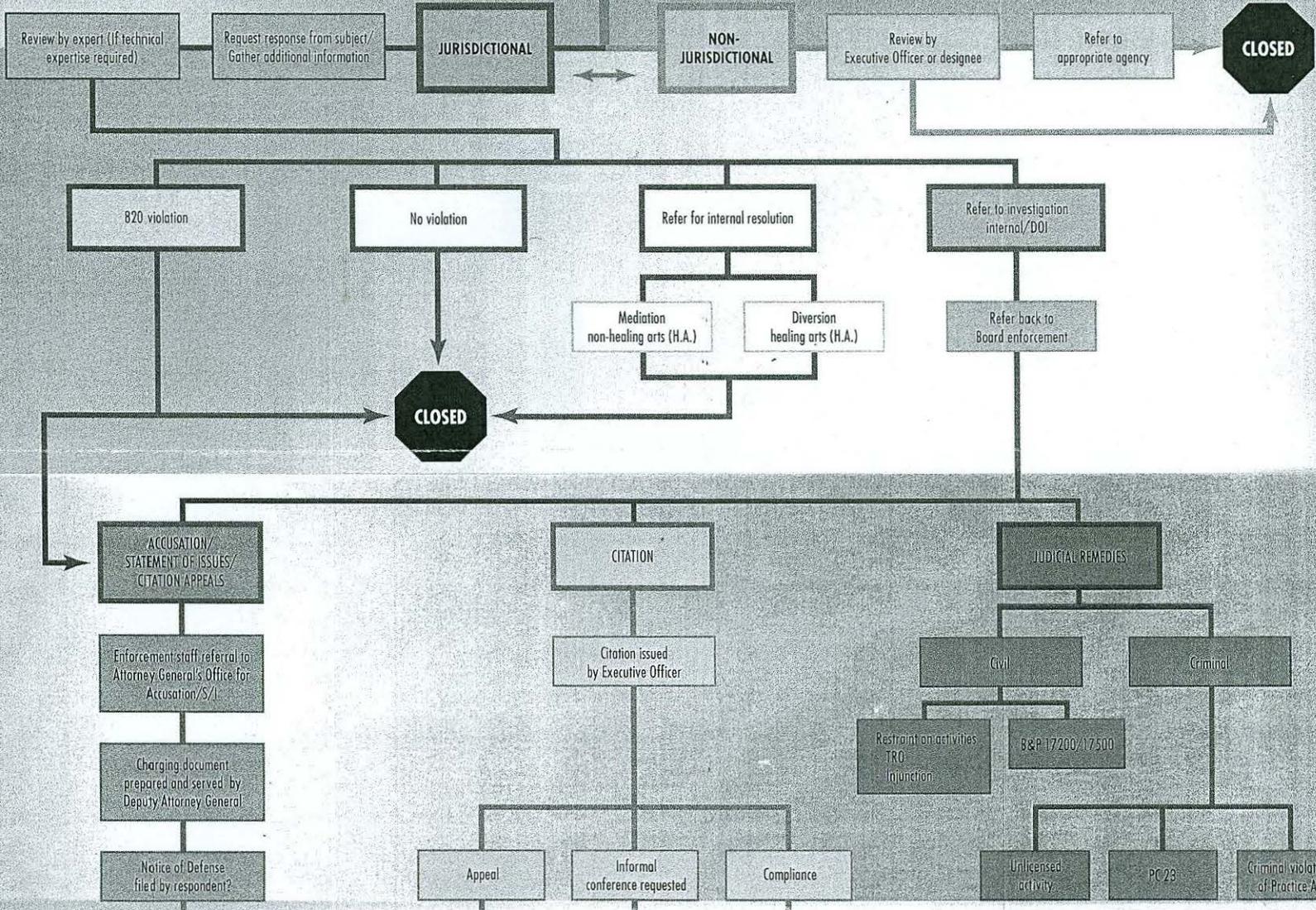
- General Public
- Mandatory Reporting (e.g., malpractice insurance carriers, courts, coroner, peer review committees)
- Subsequent arrest reports
- Own initiative/Field Inspection

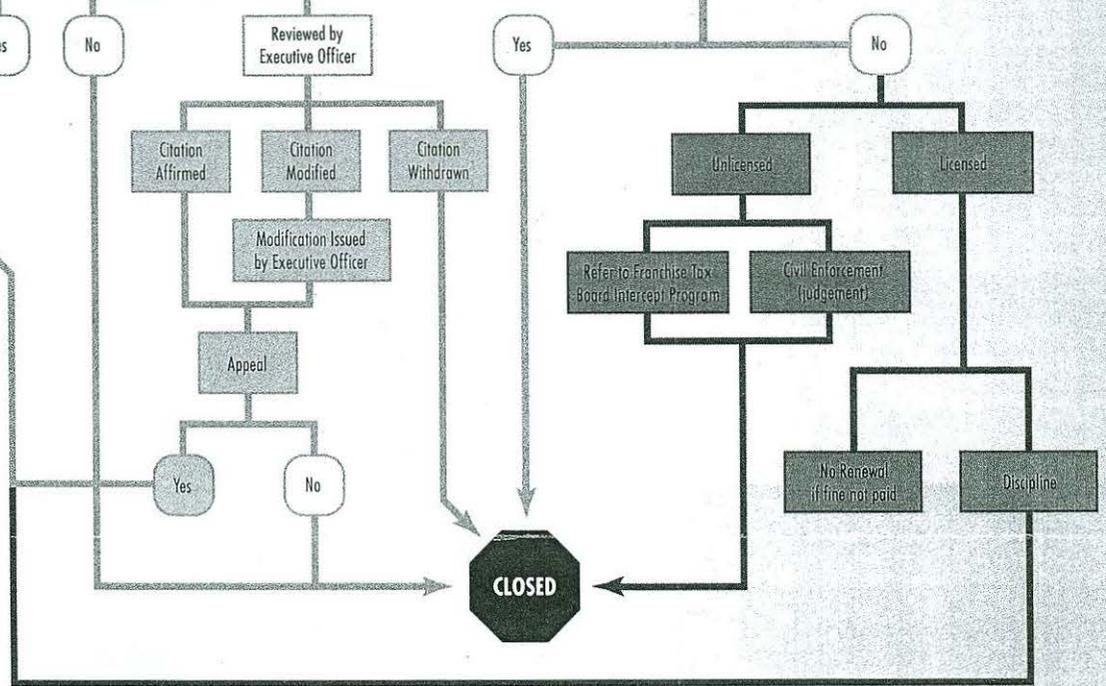
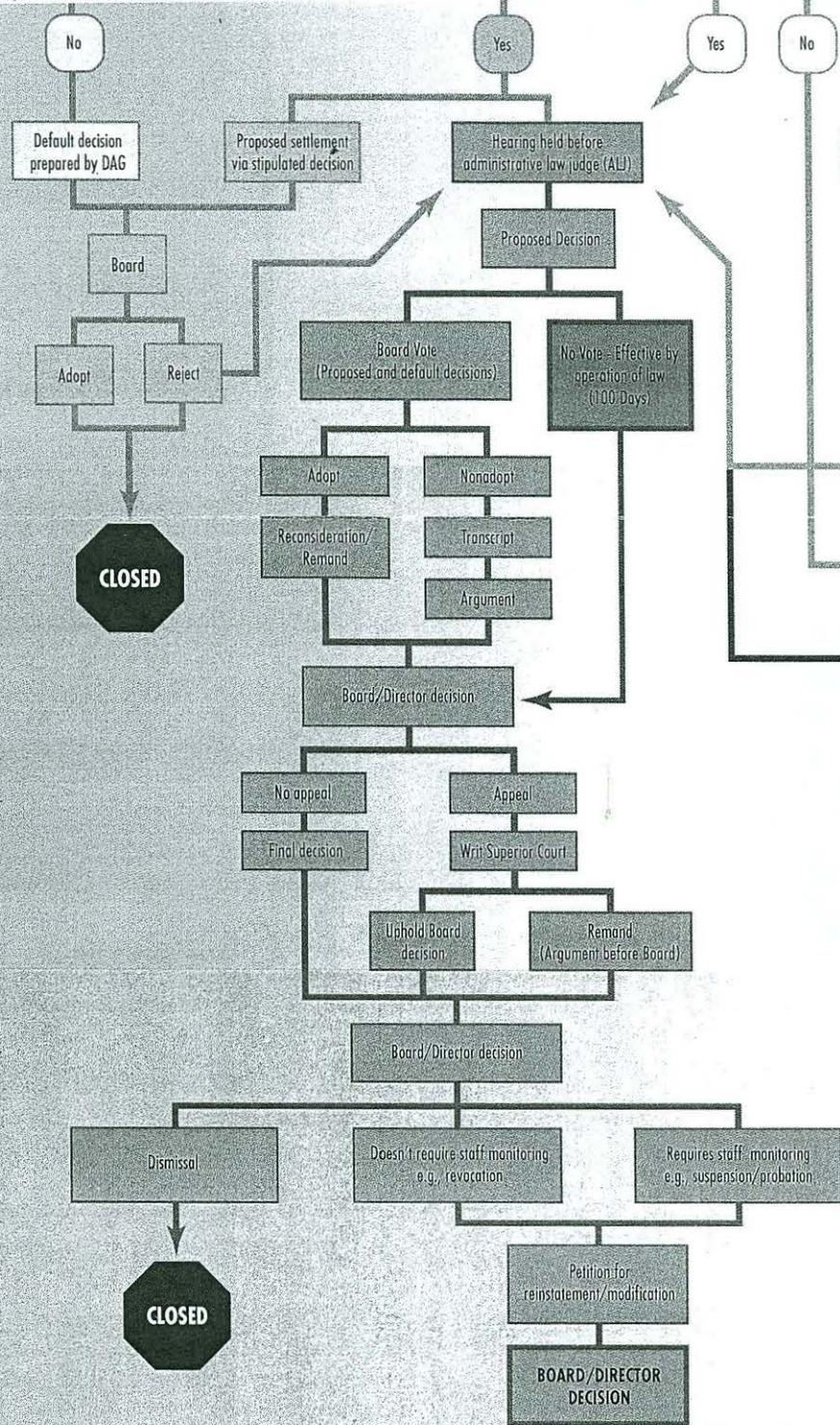
**ENTERED INTO THE COMPLAINT TRACKING SYSTEM (CAS):**

- Acknowledgement letter sent
- Complaint files referred to analyst for review

**ANALYST REVIEW TO DETERMINE:**

- Board jurisdiction
- Type of complaint/priority





# ENFORCEMENT PROCESS OVERVIEW



ENFORCEMENT  
ACADEMY  
DEPARTMENT OF CONSUMER AFFAIRS

PREPARED BY THE DIVISION OF LEGAL AFFAIRS