STATE OF CALIFORNIA
BOARD OF
PODIATRIC
MEDICINE

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

EXECUTIVE MANAGEMENT COMMITTEE
MAY 11, 2016

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

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

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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 draft a Board Administrative Procedures Manual.

DISCUSSION

Committee members reviewed prior drafts of the proposed manual at previous meetings of the executive management committee held on May 20, 2015, August 19, 2015 and September 18, 2015. In addition, a previous draft was reviewed by the full board at the November 13, 2016 meeting of the board. The recommendations for revisions to the draft provided at the November 13 meeting have been incorporated as directed.

One final review was conducted by BPM Legal Counsel as advised at the March 4, 2016 meeting of the board. Final recommended revisions have been completed and the document is hereby submitted for executive management committee review and recommendation for final approval.

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

Should the Board approve the manual staff finalize the document implementing any necessary amendments and revisions in accord with Board recommendations as directed.

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

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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.

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California Board of Podiatric Medicine
Board Administrative Manual

California Board of Podiatric Medicine

Hallmarks of Board Member Commitment and Responsibility

This document serves to remind members 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;

We recognize the important responsibility we undertake in serving as a member of the Board of Podiatric Medicine and esteem to carry out in a trustworthy and diligent manner all the duties and obligations inherent in our responsibilities as Board Members in service of the people's business.

Board Member Role

The role as a member of the Board of Podiatric Medicine is to contribute to the development of the Board's mission and vision, and to participate in governing the implementation of the mission and realization of the vision.

The role as a member is to fulfill the functions of the office of Board Member as recorded in the Board of Podiatric laws and as described in the Board Member Job Description for Strategic Governance. The implementation of this role is expressly limited to those activities and functions not directly or indirectly delegated to management.

Board Member Duties

The duties of a member of the Board of Podiatric Medicine are to carry out the following responsibilities with integrity, high moral and ethical conduct, and strong commitment.

1. To establish as a high priority my attendance at all meetings of the Board, and of committees and 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 to me in advance of each meeting.

3. To represent the Board of Podiatric Medicine in a positive and professional manner at all times and in all places.

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. When a conflict of interest presents itself, I will abide by the provisions of Board of Podiatric Medicine's laws.

7. To maintain strict confidentiality of all business discussed in closed session, disclosing to others only information which is public.

8. To support in a positive manner all actions taken by the Board of Directors 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 fiduciary stability of the Corporation, 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 strategic governance skills training workshops. If I am a new Member of the Board, I agree to attend all orientation sessions for new Board Members.

10 Principles for Highly Effective Board Members

1. Protection of the public shall be the highest priority for DCA board members in exercising 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. We are responsible for developing and setting policy and procedures as a State licensing and law enforcement agency.

3. 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.

4. A person who wishes to earn a living in an occupation should not be kept out unreasonably. That person should have easy access to all information about entering the profession, including testing and having licensure information transferred 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. We 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. 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

8. 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.

9. 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.

10. 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.

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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 though 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.

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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 inter-dependently 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 day actually spent in the discharge of official duties and are reimbursed for travel and other expenses necessarily incurred in the performance of official duties.

The Board is within the jurisdiction of the Medical Board of California and 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 enforcement of the Medical Practice Act as it pertains to Doctors of Podiatric Medicine. It is the Board's vision that all licensed California Doctors of Podiatric Medicine 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 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

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evaluate all applicants recommended 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.

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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

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- 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.

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.

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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 at least three meetings per year with a minimum of one meeting in Northern California, and one in Southern California per calendar year. 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.

- Through consensus vote the Board has established a policy for itself and each of its standing Committees to convene quarterly.
- Board Meetings shall be generally 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

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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)
Each Board member is encouraged to submit items for a Board meeting agenda to the Executive Officer at least 20 days prior to the meeting. Committee members are also encouraged to 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 according 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 published in the most cost effective and environmentally conscious manner achievable and distributed to members in either electronic or hard copy format according to individual member preference 10 days before a scheduled meeting.

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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 neutrality and maintaining the fairness of the Board when performing its adjudicative functions, neither the Board nor any board member shall 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 or member with information regarding matters that are currently under or subject to investigation or civil administrative action or criminal proceeding or on a matter subject to review by the Board, the person shall be advised that neither the Board nor its members individually may properly consider or hear such information and the person shall be instructed to refrain from making such comments. The Board or a board member 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:

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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 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.

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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 Board'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. Members desiring automatic deposits of all net reimbursements into a member designated financial institution may elect to participate in the

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Department's Direct Deposit Program. Members may apply by completing the appropriate enrollment form and submitting the completed and signed document to the Board's program support assistant.

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;
        ii. Review of materials and disciplinary matters such as mail votes as issued by Board staff; and
        iii. Training

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 amount of time provided in the fulfillment of obligations, responsibilities, duties and requirements of attendance or participation such that any identified deficiency did not materially shortchange the objective, purpose or process that it would be unreasonable to deny remuneration for service rendered in spite of all the formal requirements of service not being met.

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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 15 minute increments on a form authorized to account for time. Said time includes:

    a. Review of materials and disciplinary matters such as mail votes as issued by Board staff.

    b. Board work that is authorized and assigned by the Board President.

    c. Preparation time for Board and Committee meetings; and

    d. Training.

8. As required by Business & Professions Code section 103, if a member is a pubic 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.

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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 regulatory 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.

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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 may appoint a Nominations Committee prior to the last meeting of the calendar year if desired to be composed of not more than two members and may consider appointing both a public and a professional member of the Board to the Committee. The two- member Nominations Committee is not subject to the Open Meetings Act and 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 expresses interest in an officer position, the Nominations Committee will make a recommendation to the Board and others may be included on the ballot for a runoff if desired. 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 abecomes vacant, the Vice-President shall assume the office of the President. Elected officer shall then serve the remainder of the term.

Committees & 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. Committees are generally composed of two Board Members each. The Board has five standing Committees and they

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include: 1) the Executive Management 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 management committee which may exercise the authority of the board delegated to it by the body.

As previously discussed under Board meeting procedures, meetings of the Board are subject to all provisions of the Bagley-Keene Open Meeting Act. In keeping with the Board's value of transparency, it is the policy of the Board to also apply all notice requirements of the Open Meeting Act to its two member committees and advisory bodies. Where a committee is comprised of three or more members however all notice requirements of the Open Meeting Act must be followed.

Executive Management Committee

Members of the Executive Committee include the Board's president and vice-president (elected annually.) As determined by the Board president, the committee may also include the ranking member of the Board or another member appointed by the Board president for a total of three members. Where the committee is comprised of three or more members all notice requirements of the Open Meeting Act shall be followed. When specifically authorized by a vote of the full board, the committee may in between board meetings be authorized to make interim decisions as directed, as long as notice requirements are met where necessary. The 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

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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 before a 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.

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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 regulatory 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 able to communicate effectively
    - recognizes that the goal of the board is the service and protection of the public

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    - 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

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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

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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.

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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 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.

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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

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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 or 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

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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

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

> "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."

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Board members are prohibited from ex parte communications with Board enforcement staff while a proceeding is pending. This included communications with the Executive Officer regarding proposed decisions.

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.

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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.

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

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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

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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 principalmotions 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

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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
3) Time) Amend
4) Refer to Committee
5) Limit or Extend Limits of
6) Debate 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 Motion
4) 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.

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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

<u>Privileged Motions</u>

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

<u>Incidental Motions</u>

Motion to Appeal

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

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- 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

<u>Subsidiary Motions</u>

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

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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

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.

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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.

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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 regulatory authority. These licensing requirements are generally reflected in areas of education, experience and examination. The Board of Podiatric Medicine accomplishes its 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 health regulatory board in the country to implement such a program over and above continuing education alone.

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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 issuing licensure recommendations to prospective California podiatric doctors 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 administratively relies on the larger Medical Board of California for enforcement services, including those from Central Complaints and Discipline Coordination Units. The Board uses 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 regulatory 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.

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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 <u>does not identify</u> 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.

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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 obtaining 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 ADMINSTRATIVE 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?

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- 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:

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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.

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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.

<u>Self-Executing Statutes</u>

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."

<u>Wholly Enabling Statutes</u>

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.

<u>Statutes Susceptible to Interpretation</u>

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

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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.

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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.

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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

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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.

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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.

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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.

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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.

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Appendix A

Oath of Office

Board Member Activity Log

Direct Deposit Authorization

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

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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. _____

_____

_____

STD. 688 (REV. 11-99)

OATH OF OFFICE

of

STD. 688 (REV. 11-99) (REVERSE)

Board Member:

BOARD MEMBER ACTIVITY LOG

FY: 15/16
Month:

PODIATRIC MEDICINE

TOTAL MONTHLY HOURS: 0:00

Time to be recorded in 15 minute increments.

Activity Date	Begin Time	End Time	Activity	Subject	Time Spent
					0:00
					0:00
					0:00

Board Member:

BOARD MEMBER ACTIVITY LOG

FY: 15/16
Month: SEPTEMBER

PODIATRIC MEDICINE

TOTAL MONTHLY HOURS: 8:00

Time to be recorded in 15 minute increments.

Activity Date	Begin Time	End Time	Activity	Subject	Time Spent
9/13/15	8:00	11:00	Committee Preperation - Reading	LICENSING	3:00
9/18/15	10:30	11:30	BPM Committee Meeting - Attendance	LICENSING	1:00
9/25/15	6:00	9:00	BPM Mail Vote - Mail Vote Package - Review	Proposed Decision	3:00
9/30/15	2:00	3:00	Agenda Planning with E.O.	Board Meeting	1:00
					0:00
					0:00
					0

STATE OF CALIFORNIA - CONTROLLER'S OFFICE

Print Form | Reset Form

DIRECT DEPOSIT
ENROLLMENT AUTHORIZATION

STD. 699 (REV. 12/2011)

COMPLETION INSTRUCTIONS AND PRIVACY NOTICE ARE ON THE REVERSE OF THE EMPLOYEE COPY. PLEASE TYPE OR USE BALL POINT PEN–PRINT CLEARLY.

This authorization remains in full force and effect until the State Controller's Office receives written notification from the employee of its termination, or until the State Controller's Office or appointing authority deems it necessary to terminate the agreement.

SECTION A *(To be completed by employee)*

1. TYPE OF ENROLLMENT ACTION
   1. ☐ NEW — SECTIONS A, B, AND C MUST BE COMPLETED
   2. ☐ CHANGE — SECTIONS A, B, AND C MUST BE COMPLETED
   3. ☐ CANCEL — SECTIONS A AND D MUST BE COMPLETED

2. SOCIAL SECURITY NUMBER

3. NAME (First Middle Last)

SECTION B *(To be completed by employee if **NEW** or **CHANGE** box in Section A is checked)*

1. TYPE OF ACCOUNT- MUST BE CHECKED. IF LEFT BLANK, WILL BE PROCESSED AS **CHECKING**
   ☐ **C** (Checking) ☐ **S** (Savings)

Verify Routing/Depositor Numbers with Financial Institution

2. ROUTING NUMBER

3. DEPOSITOR ACCOUNT NUMBER

4. FINANCIAL INSTITUTION NAME

5. FINANCIAL INSTITUTION ADDRESS (Number and Street City / State ZIP)

SECTION C *(To be completed by employee if **NEW** or **CHANGE** box in Section A is checked)*

I hereby authorize the State Controller's Office to provide for direct deposit of any salary or wages due me, less any mandatory or authorized withholding or deductions therefrom, in the above designated account.

If at any time the amount of salary or wages so deposited exceeds the amount of salary or wages actually due and payable to me, I hereby authorize the State Controller's Office to either:

(a) Withhold a sum equal to the overpayment from future salary or wages; or

(b) Recover such overpayment from the above-designated account.

If the State is legally obligated to withhold any part of my wage or salary payment for any reason, or if I no longer meet eligibility requirements for the Direct Deposit program, I understand the State Controller's Office may terminate my enrollment in the program. If any action taken by me results in nonacceptance of a direct deposit by the designated financial institution, I understand that the State assumes no responsibility for processing a supplemental salary or wage payment until the amount of the nonacceptance deposit is returned to the State by the financial institution.

☐ 100% of the net deposit will not be sent to a financial institution outside the jurisdiction of the United States.

SIGNATURE | DATE

SECTION D *(To be completed by employee if **CANCEL** box in Section A is checked)*

I hereby cancel my Direct Deposit authorization.

SIGNATURE | DATE

SECTION E *(To be completed by state agency or campus personnel/payroll office only)*

1. AGENCY/CAMPUS NAME

2. AGENCY CODE

3. UNIT

FOR SCO ONLY

1. EFFECTIVE DATE MO. DAY YR.

4. REMARKS

☐ CHECK BOX IF SEMI-MONTHLY EMPLOYEE

5. AUTHORIZED AGENCY/CAMPUS SIGNATURE

I HEREBY CERTIFY THAT I AM THE DULY APPOINTED, QUALIFIED AND ACTING OFFICER OF THE HEREIN NAMED AGENCY/CAMPUS AND THAT, BEING SO AUTHORIZED, DO CERTIFY THAT THIS EMPLOYEE IS ELIGIBLE FOR DIRECT DEPOSIT.

TELEPHONE NUMBER

☐ CHECK IF CALNET

DATE RECEIVED IN EMPLOYING OFFICE MO. DAY YR.

DISTRIBUTION: WHITE–TO STATE CONTROLLER'S OFFICE
CANARY–TO AGENCY
PINK–TO EMPLOYEE

OAH

TRAINING MATERIALS FOR

NEW BOARD MEMBER ORIENTATION

DEPARTMENT OF CONSUMER AFFAIRS

Prepared by
Administrative Law Judges
David Rosenman &
Janis Rovner
March 2005

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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; 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 <u>be</u> fair and <u>appear</u> 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.4th 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.4th 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.

STATE OF CALIFORNIA

BOARD OF PODIATRIC MEDICINE

MANUAL

OF

MODEL DISCIPLINARY ORDERS ~~GUIDELINES~~

~~WITH~~ AND

~~MODEL~~ DISCIPLINARY GUIDELINES ~~ORDERS~~

(Effective ~~February 4, 2006~~)

These Disciplinary Guidelines were originally adopted by the BPM on September 5, 1984, and most recently revised ~~September 2005~~ November 13, 2015. They are for use by administrative law judges, attorneys, and licensees.

Additional copies may be obtained from:

Board of Podiatric Medicine
2005 Evergreen Street, Suite 1300
Sacramento, CA 95815-3835

(916) 263-2647

MODEL DISCIPLINARY ORDERS ~~GUIDELINES~~ ~~WITH~~
AND ~~MODEL~~ DISCIPLINARY GUIDELINES ~~ORDERS~~

Business and Professions Code section 2460.1 mandates that protection of the public shall be the highest priority for the Board of Podiatric Medicine (BPM).

The BPM expects that, absent mitigating or other appropriate circumstances, Administrative Law Judges hearing cases on behalf of the BPM and proposed settlements submitted to the BPM will follow these Guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

The Model Disciplinary Orders contain three sections: three (3) Disciplinary Orders; twenty-six (26) Optional Conditions whose use depends on the nature and circumstances of the particular case; and sixteen (16) Standard Conditions that generally appear in all probation cases. All orders should place the Order(s) first, optional condition(s) second, and standard conditions third.

The Model Disciplinary Guidelines list proposed terms and conditions for more than twenty-four (24) sections of the Business and Professions Code.

MODEL DISCIPLINARY ORDERS

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MODEL DISCIPLINARY ORDERS

1. Revocation - Single Cause

Certificate No. (Ex: E-1035) issued to respondent (Ex: John Doe, DPM) is revoked.

2. Revocation - Multiple Causes

Certificate No. _____ issued to respondent _____ is revoked pursuant to Determination of Issues (Ex: I, II, and III) separately and for all of them.

3. Standard Stay Order

However, revocation is stayed and respondent is placed on probation for _____ (Ex: e.g., ten) years upon the following terms and conditions.

OPTIONAL CONDITIONS

4. Actual Suspension

As part of probation, respondent is suspended from the practice of podiatric medicine for (Ex: 90 days) beginning the sixteenth (16th) day after the effective date of this decision. Respondent shall prominently post a notice of the Board's Order of Suspension, in a place clearly visible to the public. Said notice, provided by the Board, shall remain so posted during the entire period of suspension.

4a. Provisions for Cessation of Practice

In settlements or orders which provide for a cessation of practice, respondent shall comply with procedures provided by the BPM regarding notification and management of patients.

5. Controlled Substances - Total Restriction

Respondent shall not order, prescribe, dispense, administer, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

6. Controlled Substances - Surrender of DEA Permit

Respondent is prohibited from practicing podiatric medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together
with any *state* prescription forms and all controlled substances order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent

of the Board or its designee.

7. Controlled Substances - Partial Restriction

Respondent shall not order, prescribe, dispense, administer or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule~~s~~(s) (e.g., IV and V) of the Act.

NOTE: Also use Condition 8 which requires that separate records be maintained for all controlled substances prescribed.

(Option)
Respondent shall immediately surrender respondent's current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of this Decision, respondent shall submit proof that respondent has surrendered respondent's DEA permit to the Drug Enforcement Administration for cancellation and reissuance. Within 15 calendar days after the effective date of the issuance of a new DEA permit, the respondent shall submit a true copy of the permit to the Board or its designee.

8. Controlled Substances- Maintain Records *and Access to Records and Inventories*

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered *or* possessed by respondent, during probation, showing all the following: 1) the name and address of the patient; 2) the date, 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substance was furnished.

Respondent shall keep these records in a separate file or ledger in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.

9. Controlled Substances- Abstain from Use
Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs

requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of ~~or~~ receiving any lawfully prescribed ~~lawful prescription~~ medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, ~~and~~ strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard from an Administrative Law Judge alone, he or she shall forward a proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

10. Alcohol - Abstain from Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the

Board within 30 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard from an Administrative Law Judge alone, he or she shall forward a proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

11. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon ~~the~~ request of the Board or its designee. Biological fluid testing may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test results may be received in evidence in any ~~may~~ proceedings between the Board and ~~the~~ respondent. ~~Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.~~

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification

to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard from an Administrative Law Judge alone, he or she shall forward a proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

12. Rehabilitation Program - Alcohol or Drug

Within 30 days of the effective date of this decision, respondent shall submit to the BPM for its prior approval a rehabilitation monitoring program. When evaluating programs for approval, the following will be taken into consideration: Unless specifically noted in the decision, the minimum length of the program shall be no less than three years. All plans must include face to face monitoring, random biological fluid testing, and an educational program that addresses disease concepts, recovery process and recovery oriented lifestyle changes.

Within 30 days of approval of said program respondent shall enroll and participate until the BPM or its designee determines that further monitoring and rehabilitation is no longer necessary. If it is determined by both the rehabilitation program and a BPM designated physician that respondent cannot practice podiatric medicine safely, the respondent shall immediately cease practice upon notification. Respondent may not resume practice until it has been determined by both the rehabilitation program and a BPM designated physician that respondent can safely practice podiatric medicine and has been notified in writing by the board's designee. Failure to cooperate or comply with the Rehabilitation Program requirements and recommendations, quitting the program without permission, or being expelled for cause is a violation of probation.

13. Community Service - Free Services

Within 60 days of the effective date of this Decision, respondent shall submit to the Board or its designee for its prior approval a community service plan in which respondent shall within the first 2 years of probation, provide_____hours of free services (e.g.,medical or non-medical) to a community or non-profit organization. If the term of probation is designated for 2 years or less, the community service hours must be completed not later than 6 months prior to the completion of probation.

Prior to engaging in any community service respondent shall provide a true copy of the Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition. NOTE: In quality of care cases, only non-medical community service is allowed unless respondent passes the National Board of Podiatric Medical Examiners Part III Exam or otherwise demonstrates competency prior to providing community service.

14. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified or Board approved and limited to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at the respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements,_which must be scientific in nature, for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

15. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

16. Medical Record Keeping Course

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in medical record keeping, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

17. Ethics Course

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first year is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its

designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after the effective date of the Decision.

18. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program, at respondent's expense, ~~equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program").~~approved in advance by the Board or its designee. Respondent, at the ~~P~~program's discretion, shall undergo and complete the ~~P~~program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The ~~P~~program shall evaluate respondent at the end of the training and the ~~P~~program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire ~~P~~program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on respondent's performance and evaluations from the assessment, education, and training, the ~~P~~program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with ~~P~~program recommendations. At the completion of the ~~P~~program, respondent shall submit to a final evaluation. The ~~P~~program shall provide the results of the evaluation to the Board or its designee.

The ~~P~~program's determination whether or not respondent successfully completed the ~~P~~program shall be binding. Failure to participate in and complete successfully all phases of the ~~P~~program, as outlined above, is a violation of probation.

(Option # 1: Condition Precedent)
Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing.

(Option # 2: Condition Subsequent)

If respondent fails to complete the Program within the

designated time period, respondent shall cease the practice of podiatric medicine within 72 hours after being notified by the Board or its designee that respondent failed to complete the Program.

19. Clinical Competence Assessment ~~Training~~ Program

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical competence assessment ~~training or educational~~ program ~~equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California – San Diego School of Medicine ("Program").~~approved in advance by the Board or its designee.

The ~~P~~program shall consist of a Comprehensive Assessment ~~program comprised of a two-day assessment~~ of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty~~, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and~~. The program shall~~which~~ take~~s~~ into account data obtained from the pre-assessment, self report form and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program. The program shall require respondent's on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation.

At the end of the evaluation, the program will submit a report to ~~Based on respondent's performance and test results in the assessment and clinical education, the Program will advise~~ the Board or its designee which unequivocally states whether the respondent has demonstrated the ability to practice safely and independently. Based on respondent's performance on the Clinical Compentence Assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition, ~~treatment for any~~ or psychological condition, or anything else affecting respondent's practice of podiatric medicine. Respondent shall comply with ~~P~~program recommendations.

~~At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination.~~ The ~~P~~program's determination whether or not respondent passed the examination or successfully completed the ~~P~~program shall be binding.

Respondent shall complete the ~~P~~program not later than six months after respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion. Failure to participate in and complete successfully

all phases of the clinical competence assessment ~~training~~ program outlined above is a violation of probation.

(Option #1: Condition Precedent)
Respondent shall not practice podiatric medicine until respondent has successfully completed the ~~P~~program and has been so notified by the Board or its designee in writing~~, except that respondent may practice in a clinical training program approved by the Board or its designee. Respondent's practice of podiatric medicine shall be restricted only to that which is required by the approved training program~~.

(Option#2: Condition Subsequent)
If respondent fails to complete the clinical competence assessment ~~training~~ program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent failed to complete the clinical competence assessment ~~training~~ program.

(Option#3)
After respondent has successfully completed the clinical competence assessment ~~training~~ program, respondent shall participate in a professional enhancement program ~~equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine,~~ approved in advance by the Board or its designee, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation, or until the Board or its designee determines that further participation is no longer necessary.

Failure to participate in and complete successfully the professional enhancement program outlined above is a violation of probation.

20. Examination

Within 60 calendar days of the effective date of this Decision, respondent shall arrange to take and pass a written examination, approved by the Board. Failure to pass the examination within one year of the effective date of this Decision is a violation of probation. Respondent shall pay the costs of all examinations. For purposes of this condition, the exam shall be a passing score of the National Board of Podiatric Medical Examiners Part III examination consistent with B&P code section 2493.

(Continue with either one of these two options.)

(OPTION 1: Condition Precedent)
Respondent shall not practice podiatry until respondent has

passed the required examination and has been so notified by the Board or its designee in writing. This prohibition shall not bar respondent from practicing in a clinical training program approved by the Board or its designee. Respondent's practice of podiatric medicine shall be restricted only to that which is required by the approved training program.

NOTE: The condition precedent option is particularly recommended in cases where respondent has been found to be incompetent, repeatedly negligent, or grossly negligent.

(**OPTION 2: Condition Subsequent)**
If the respondent fails to pass the first examination, respondent shall be suspended from the practice of podiatric medicine. Respondent shall cease the practice of podiatric medicine within 72 hours after being notified by the Board or its designee that respondent has failed the examination. Respondent shall remain suspended from the practice of medicine until respondent successfully passes a follow-up examination, as evidenced by written notice to respondent from the Board or its designee.

21. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of the requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee. Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

(Option: Condition Precedent)
Respondent shall not engage in the practice of podiatric medicine until notified by the Board or its designee that respondent is mentally fit to practice podiatric medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation.

22. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years or postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist.
If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of podiatric medicine without restrictions, the Board shall retain continuing jurisdiction over the respondent's license and the period ofprobation shall be extended until the Board determines that the respondent is mentally fit to resume the practice of podiatric medicine without restrictions. Respondent shall pay the cost of *all* psychotherapy and psychiatric evaluations.

Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency or psychotherapy, is a violation of probation.

NOTE: This condition is for those cases where the evidence demonstrates that the respondent has had impairment (impairment by mental illness, alcohol abuse and/or drug self—abuse) related to the violations but is not at present a danger to respondent's patients.

23. Medical Evaluation and Treatment

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee.

If respondent is required by the Board or its designee to

undergo medical treatment, respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for its prior approval the name and qualifications of a treating physician of respondent's choice. Upon approval of the treating physician, respondent shall within 15 calendar days undertake and shall continue such treatment until further notice from the Board or its designee. The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment, that the Board or its designee deems necessary.

If, prior to the completion of probation, respondent is found to be physically incapable of resuming the practice of podiatric medicine without restrictions, the Board shall retain continuing jurisdiction over respondent’s license and the period of probation shall be extended until the Board determines that respondent is physically capable of resuming the practice of podiatric medicine without restrictions. Respondent shall pay the cost of the medical evaluation(*s)* and treatment.
Failure to undergo and continue medical treatment or comply with the required additional conditions or restrictions is a violation of probation.

(OPTION – Condition Precedent)
Respondent shall not engage in the practice of podiatric medicine until notified in writing by the Board or its designee of its determination that respondent is medically fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

24. Monitoring – Practice/Billing

Within 30 days of the effective date of this decision, the entire practice shall be monitored, including, but not limited to the following: medical records, charting, pre and postoperative evaluations, and all surgical procedures, and billing records.

The Board shall immediately, within the exercise of reasonable discretion, appoint a doctor of podiatric medicine from its panel of medical consultants or panel of expert reviewers as the monitor.

The monitor shall provide quarterly reports to the Board or

its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of podiatric medicine or billing, or both, and whether respondent is practicing podiatric medicine safely.

The Board or its designee shall determine the frequency and practice areas to be monitored. Such monitoring shall be required during the entire period of probation. The Board or its designee may at its sole discretion also require prior approval by the monitor of any medical or surgical procedures engaged in by the respondent. The respondent shall pay all costs of such monitoring and shall otherwise comply with all requirements of his or her contract with the monitor, a copy of which is attached as "Appendix A – Agreement to Monitor Practice and/or Billing" (revised April 2004). If the monitor terminates the contract, or is no longer available, the Board or its designee shall appoint a new monitor immediately. Respondent shall not practice at any time during the probation until the respondent provides a copy of the contract with the current monitor to the probation investigator and such contract is approved by the Board.

Respondent shall provide access to the practice monitor of respondent's patient records and such monitor shall be permitted to make direct contact with any patients treated or cared for by respondent and to discuss any matters related to respondent's care and treatment of those patients. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to provide to the Board or its designee any relevant information. If the practice monitor deems it necessary to directly contact any patient, and thus require the disclosure of such patient's identity, respondent shall notify the patient that the patient's identity has been requested pursuant to the Decision. This notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by respondent and a copy of such notification shall be maintained in each patient's file. The notifications signed by respondent's patients shall be subject to inspection and copying by the Board or its designee at any time during the period of probation that respondent is required to comply with this condition. The practice monitor will sign a confidentiality agreement, requiring him or her to keep all patient information regarding respondent's patients in complete confidence, except as otherwise required by the Board or its designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

In lieu of a monitor, respondent may participate in ~~the~~ a professional enhancement program ~~offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine,~~ approved by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

25. Solo Practice

Respondent is prohibited from engaging in the solo practice of podiatric medicine.

26. Third Party Chaperone

During probation, respondent shall have a third party present while consulting, examining or treating patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

Each third party chaperone shall initial and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the:
1) patient name, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

(Option)
Respondent shall provide written notification to respondent's patients that a third party chaperone shall be present during all consultations, examination, or treatment with _____ patients. Respondent shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation
Note: Sexual offenders should normally be placed in a monitored environment.

27. Prohibited Practice

During probation, respondent is prohibited from (e.g., practicing, performing, or treating) (e.g., a specific medical procedure; surgery; on a specific patient population). After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment respondent shall orally notify the patient that respondent does not (e.g., practice, perform or treat) (e.g., a specific medical procedure; surgery; on a specific patient population). Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address, and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition *to the required* oral notification, after the effective date of this Decision, the first time that a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not _____(e.g., practice, perform or treat)_____(e.g., a specific medical procedure; surgery; on a specific patient population). Respondent shall maintain a copy of the written notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.

27a. Restitution

Within 90 days of the effective date of this Decision, respondent shall provide proof to the BPM or its designee of restitution in the amount $_____ paid to _____. Failure to pay restitution shall be considered a violation of probation.

NOTE: In offenses involving economic exploitation, restitution is a necessary term of probation. For example, restitution would be a standard term in any case involving Medi-Cal or other insurance fraud. The amount of restitution

shall be no less than the amount of money that was fraudulently obtained by the licensee. Evidence relating to the amount of restitution would have to be introduced at the administrative hearing.

STANDARD CONDITIONS

28. Notification

Prior to engaging in the practice of medicine the respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of podiatric medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

29. Physician Assistants and Advanced Practice Nurses

Prior to receiving assistance from a physician assistant or advanced practice nurse, respondent must notify the supervising physician of the terms and conditions of his/her probation.

30. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of podiatric medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

31. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

32. Probation Unit Compliance

Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the

Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of podiatric medicine in respondent's place of residence. Respondent shall, maintain a current and renewed California doctor of podiatric medicine's license.

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

33. Interview with the Board or its Designee

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without notice throughout the term of probation.

34. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 15 ~~30~~ calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside, will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; Biological Fluid Testing; and Cost Recovery.

Respondent's license is subject to cancellation ~~shall be automatically cancelled~~ if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing podiatric medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin

on the date probation is completed or terminated in that state.

(OPTIONAL)
Any respondent disciplined under B&P Code sections 141(a) or 2305 may petition for modification or termination of penalty: 1) if the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

35. Failure to Practice Podiatric Medicine – California Resident

In the event the respondent resides in the State of California and for any reason respondent stops practicing podiatric medicine in California, respondent shall notify the Board or its designee in writing within 15 ~~30~~ calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice, and does not relieve respondent from complying with all the terms and conditions of probation.

~~Respondent's license shall be automatically cancelled if respondent resides~~ Failure to practice while in California ~~and~~ for a total of two years~~, fails to engage in California~~ in any of the activities described in Business and Professions Code section 2472 shall be a violation of probation. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation.

36. Completion of Probation

Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate will be fully restored.

37. Violation of Probation

Failure to fully comply with any term or condition of

probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

38. Cost Recovery

Within 90 calendar days from the effective date of the Decision or other period agreed to by the Board or its designee, respondent shall reimburse the Board the amount of $_____ for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent of his/her obligation to reimburse the Board for its costs.

39. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice podiatric medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a podiatric medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

40. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Podiatric Medicine and delivered to the Board or its designee within 60 days after the start of the new fiscal year. Failure to pay costs within 30 calendar days of this date is a violation of probation.

41. Notice to Employees

Respondent shall, upon or before the effective date of this Decision, post or circulate a notice which actually recites the offenses for which respondent has been disciplined and the terms and conditions of probation, to all employees involved in his/her practice. Within fifteen (15) days of the effective date of this Decision, respondent shall cause his/her employees to report to the BPM in writing, acknowledging the employees have read the Accusation and Decision in the case and understand respondent's terms and conditions of probation.

42. Changes of Employment

Respondent shall notify the BPM in writing, through the assigned probation officer, of any and all changes of employment, location, and address within thirty (30) days of such change.

43. Compliance with Required Continuing Medical Education

Respondent shall submit satisfactory proof biennially to the BPM of compliance with the requirement to complete fifty hours of approved continuing medical education, and meet continuing competence requirements for re-licensure during each two (2) year renewal period.

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2234(e)	Dishonesty – Substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care, treatment, management or billing	**XX**
2235	Procuring License by Fraud	**XX**
2236	Conviction of Crime – Substantially related to the qualifications, functions or duties of a doctor of podiatric medicine and arising from or occurring during patient care, treatment, management or billing	**XX**
2236	Conviction of Crime – Felony conviction substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care, treatment, management or billing	**XX**
2236	Conviction of Crime – Misdemeanor conviction substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care, management, treatment or billing	**XX**
2237	Conviction of Drug Violation	**XX**
2238	Violation of Drug Statutes	**XX**
2238	Illegal Sales of Controlled Substances	**XX**
2239	Excessive Use of Controlled Substances	**XX**
2239	Excessive Use of Alcohol	**XX**
2241	Prescribing to Addicts	**XX**
2242	Prescribing Without a Prior Examination	**XX**
2261	Making or Signing False Documents	**XX**
2262	Alteration of Medical Records	**XX**
2264	Aiding and Abetting Unlicensed Practice	**XX**
2266	Failure to Maintain Adequate Medical Records	**XX**
2271	Misleading Advertising	**XX**
2280	Practice Under the Influence of Narcotic	**XX**
2280	Practice Under the Influence of Alcohol	**XX**
2285	Fictitious Name Violation	**XX**
2288	Impersonation of Applicant in Examination	**XX**
2305	Discipline by Another State	**XX**
2306	Practice During Suspension	**XX**
	Violation of Probation	

DISCIPLINE BY ANOTHER STATE [B&P 141(a)&2305]

Minimum penalty: Same for similar offense in California
Maximum penalty: Revocation

1. Examination as a condition precedent to practice in California [20]

MISLEADING ADVERTISING [B&P 651, 2271]

Minimum penalty: Stayed Revocation, 5 years probation
Maximum penalty: Revocation

1. Ethics course [17]
2. Suspension of 60 days or more [4]
3. Education Course [14]
4. Monitoring-Practice/Billing [24]
5. Prohibited Practice [27]

EXCESSIVE PRESCRIBING [B&P 725] or
PRESCRIBING WITHOUT A PRIOR EXAMINATION [B&P 2242]

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Controlled Substances - Total DEA restriction [5]
   Surrender DEA permit [6] or Partial DEA restriction [7]
2. Clinical Training Program [19] or Examination [20]
3. Maintain records and Access to Records and inventories [8]
4. Prescribing Practices Course [15]
5. Suspension of 60 days or more [4]
6. Monitoring – Practice/Billing [24]
7. Education course [14]
8. Ethics course [17]
9. Medical Record Keeping Course [16]

EXCESSIVE TREATMENTS [B&P 725]

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Clinical Training Program [19] or Examination [20}
2. Education course [14]
3. Suspension of 60 days or more [4]
4. Monitoring – Practice/Billing [24]
5. Ethics course [17]
6. Prohibited Practice [27]
7. Medical Record Keeping Course[16]

SEXUAL MISCONDUCT [B&P 726]

Minimum penalty: Stayed revocation, 7 years probation
Maximum penalty: Revocation

1. Psychiatric evaluation and/or psychotherapy [21] [22]
2. Education course [14]
3. Ethics course [17]

4. Third Party Chaperone [26]
5. Suspension of 60 days or more [4]

6. Monitoring – Practice/Billing [24]
7. Professional Boundaries Program [18]
   1. Prohibited Practice[27]

SEXUAL EXPLOITATION (B&P 729)

Effective January 1, 2003, Business and Professions Code 2246 was added to read, "Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge."

INSURANCE FRAUD [B&P 810]

Minimum penalty: Stayed revocation, 5 years probation
Maximum Penalty: Revocation

1. Ethics course [17]
2. Restitution to victim [27a]
3. Suspension of 60 days or more [4]
4. Community service program [13]

MENTAL OR PHYSICAL ILLNESS (B&P 820)

Minimum penalty: Stayed Revocation, 5 years probation
Maximum penalty: Revocation

1. Rehabilitation Program – Alcohol or Drug [12]
2. Examination [20]
3. Psychiatric Evaluation [21]
4. Psychotherapy [22]
5. Medical Evaluation and Treatment [23]
6. Monitoring-Practice/Billing [24]
7. Solo Practice [25]
8. Prohibited Practice [27]

GENERAL UNPROFESSIONAL CONDUCT [B&P 2234], or
GROSS NEGLIGENCE [B&P 2234(b)] or
REPEATED NEGLIGENT ACTS [B&P 2234(c)] or
INCOMPETENCE [B&P 2234(d)] or
FAILURE TO MAINTAIN ADEQUATE MEDICAL RECORDS [B&P 2266]

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Examination [20](preferably Condition Precedent)
2. Education course [14]
3. Clinical training program [19]
4. Monitoring-Practice/billing [24]
5. Prohibited Practice [27]
6. Suspension of 60 days or more [4]
7. Ethics course [17]

8. Prescribing Practices Course [15]
9. Medical Record Keeping Course [16]
10. Solo Practice [25]

DISHONESTY- Substantially related to the qualifications, functions or duties of a doctor of podiatric medicine and arising from or occurring during patient care, treatment, management or billing [B&P 2234(e)]

Minimum penalty: Stayed revocation, one year suspension, at least 7 years probation

Maximum penalty: Revocation

1. Ethics course [17]
2. Examination [20]
3. Community service [13]
4. Restitution [27a]
3. Psychiatric Evaluation [21]
4. Medical Evaluation [23]
5. Monitoring-Practice/Billing [24]
6. Solo Practice [25]
7. Prohibited Practice [27]

DISHONESTY- Substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care, treatment, management or billing [B&P 2234(e)]

Minimum penalty: Stayed Revocation, 5 years probation
Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Ethics Course [17]
3. Psychiatric Evaluation [21]
4. Medical Evaluation [23]
5. Monitoring-Practice/Billing (if financial dishonesty or conviction of financial crime) [24]
6. Restitution to Victim [27a]

PROCURING LICENSE BY FRAUD [B&P 2235]
Revocation [1] [2]

CONVICTION OF CRIME – Substantially related to the qualifications, functions or duties of a doctor of podiatric medicine and arising from or occurring during patient care treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, one year suspension, at least 7 years probation
Maximum penalty: Revocation

1. Ethics Course [17]
2. Examination [20]
3. Psychiatric Evaluation [21]

4. Medical Evaluation and Treatment [23]
5. Monitoring-Practice/Billing [24]
6. Solo Practice [25]
7. Prohibited Practice [27]

CONVICTION OF CRIME – Felony conviction substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, 7 years probation
Maximum penalty: Revocation

1. Suspension of 30 days or more [4]
2. Ethics Course [17]
3. Psychiatric Evaluation [21]
4. Medical Evaluation and Treatment [23]
5. Monitoring- Practice/Billing (if dishonesty or conviction of a financial crime) [24]
6. Victim Restitution [27a]

CONVICTION OF CRIME – Misdemeanor conviction substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Ethics Course [17]
2. Psychiatric Evaluation [21]
3. Medical Evaluation and Treatment [23]
4. Victim Restitution [27a]

CONVICTION OF DRUG VIOLATION [B&P 2237], or
VIOLATION OF DRUG STATUTES [B&P 2238],or
EXCESSIVE USE OF CONTROLLED SUBSTANCES [B&P 2239], or
PRACTICE UNDER THE INFLUENCE OF NARCOTIC [B&P 2280]

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Examination [20]
2. Controlled Substances – Total DEA restriction [5], Surrender DEA permit [6], or Partial DEA restriction [7]
3. Maintain Drug Records and Access to Records and Inventories [8]
4. Prescribing Practices Course [15]
5. Education course [14]
6. Suspension of 60 days or more [4]
7. Rehabilitation Program [12]
8. Biological Fluid Testing [11]
2. Monitoring – Practice/Billing [24]

10. Ethics course [17]
11. Clinical Training Program [19]
12. Controlled Substances – Abstain From Use [9]
13. Medical Record Keeping Course [16]
14. Psychiatric Evaluation [21]
15. Psychotherapy [22]
16. Medical Evaluation and Treatment [23]
17. Prohibited Practice [27]

ILLEGAL SALES OF CONTROLLED SUBSTANCES (B&P 2238)
Revocation [1] [2]

EXCESSIVE USE OF ALCOHOL [B&P 2239] or
PRACTICE UNDER THE INFLUENCE OF ALCOHOL [B&P 2280]

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Rehabilitation Program [12]
2. Examination [20]
3. Biological Fluid Testing [11]
4. Suspension of 60 days or more [4]
5. Monitoring – Practice/Billing [24]
6. Ethics Course [17]
7. Controlled Substances – Abstain From Use [9]
8. Alcohol- Abstain From Use [10]
9. Psychiatric Evaluation [21]
10. Psychotherapy [22]
11. Medical Evaluation and Treatment [23]

PRESCRIBING TO ADDICTS [B&P 2241]

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Controlled Substances - Total DEA restriction [5]
   Surrender DEA permit [6] or Partial restriction [7]
2. Maintain Drug Records and Access to Records and Inventories [8]
3. Prescribing practices course [15]
4. Examination [20]
5. Education course [14]
6. Clinical Training Program [19]
7. Monitoring- Practice/Billing [24]
8. Ethics Course [17]
9. Medical Record Keeping Course [16]
10. Suspension of 60 days or more [4]
11. Prohibited Practice [27]

MAKING OR SIGNING FALSE DOCUMENTS [B&P 2261], or
ALTERATION OF MEDICAL RECORDS [B&P 2262]

Minimum penalty: Stayed revocation, ~~3~~ 5 years probation
Maximum penalty: Revocation

1. Ethics course [17}
2. Suspension of 60 days or more [4]
3. Medical Record Keeping Course [16]
4. If fraud involved, see "Dishonesty" guidelines

AIDING AND ABETTING UNLICENSED PRACTICE [B&P 2264]
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education Course [14]
3. Ethics Course [17]
4. Examination [20]
5. Monitoring – Practice/Billing [24]
6. Prohibited Practice [27]

FICTITIOUS NAME VIOLATION [B&P 2285]
Minimum penalty: Stayed revocation, one year probation
Maximum penalty: Revocation

IMPERSONATION OF APPLICANT IN EXAMINATION [B&P 2288]
1. Revocation [1] [2]

PRACTICE DURING SUSPENSION [B&P 2306]

1. Revocation [1] [2]

VIOLATION OF PROBATION

Minimum penalty: 30 day suspension ~~Impose actual period of suspension~~
Maximum penalty: Revocation ~~Impose penalty that was stayed~~

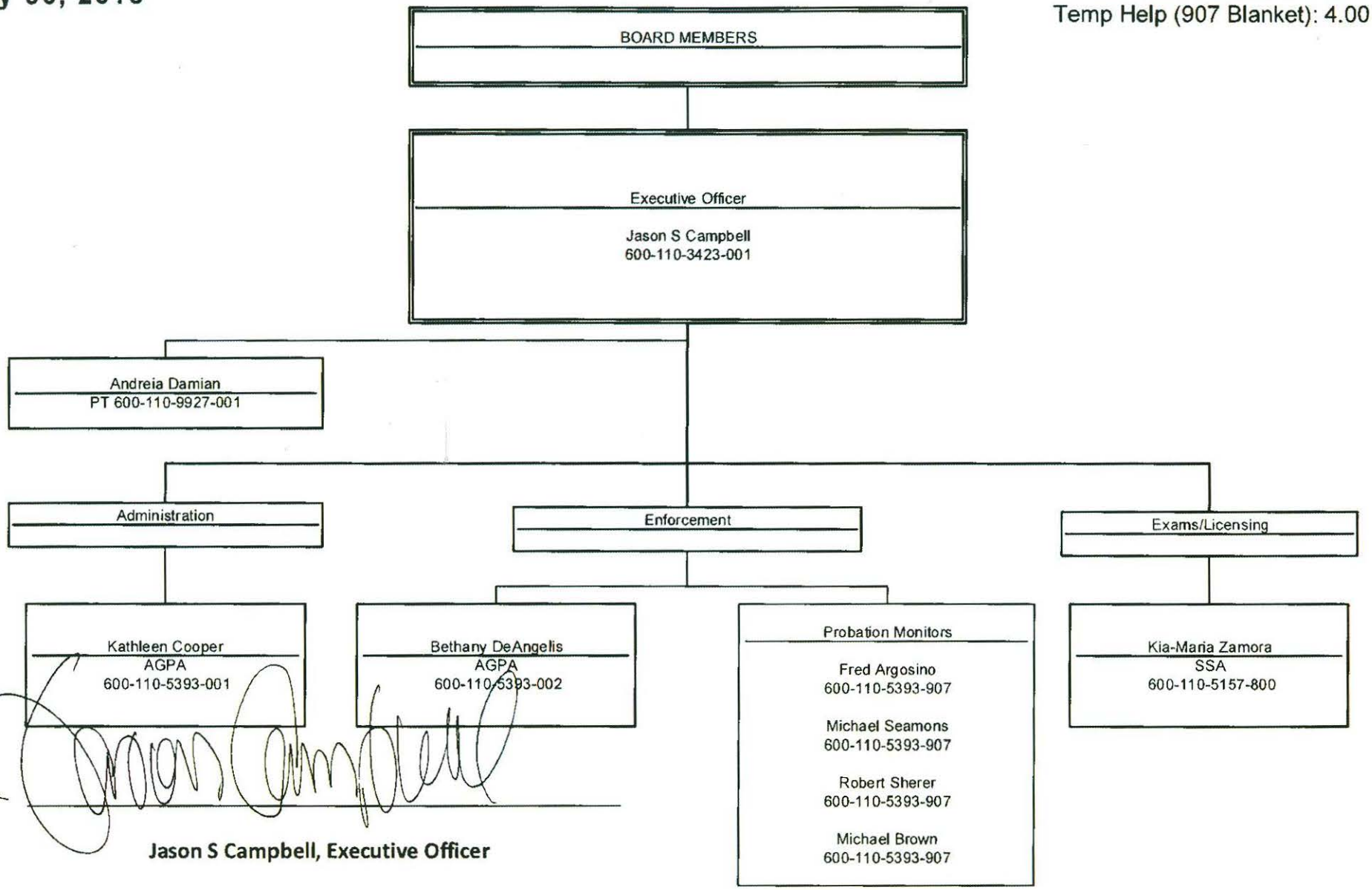
The maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. A violation of any of the following conditions of probation ~~Other violations of probation~~ should result in, ~~draw~~ at minimum, a 60 day ~~least a period of actual~~ suspension:~~, preferably 90 days or more.~~

1. Controlled Substances – Maintain Records and Access to Records and Inventories [8]
2. Biological Fluid Testing [11]
3. Professional Boundaries Program [18]
4. Psychiatric Evaluation [21]
5. Psychotherapy [22]
6. Medical Evaluation and Treatment [23]
7. Third Party Chaperone [26]

It is the expectation of the Board of Podiatric Medicine that the appropriate penalty for a doctor of podiatric medicine who did not successfully complete a clinical training program ordered as part of his or her probation is revocation.

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

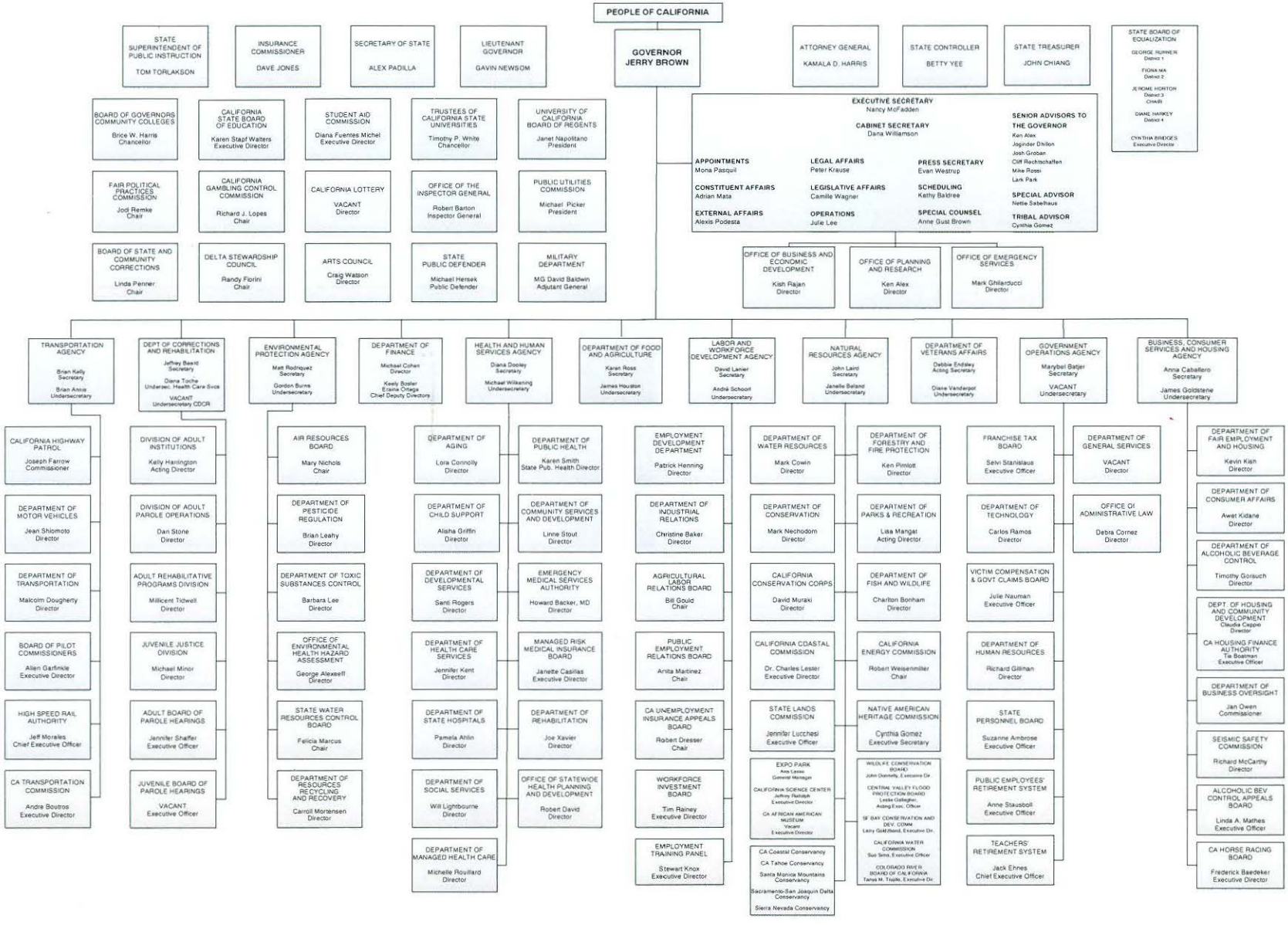
CURRENT
FY 2015-16
Authorized Positions: 5.00
Temp Help (907 Blanket): 4.00



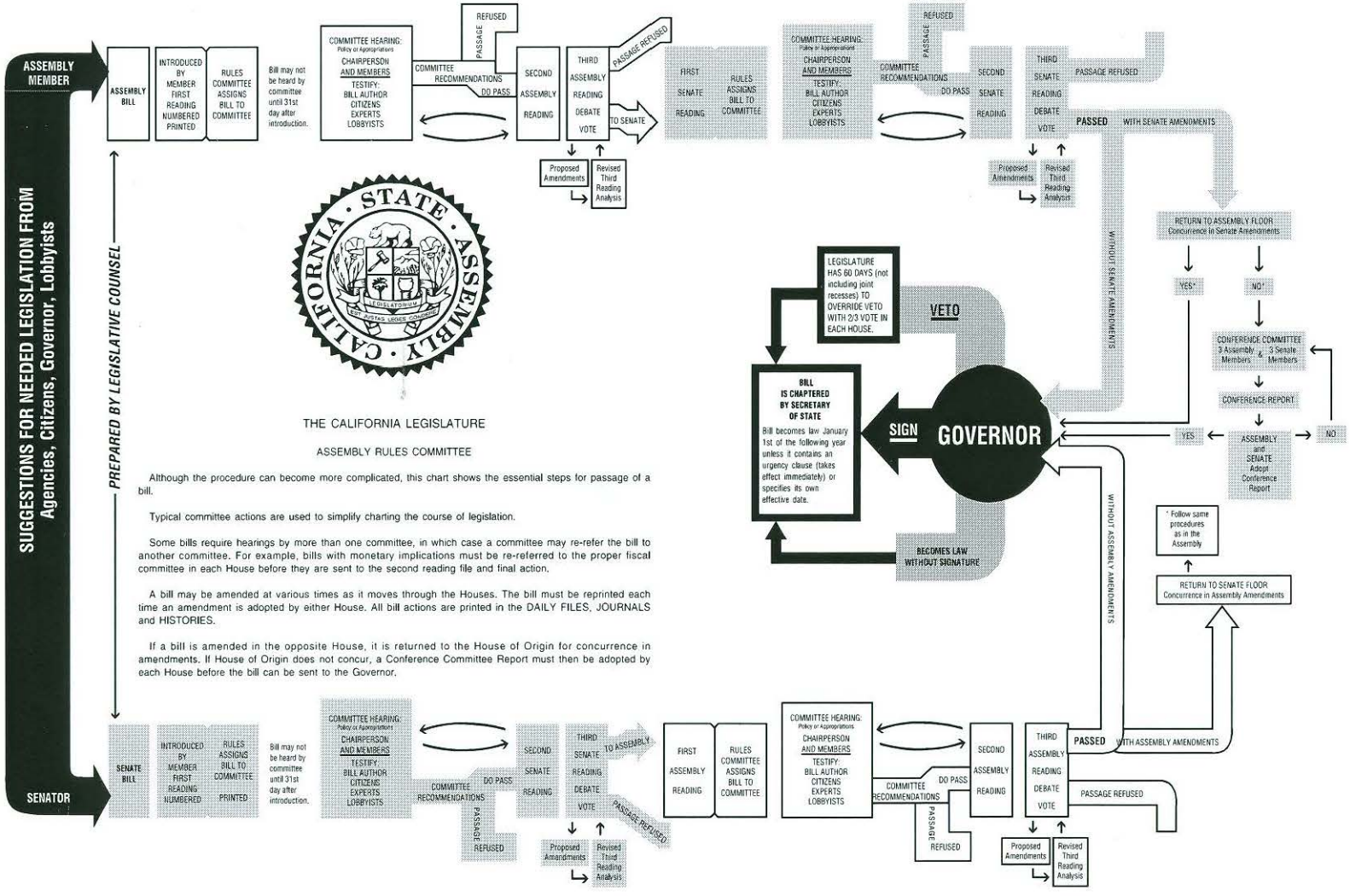
Jason S Campbell, Executive Officer

Korey Landry, Personnel Analyst

CALIFORNIA STATE GOVERNMENT – THE EXECUTIVE BRANCH



THE LIFE CYCLE OF LEGISLATION —From Idea into Law



THE CALIFORNIA LEGISLATURE

ASSEMBLY RULES COMMITTEE

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

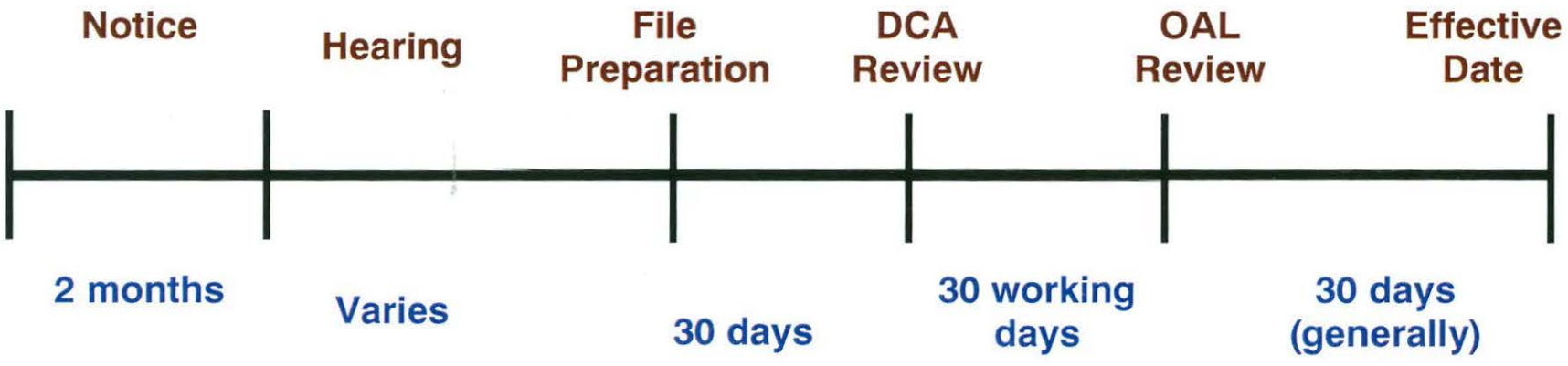
Typical committee actions are used to simplify charting the course of legislation.

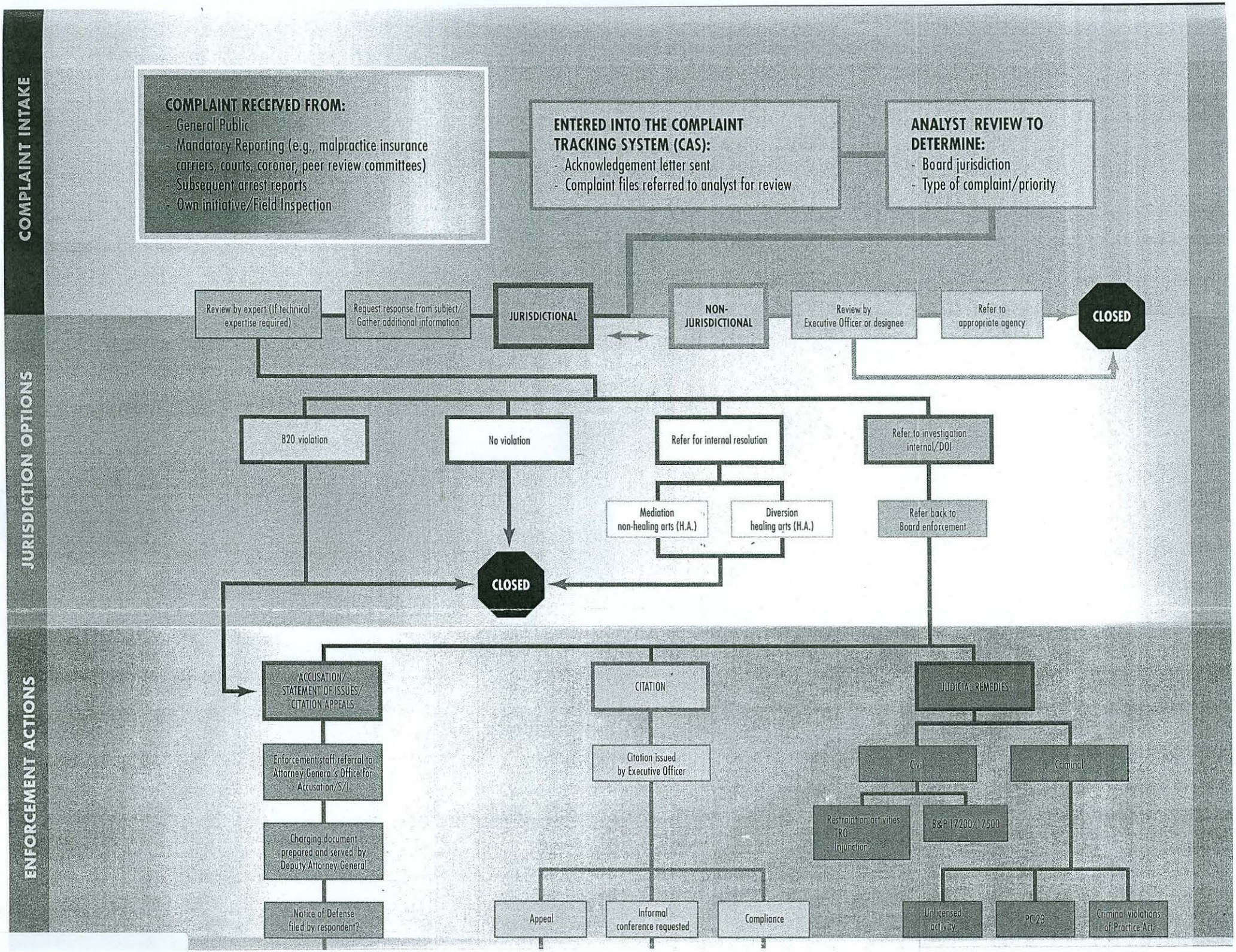
Some bills require hearings by more than one committee, in which case a committee may re-refer the bill to another committee. For example, bills with monetary implications must be re-referred to the proper fiscal committee in each House before they are sent to the second reading file and final action.

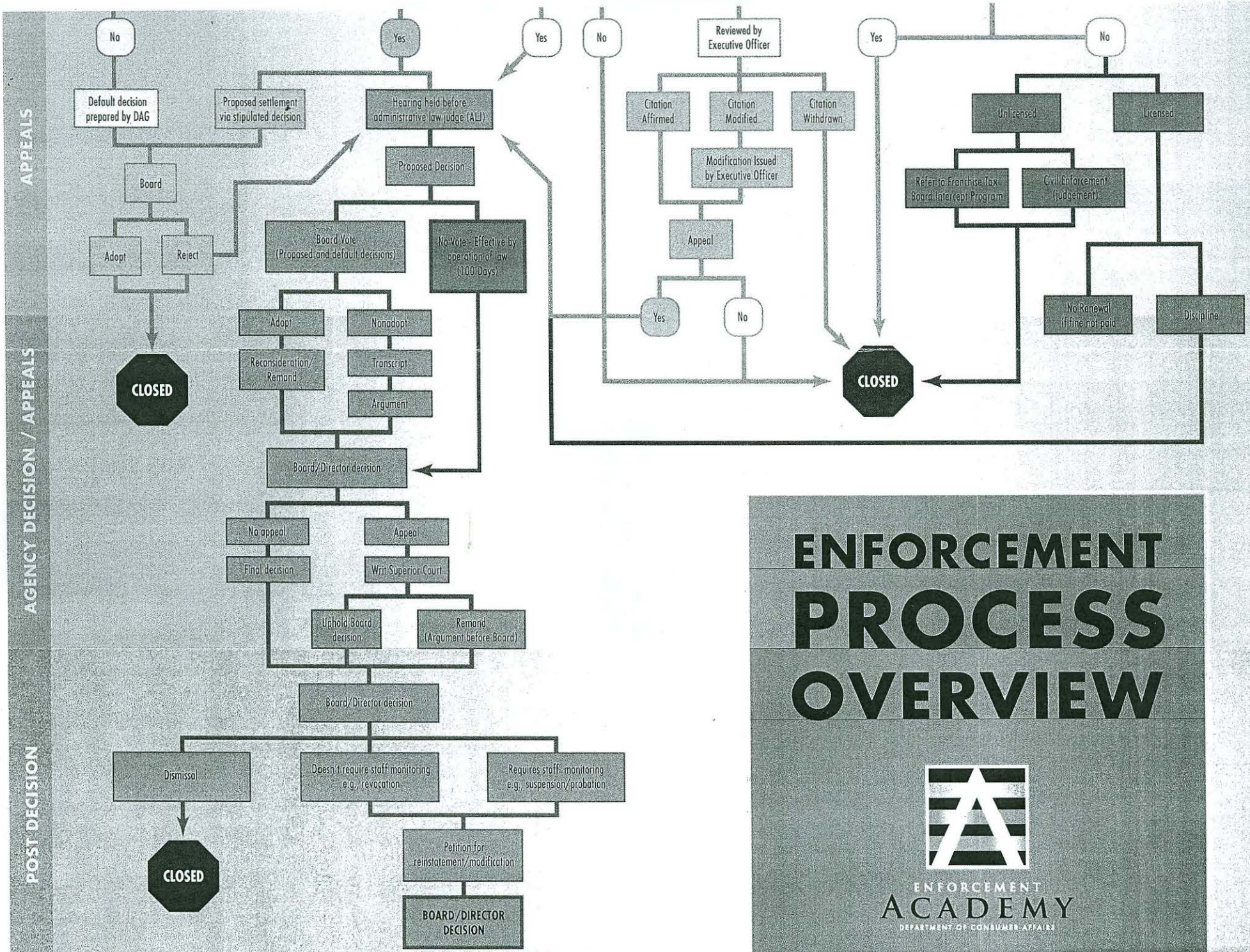
A bill may be amended at various times as it moves through the Houses. The bill must be reprinted each time an amendment is adopted by either House. All bill actions are printed in the DAILY FILES, JOURNALS and HISTORIES.

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.

Formal Regulatory Process




COMPLAINT INTAKE
JURISDICTION OPTIONS
ENFORCEMENT ACTIONS
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
Review by expert (if technical expertise required)
Request response from subject/ Gather additional information
JURISDICTIONAL
NON-JURISDICTIONAL
Review by Executive Officer or designee
Refer to appropriate agency
CLOSED
820 violation
No violation
Refer for internal resolution
Refer to investigation internal/DOI
Mediation non-healing arts (H.A.)
Diversion healing arts (H.A.)
Refer back to Board enforcement
CLOSED
ACCUSATION/ STATEMENT OF ISSUES/ CITATION APPEALS
Enforcement staff referral to Attorney General's Office for Accusation/S/I
Charging document prepared and served by Deputy Attorney General
Notice of Defense filed by respondent?
CITATION
Citation issued by Executive Officer
Appeal
Informal conference requested
Compliance
JUDICIAL REMEDIES
Civil
Criminal
Restraint on activities TRO Injunction
B&P 17200/17500
Unlicensed activity
PC 23
Criminal violations of Practice Act



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ENFORCEMENT PROCESS OVERVIEW

ENFORCEMENT ACADEMY
DEPARTMENT OF CONSUMER AFFAIRS

PREPARED BY THE DIVISION OF LEGAL AFFAIRS