



STAKEHOLDER MEETING MATERIALS

DISCIPLINARY MATRIX

April 1, 2016

1. Notice of Stakeholder Meeting
2. Current Disciplinary Matrix
3. Texas
 - a. Texas Medical Board rules
 - b. Texas Board of Nursing rules
 - c. Texas Pharmacy Board rules
4. Other states
 - a. California guidelines
 - b. Colorado rule
 - c. Florida rule
 - d. Massachusetts rule
 - e. Ohio guidelines
 - f. Virginia guidelines
 - g. Washington rule
 - h. Arkansas – none
 - i. Louisiana – none
 - j. Missouri – none
 - k. New York – none



NOTICE OF STAKEHOLDER MEETING REGARDING DISCIPLINARY MATRIX

Staff of the Texas State Board of Dental Examiners will convene a stakeholder meeting to provide interested persons an opportunity to address board staff regarding the Disciplinary Matrix.

The Board's Disciplinary Matrix assists agency staff and Board members in resolution of matters before the Board by identifying possible sanctions and requirements for specific violations. The Matrix also provides notice to licensees as to the possible consequences of conduct in violation of the law or Board rules.

Staff will convene a stakeholder meeting regarding this topic on:

Friday, April 1, 2016, at 10:00 a.m.

Tower 2, Room 500

William P. Hobby Jr. Building

333 Guadalupe Street

Austin, Texas, 78701

Additional materials will be distributed on or before March 18, 2016.

Stakeholders may also submit informal input by email to stakeholders@tsbde.texas.gov.

Persons who have special communication or other accommodation needs who are planning to attend the stakeholder meeting should contact Cristabel Bodden, at cbodden@tsbde.texas.gov or (512) 305-9332. Arrangements should be made as far in advance as possible.

Texas Register

AGENCY State Board of Dental Examiners
ISSUE 12/11/2015
ACTION Miscellaneous

Disciplinary Matrix

The Texas State Board of Dental Examiners' (Board) Disciplinary **Matrix** was developed to outline Board policy when the Board takes disciplinary action in accordance with the Dental Practice Act (Texas Occupations Code, Chapters 251 - 267) and Board rules (22 Texas Administrative Code Chapters 100 - 104, 107, 108, 110, 112 - 117, 119 and 125). The **matrix** also provides licensees, attorneys, the public and Administrative Law Judges ready access to the Board's enforcement policies. Further, the **matrix** is intended to maintain flexibility in determining the most appropriate sanction for each violation and allows the Board to take into account aggravating and mitigating factors (i.e., the licensee's compliance history, the seriousness of the violation, the threat to the public health and safety, etc.) when determining sanctions.

The **matrix** is organized by violation type and distinguished by violation tiers. The violations described in the **matrix** mirror the violations specified in the Texas Occupations Code (Dental Practice Act). Violations that are distinguished as First Tier Violations are those that the Board determines to be less serious, or which pose minimal threat to the public safety, after consideration of any aggravating or mitigating factors. Each violation tier in the **matrix** includes a description of events that might fall within that violation tier. The corresponding sanction description describes each of the sanctions that could be imposed.

The **matrix** was first published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8152) and was subsequently amended and published in the December 21, 2012, September 27, 2013, September 5, 2014, and June 12, 2015, issues of the *Texas Register*. At the November 20, 2015, Board meeting, the Board voted to amend the Disciplinary **Matrix** to move the failure to self-report patient hospitalization or patient death to a first tier violation with the understanding that this only refers to the administrative requirement to self-report and not any violation of the minimum standard of care in the dental treatment that may have led to hospitalization or death. The Board republishes the **matrix** with this amendment.

[Attached Graphic](#)

This amended **matrix** is effective immediately upon filing in the *Texas Register*.

TRD-201505210

Nycia Deal

General Counsel

State Board of Dental Examiners

Filed: December 1, 2015

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Texas State Board of Dental Examiners - Disciplinary Matrix

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VIOLATION TIERS

First Tier Violations: Violations that are distinguished as First Tier Violations are those that the Board determines to be less serious, or which pose minimal threat to public safety, after consideration of any aggravating or mitigating factors.

Second, Third, or Fourth Tier Violations: Violations that are distinguished as Second, Third, or Fourth Tier Violations are those that the Board determines to be more serious, or which pose more than a minimal threat to public safety, after consideration of any aggravating or mitigating factors.

SANCTIONS

The Board will determine an appropriate sanction after consideration of any aggravating or mitigating factors.

When considering conduct constituting a violation of multiple statute sections, the Board will determine an appropriate sanction after consideration of the sanction recommendations from all applicable violation sections and any aggravating or mitigating factors.

NOTE: All Sanctions other than Administrative Penalty Tickets, denial of licensure, revocation of license, emergency suspension of license, or surrender of license should include a stipulation requiring completion of the online jurisprudence assessment.

Levels listed from lowest (no action) to highest (revocation):

- Denial of Licensure
- Administrative Penalty (Ticket) – Fine-based penalty limited to those violations that do not involve the provision of direct patient care.
- Remedial Plan – Non-disciplinary action.
- Warning – Lowest level of disciplinary action.
- Reprimand – Increased level of disciplinary action.
- Suspension – Increased level of disciplinary action. Suspension may be probated in full or for limited time periods.
 - Emergency Suspension – If a licensee is found by the board or executive committee to constitute a clear, imminent, or continuing threat to a person's physical health or well-being, the person's license or permit will be immediately suspended.
- Revocation of license or certification. Voluntary surrender may be accepted in lieu of revocation.

AGGRAVATING AND MITIGATING FACTORS

The Board will consider all factors required by statute or board rule (e.g., Tex. Occ. Code Chapter 53). In addition, the Board will consider aggravating or mitigating factors, including the following:

- Potential or actual patient harm
- Prior disciplinary action
- Prior violations of a similar nature
- Self-report or voluntary admission of violation
- Remedial measures taken to correct or mitigate harm
- Rehabilitative potential
- Level of competency exhibited over course of career
- Attempts to circumvent a statute or board rule
- Isolated or repeated violation
- Number of violations
- Cooperation with board investigation and response to board communication
- Material or financial gain from violation
- Involvement of, or impairment by alcohol, illegal drugs, or controlled substances
- Criminal conduct
- Other relevant circumstances

ADMINISTRATIVE FINE SCHEDULE

See SBDE Rule §107.202 – 22 Tex. Admin. Code §107.202. The amount of an administrative fine assessed will be based on the following criteria:

- The seriousness of the violation, including but not limited to, the nature, circumstances, extent and the gravity of the prohibited acts and the hazard of potential hazard created to the health, safety, or welfare of the public;
- the economic damage to property or the environment caused by the violation;
- the history of previous violations;
- the amount necessary to deter future violations;
- efforts made to correct the violation; or
- any other matter the justice may require.

Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

First Offense:	Second Offense:	Third Offense:
≤ \$3,000	≤ \$4,000	≤ \$5,000

ADMINISTRATIVE PENALTY SCHEDULE (Tickets)

An administrative penalty may consist only of a monetary penalty that does not exceed \$1,000 for each violation. The total amount of penalties assessed against a person may not exceed \$3,000 in a calendar year.

If the Respondent fails to pay or appeal the administrative penalty by the due date, the penalty amount will double, not to exceed the statutory maximum penalty for each violation.

Violation:	Administrative Penalty:
No Consumer Information	\$250.00
Names of Dentists not Posted	\$250.00
Fail to Display Registration (Dental office)	\$250.00
Fail to Provide Records to Board	\$500.00
Fail to Provide Records to Patient	\$500.00
Fail to File Records Maintenance Agreement	\$250.00
Fail to Notify Board of Change of Information	\$250.00
Sanitation and Infection Control	\$500.00
False/Misleading Communications/Unlawful or Deceptive Advertising	\$250.00
Specialty Announcement-	\$250.00
Advertising – Testimonials	\$250.00
Improper Use of Trade Name	\$500.00
No Prosthetic Identification	\$250.00

STANDARD OF CARE

<p>Licensee fails to treat a patient according to the standard of care in the practice of dentistry or dental hygiene. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(4)</p>	
<p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Practice below minimum standard with a low risk of patient harm. • Failure to advise patient before beginning treatment. • Failure to make, maintain and keep adequate dental records. • Failure to report patient death or injury requiring hospitalization, where the patient death or injury requiring hospitalization did not occur as a result of the dental care provided. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan including continuing education and/or restitution to patient for service rendered below minimum standard. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient for service rendered below minimum standard, community service, and/or audit of practice procedures.
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Practice below minimum standard with patient harm or risk of patient harm. • Misleading patient as to the gravity, or lack thereof, of their dental needs. • Failure to maintain appropriate life support training. • Abandonment of patient. • Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning, Reprimand, or Probated Suspension with stipulations that may include: period of enforced suspension, continuing education, administrative fine, restitution to patient, community service, and/or audit of practice procedures. • Denial, suspension of license, revocation of license or request for voluntary surrender.
<p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • Negligence in treatment • Any intentional act or omission that risks or results in serious harm. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Denial, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene

Standard of care violations continued on next page

STANDARD OF CARE (continued)

<p>Licensee fails to use proper diligence in practice or fails to safeguard patients against avoidable infections. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(9)</p>	
<p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to properly document compliance with health and sanitation requirements. Office premises are maintained in compliance with health and sanitation requirements. Low risk of patient harm. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Administrative Penalty ticket • Remedial Plan including continuing education, and/or audit of practice procedures. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, community service, and/or audit of practice procedures.
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Office premises are not maintained in compliance with health and sanitation requirements. • Barrier techniques, disinfection, or sterilization techniques do not comply with health and sanitation requirements. • Failure to properly document controlled substance inventories or prescription records. • Failure to use reasonable diligence in preventing unauthorized persons from utilizing DEA or DPS permit privileges. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning, Reprimand, or Probated Suspension with stipulations that may include: continuing education, restitution to patient, administrative fine, community service, audit of practice procedures, and/or supervised practice or practice in a group setting.
<p>Licensee is negligent in performing dental services and that negligence causes injury or damage to a dental patient. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(12)</p>	
	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Denial, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene.
<p>Licensee is physically or mentally incapable of practicing in a manner that is safe for the person’s dental patients. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(11)</p>	
	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Suspension of license pending medical evaluation determining licensee is safe to practice. If evaluation determining licensee is safe to practice is received, then probated suspension with stipulation including regular evaluations for ability to practice safely. • Denial, suspension of license, revocation of license or request for voluntary surrender .Emergency suspension of license to practice dentistry or dental hygiene.

AIDING AND ABETTING OR IMPERMISSIBLE DELEGATION

<p>Licensee holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist’s control or management.</p> <p>Dental Practice Act (DPA), Tex. Occ. Code §§ 258.001 and 263.002(a)(8)</p>	
<p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Impermissible delegation resulting in no more than a minimal risk of patient harm. Isolated incident. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan including continuing education and/or restitution to patient. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient, community service, and/or audit of practice procedures.
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Impermissible delegation resulting in actual patient harm, or presenting a risk of patient harm. • Aiding and abetting another to practice dentistry without a license • Repeated incidents or pattern of impermissible delegation or aiding and abetting. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated Suspension with stipulations that may include: continuing education, administrative fine, restitution to patient, community service, and/or audit of practice procedures. • Denial, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene.

DISHONORABLE OR UNPROFESSIONAL CONDUCT

NOTE: Violations under this section may also constitute violations under sections such as those related to criminal conduct, chemical dependency, or improper distribution of a drug.

<p>Licensee practices dentistry or dental hygiene in a manner that constitutes dishonorable conduct. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(3)</p>	
<p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Isolated dishonorable conduct resulting in no adverse patient effects. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan including continuing education and/or restitution to patient. Warning or Reprimand with stipulations that may include: continuing education, administrative fine, supervised practice or practice in a group setting, community service, audit of practice procedures, and/or limitations on sedation or controlled substance permits.
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Repeated acts of dishonorable conduct or dishonorable conduct which places a patient or the public at risk of harm. • Dishonorable conduct which impairs a person’s ability to treat a patient according to the standard of care. • Dispensing, administering, prescribing, or distributing drugs for a non-dental purpose. • Failure to meet duty of fair dealing in advising, treating, or billing patient. • Diagnosis of dental disease, prescription of medication, or performance of impermissible acts by dental hygienist. • Practicing dental hygiene without required supervision. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning, Reprimand, or Probated Suspension with stipulations that may include: continuing education, restitution to patient for financial exploitation, administrative fine, community service, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits. • Denial, suspension of license, revocation of license or request for voluntary surrender If violation involves mishandling or improper documentation of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing.
<p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to comply with a substantive board rule regarding dishonorable conduct resulting in serious patient harm. • Repeated acts of dishonorable conduct or dishonorable conduct which results in harm to a patient or the public. • Sexual or sexualized conduct with patient. • Financial exploitation or dishonorable conduct resulting in a material or financial loss to a patient in excess of \$4,999. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Denial, suspension of license, revocation of license or request for voluntary surrender. Emergency suspension of license to practice dentistry or dental hygiene.

CRIMINAL OFFENSES

The Board considers criminal behavior to be highly relevant to an individual's fitness to engage in the practice of dentistry and has determined that the disciplinary actions imposed by these guidelines promote the intent of the Act. This matrix was developed to address criminal actions for which the Dental Practice Act does not mandate the Board take a specific disciplinary action.

The "date of disposition," when used to calculate the application of disciplinary actions, refers to the date a criminal action is entered by the court. The disciplinary actions imposed by the guidelines may be used in conjunction with other types of disciplinary actions, including administrative penalties.

The Board has determined that the nature and seriousness of certain crimes outweigh other factors to be considered in accordance with Section 101.8(h) of the Board's Rules and Regulations and so necessitate the disciplinary action as described below. Regarding the crimes enumerated in this matrix, the Board has weighed the factors in Section 101.8(h) in a light most favorable to the individual, and even if these factors are present, the Board has concluded that the following disciplinary actions apply to individuals with the criminal offenses as described below:

Type of Offense	Disciplinary Action
Criminal offenses requiring the individual maintain current registration as a sex offender with the Department of Public Safety Chapter 62, Code of Criminal Procedure	Denial or revocation of license
Criminal offenses relating to the regulation of dentists, dental hygienists, or dental assistants or committed in the practice of or connected to dentistry, dental hygiene or dental assistance	0-5 years since disposition – Denial or revocation of license 6-10 years since disposition – 5 years Probated Suspension of license 11-20 years since disposition – 3 years Probated Suspension of license Over 20 years since disposition – 1 year Probated Suspension of license

Type of Offense	Disciplinary Action
Criminal offense relating to the regulation of a plan to provide, arrange for, or reimburse any part of the cost of dental care services or the regulation of the business of insurance	0-5 years since disposition – Denial or revocation of license 6-10 years since disposition – 5 years Probated Suspension of license 11-20 years since disposition – 3 years Probated Suspension of license Over 20 years since disposition – 1 year Probated Suspension of license
Felony offenses under: (1) Chapter 481 or 483, Health and Safety Code; (2) Section 485.033, Health and Safety Code; or (3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).	0-5 years since disposition – Denial or revocation of license 6-10 years since disposition – 5 years Probated Suspension of license 11-20 years since disposition – 3 years Probated Suspension of license Over 20 years since disposition – 1 year Probated Suspension of license
All other felony offenses	Currently on probation – Denial or revocation of license, or 30- to 180-day suspension followed by 5 years probation of license 0-5 years since disposition – 5 years Probated Suspension of license 6-10 years since disposition – 3 years Probated Suspension of license 11-20 years since disposition – 1 year Probated Suspension of license

Type of Offense	Disciplinary Action
Misdemeanor offenses under: (1) Chapter 22, Penal Code, other than a misdemeanor punishable by fine only; (2) Section 25.07, Penal Code; or (3) Section 25.071, Penal Code.	0-5 years since disposition – 3 years Probated Suspension of license 6-10 years since disposition – 1 year Probated Suspension of license
Other Class A and B misdemeanor offenses	0-5 years since disposition – Reprimand

CHEMICAL DEPENDENCY OR IMPROPER POSSESSION OR DISTRIBUTION OF DRUG

NOTE: Violations under this section may also constitute dishonorable or unprofessional conduct violations.

<p>Licensee is addicted to or habitually intemperate in the use of alcoholic beverages or drugs or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(7)</p>	
<p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated suspension of license with stipulations that may include: continuing education, supervised practice or practice in a group setting, limitations on sedation or controlled substance permits, random drug screens, and/or enrollment in a Board approved peer assistance program.
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Improperly distributes habit-forming drugs or narcotics • Prescribes or dispenses a controlled substance for a non-dental purpose. • Prescribes or dispenses a controlled substance to a person who is not a dental patient, or to a patient without adequate diagnosis of the need for prescription. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated suspension of license with stipulations that may include: period of enforced suspension, mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing, continuing education, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits.
<p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Enforced or probated suspension of license with stipulations that may include: period of enforced suspension, mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing, continuing education, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits.
<p><u>Fourth Tier Violation:</u></p> <ul style="list-style-type: none"> • Misuse of drugs or alcohol with significant physical injury or death of a patient or a risk of significant physical injury or death. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Denial of licensure, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene.

FRAUD AND MISREPRESENTATION

NOTE: Violations under this section may also constitute dishonorable or unprofessional conduct violations.

<p>Licensee obtains a license by fraud or misrepresentation. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(6)</p>	
<p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to honestly and accurately provide information that may have affected the Board’s determination of whether to grant or renew a license. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan including continuing education. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional. • Warning or Reprimand with stipulations that may include: continuing education, community service, and/or administrative fine.
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Intentional misrepresentation of previous licensure, education, or professional character, including failure to disclose criminal convictions. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Denial of licensure, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene.

<p>Licensee engages in deception or misrepresentation in soliciting or obtaining patronage. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(5)</p>	
<p><u>Violation:</u></p> <ul style="list-style-type: none"> • Engaging in false advertising. • Creating unjustified expectation. • Engaging in false, misleading or deceptive referral schemes. • Failing to comply with requirements relating to professional signs. • Failure to list at least one dentist practicing under a trade name in an advertisement. • Falsely advertising as a specialist in one of the ADA recognized specialties or advertising as a specialist in an area not recognized by the ADA. • Other violations as assigned by rule. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • For a first violation of advertising restrictions, no sanction will be pursued until an opportunity to cure has been provided pursuant to statutory requirements. • Administrative Penalty ticket • Warning or Reprimand with stipulations that may include: cure of violation, continuing education, community service, and/or administrative fine.

VIOLATION OF LAW REGULATING DENTISTRY OR DENTAL HYGIENE

NOTE: A violation of any law relating to the regulation of dentists or dental hygienists, including those law violations expressed elsewhere in this matrix, will also be considered a violation of the Dental Practice Act, at Tex. Occ. Code §263.002(a)(10).

<p>Licensee violates or refuses to comply with a law relating to the regulation of dentists or dental hygienists. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(10)</p>	
<p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Isolated failure to make, maintain and keep adequate dental records not resulting in patient harm. • Failure to notify patients that complaints concerning dental services can be directed to the Board. • Failure to post names of, degrees received by, and schools attended by each dentist practicing in office. Failure to properly exclude names of dentists not practicing in office. • Failure to place identifying mark on a removable prosthetic device. • Failure to notify the Board of maintenance of records agreement. • First Tier violation of another law regulating dentists or dental hygienists. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Administrative Penalty ticket. • Remedial Plan including continuing education, restitution to patient, and/or audit of practice procedures.
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to make, maintain and keep adequate dental records resulting in potential for patient harm. • Failure to obtain written, signed informed consent. • Failure to provide full dental records to the Board upon request. • Failure to maintain an appropriate permit for a mobile dental facility. • Perform treatment outside licensee’s scope of practice not resulting in patient harm. • Prescription of controlled substance while DPS or DEA permit is expired. • Second Tier violation of another law regulating dentists or dental hygienists. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan including continuing education, restitution to patient , and/or audit of practice procedures. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient, community service, and/or audit of practice procedures.
<p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to make, maintain and keep adequate dental records resulting in actual patient harm. • Violation of stipulation in a prior Board Order. • Perform treatment outside licensee’s scope of practice resulting in patient harm or potential for patient harm. • Prescription of controlled substance without DPS or DEA permit. • Third Tier or Fourth Tier violation of another law regulating dentists or dental hygienists. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Reprimand or Probated Suspension with stipulations that may include: enforced suspension of license until licensee obtains compliance with all stipulations in prior Board Orders, continuing education, restitution to patient, community service, and/or administrative fine. • Denial of licensure, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene.

VIOLATION OF LAW REGULATING DENTISTRY OR DENTAL HYGIENE (continued)

<p>Licensee knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that: regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or regulates the business of insurance. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(14)</p>	
	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Reprimand or Probated Suspension with stipulations that may include: continuing education, administrative fine, community service, repayment of any funds gained in violation of applicable law. • Denial of licensure, suspension of license, revocation of license or request for voluntary surrender.. • Emergency suspension of license to practice dentistry or dental hygiene.
<p>Licensee holds a license or certificate in another state and that state reprimands the licensee, suspends or revokes the licensee’s license or certificate or places the licensee on probation, or imposes another restriction on the licensee’s practice. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(13)</p>	
<p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • License or certificate is reprimanded or restricted in another jurisdiction. The action leading to the reprimand or restriction did not cause patient harm or risk patient harm. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan including continuing education, and/or audit of practice procedures.
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • License or certificate is reprimanded or restricted in another jurisdiction. The action leading to the reprimand or restriction caused patient harm or caused a risk of patient harm. • Failure to report disciplinary action received in another jurisdiction. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning, reprimand, or probated suspension of license with stipulations that may include: continuing education, administrative fine, community service, and/or audit of practice procedures.
<p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • License or certificate is suspended, revoked, or placed on probation in another jurisdiction. • License or certificate is reprimanded or restricted in another jurisdiction for action that caused severe patient harm or death. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Denial of licensure, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene.

PRACTICING DENTISTRY WITHOUT A LICENSE

<p>License required to practice dentistry or dental hygiene Dental Practice Act (DPA), Tex. Occ. Code §256.001</p>	
<p><u>Violation:</u></p> <ul style="list-style-type: none"> • Practicing dentistry without a license. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Issuance of Cease and Desist Order with referral of all information to Attorney General’s Office and local law enforcement.

<p>Licensee enters into a contract, agreement or arrangement that allows a non-dentist to practice dentistry. Dental Practice Act (DPA), Tex. Occ. Code §251.003(a)(4) and (a)(9)</p>	
<p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Licensee knowingly, or should have known, entered into a contract, agreement or arrangement that allowed a non-dentist to practice dentistry that did not result in harm to patients. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated suspension, suspension of license, revocation of license or request for voluntary surrender.
<p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • Licensee knowingly, or should have known, entered into a contract, agreement or arrangement that allowed a non-dentist to practice dentistry that resulted in harm to patients. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license.

OTHER VIOLATIONS

<p>Licensee is adjudged under the law to be insane. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(1)</p>	
	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Denial of licensure, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene.

DENTAL ASSISTANTS

Permitted Duties Dental Practice Act (DPA), Tex. Occ. Code §265.003	
<u>First Tier Violation:</u> <ul style="list-style-type: none"> • Failure to comply with procedural Board rule such as failure to timely complete continuing education to maintain a Board-issued certification. 	<u>Sanction:</u> <ul style="list-style-type: none"> • Remedial Plan including continuing education. • Denial of registration, suspension of registration, revocation of registration or request for voluntary surrender.
<u>Second Tier Violation:</u> <ul style="list-style-type: none"> • Practices dentistry or dental hygiene, or otherwise performs activities outside the scope of permitted duties for dental assistants. 	<u>Sanction:</u> <ul style="list-style-type: none"> • Denial of registration, suspension of registration, revocation of registration or request for voluntary surrender.

OWNER RESPONSIBILITY

Owner is responsible for all professional acts performed under the name of the owner. Dental Practice Act (DPA), Tex. Occ. Code §259.004(b)	
<u>First Tier Violation:</u> <ul style="list-style-type: none"> • Violation of the DPA or Board Rules – owner not personally involved or management of the entity was not a cause of the violation 	<u>Sanction:</u> <ul style="list-style-type: none"> • Remedial Plan or Warning with stipulations that may include: continuing education, community service, and/or administrative fine, restitution to patient
<u>Second Tier Violation:</u> <ul style="list-style-type: none"> • Violation of the DPA or Board Rules – owner not personally involved, but management of the entity was a cause of the violation 	<u>Sanction:</u> <ul style="list-style-type: none"> • Warning or Reprimand with stipulation that may include: continuing education, and/or administrative fine, restitution to patient, and community service.
<u>Third Tier Violation</u> <ul style="list-style-type: none"> • Repeated Violations of the DPA or Board Rules – owner not personally involved, but management of the entity was a cause of the violation 	<u>Sanction:</u> <ul style="list-style-type: none"> • Probated Suspension, Suspension of License, Voluntary Surrender, or Revocation with stipulations that may include: continuing education, and/or administrative fine, restitution to patient, and community service.

DENTAL LABORATORIES

<p>Registration Required Dental Practice Act (DPA), Tex. Occ. Code §266.151</p>	
<p><u>Violation:</u></p> <ul style="list-style-type: none"> • Operation of a dental laboratory or offer to provide dental laboratory services without a registration certificate. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Issuance of Cease and Desist Order with referral of all information to Attorney General’s Office and local law enforcement.
<p>Certified Dental Technician Dental Practice Act (DPA), Tex. Occ. Code §266.152</p>	
<p><u>Violation:</u></p> <ul style="list-style-type: none"> • Failure to have at least one dental technician working on the laboratory’s premises who is certified by a recognized board of certification for dental technology. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning or Reprimand with stipulations that may include: continuing education, community service, and/or administrative fine. • Denial of registration, suspension of registration, revocation of registration or request for voluntary surrender.
<p>Applicant or certificate holder has violated, aided another person, or allowed a person under their direction to violate a law regulating the practice of dentistry. Dental Practice Act (DPA), Tex. Occ. Code §266.251</p>	
<p><u>Violation:</u></p> <ul style="list-style-type: none"> • Failure to obtain written work orders or prescriptions from a licensed dentist, and maintain appropriate records. • Failure to keep premises and records open to inspection during working hours. • Failure to comply with the requirements for notification of change of ownership. 	<p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning or Reprimand with stipulations that may include: continuing education, community service, and/or administrative fine. • Denial of registration, suspension of registration, revocation of registration or request for voluntary surrender.

Texas Register

TITLE 22	EXAMINING BOARDS
PART 9	TEXAS MEDICAL BOARD
CHAPTER 190	DISCIPLINARY GUIDELINES
SUBCHAPTER C	SANCTION GUIDELINES
RULE §190.14	Disciplinary Sanction Guidelines
ISSUE	12/11/2015
ACTION	Final/Adopted

[Preamble](#)

[Texas Admin Code
Rule](#)

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1)The standard sanctions outlined in paragraph (9) of this section provide a range from "Low Sanction" to "High Sanction" based upon any aggravating or mitigating factors that are found to apply in a particular case. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §190.15 of this chapter (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2)The minimum sanctions outlined in paragraph (9) of this section are applicable to first time violators. In accordance with §164.001(g)(2) of the Act, the board shall consider revoking the person's license if the person is a repeat offender.

(3)The sanctions outlined in paragraph (9) of this section are based on the conclusion stated in §164.001(j) of the Act that a violation related directly to patient care is more serious than one that involves only an administrative violation. An administrative violation may be handled informally in accordance with §187.14(7) of this title (relating to Informal Resolutions of Violations). Administrative violations may be more or less serious, depending on the nature of the violation. Administrative violations that are considered by the board to be more serious are designated as being an "aggravated administrative violation."

(4)The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to \$5,000 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(5)Each statutory violation constitutes a separate offense, even if arising out of a single act.

(6)If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced.

(7)Any panel action that falls outside the guideline range shall be reviewed and voted on individually

by the board at a regular meeting.

(8)For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions outlined in this rule.

(9)The following standard sanctions shall apply to violations of the Act:

[Attached Graphic](#)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 25, 2015

TRD-201505185

Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016

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Violation Description	Statutory/Rule Citation	Low Sanction	High Sanction
Abusive or Disruptive Behavior	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(K), (P)	Remedial Plan: Anger management and communications CME, JP exam, medical ethics	Agreed Order with IME or Public Referral to PHP; CME in medical ethics, anger management, communications with colleagues, JP exam. For multiple orders or egregious actions- interfering with patient care: public reprimand, suspension with terms and conditions
Aiding in unlicensed practice	§164.052(a)(17) (directly or indirectly aids or abets unlicensed practice)	Remedial Plan: Directed CME in supervision or delegation if applicable; 8 hours CME in medical ethics, 8 hours CME in risk management; must pass JP within 1 year	Agreed Order: Public reprimand, all sanctions in low category, plus \$2,000 admin penalty
Bad faith mediation by a licensee in relation to an out-of-network health benefit claim	§1467.101 and 1467.102 of the Texas Insurance Code (bad faith in out-of-network claim dispute resolution)--"except for good cause shown, the regulatory agency shall impose an administrative penalty"	Good cause shown: Remedial Plan: 8 hours of medical ethics; otherwise, admin penalty is statutorily required	Agreed Order: Public reprimand; \$5,000 admin penalty, "except for good cause shown" per §1467.102; plus all sanctions in low category
Boundary Violation: Engaging in sexual contact with a patient or engaging in sexually inappropriate behavior or	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(E)-(F)	RP is statutorily prohibited Verbal remarks, or inappropriate behavior, but not involving touching: Agreed Order: Public reprimand;	Cases involving physical contact: Agreed Order: Low sanctions plus IME, Replace chaperone with may not treat patient of the affected gender; or

comments directed towards a patient		Vanderbilt or PACE boundaries course; JP exam; CME in ethics; chaperone	suspension or revocation
Boundary Violation: Becoming financially or personally involved with a patient in an inappropriate manner	§164.052(a)(5)(unprofessional conduct likely to injure public); Rule §190.8(2)(G)	RP is statutorily prohibited Single incident: Agreed Order: CME in ethics, JP exam; if financial involvement, restitution if appropriate; and/or admin penalty	More than one incident (more than one patient, or occasion): Agreed Order: Low Sanctions plus: Public reprimand; Vanderbilt or PACE boundaries course; JP exam; CME in ethics; administrative penalty; or suspension or revocation
Breach of Confidentiality	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(N)	Remedial Plan: 8 hours risk management CME to include HIPAA, \$500 administration fee	Agreed Order: Public reprimand, CME in risk management and in HIPAA requirements; \$3,000 per occurrence; JP exam
Cease and desist order--issuance of: See "Unlicensed practice of medicine"	§164.002 (Board's general authority to dispose of "any complaint or matter" unless precluded by another statute) §165.052 (power to issue cease and desist orders against unlicensed persons)		
Cease and desist order (existing), violation of	§165.052(b) (violation of (c) and (d) is grounds for imposing admin penalty)	Administrative penalty \$2,000 - \$5,000 per offense	Referral to Attorney General for civil penalty and costs or criminal prosecution. §165.101 (civil)and §165.152 (criminal)
Change in practice or mailing address, failure to notify the board of	§164.051(a)(3) Rule §166.1(d) (notify Board within 30 days of change of mailing or practice address or professional name on file)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam

<p>CME - Failure to obtain or document CME</p>	<p>§164.051(a)(3) (forbids breaking or attempting to break a Board rule); Rule §166.2 (48 credits each 24 months + other requirements and accreditation of CME req'ts)</p>	<p>Remedial Plan: All missing hours of CME and 4 hours of ethics/risk management and \$500 administration fee</p>	<p>Agreed Order: 8 hours of CME in ethics/risk management plus complete all missing hours; \$1,000 admin penalty; JP exam</p>
<p>Crime: Abortion - performing a criminal abortion. Health and Safety Code §170.002 and Chapter 171 (§170.002 prohibits third-trimester abortions, with exceptions; Chapter 171 requires physicians to make available certain materials to abortion patients and restricts how informed consent is obtained; the criminal offense (§171.018) is an unspecified class of misdemeanor punishable only by a \$10,000 fine)</p>	<p>§164.052(a)(16) (prohibits performing, procuring, aiding, or abetting in procuring a criminal abortion); §164.055 (requires "appropriate disciplinary action" against a physician who violates Health and Safety Code §170.002 or Chapter 171)</p>	<p>Agreed Order: Public Reprimand; must pass JP within 1 year; \$5,000 admin penalty</p>	<p>Agreed Order: Suspension, probated with terms, or revocation</p>
<p>Crime: Arrest for offense under Penal Code §§21.02; 21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)</p>	<p>§164.0595 (Temporary suspension or restriction of license for certain arrests)</p>	<p>Agreed Order: Restriction of license, chaperone; may not treat pediatric patients</p>	<p>Agreed Order: Suspension of license, no probation</p>
<p>Crime: Deferred adjudication community supervision for offense under Penal Code §§21.11; 22.011(a)(2);</p>	<p>§164.057(c) (mandates revocation upon proof of deferred adjudication community supervision)</p>		<p>Revocation is statutorily required</p>

22.021(a)(1)(B); (assaultive offenses against children)			
Crime: Felony conviction	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.057(a)(1)(A) of the Medical Practice Act (requires suspension on initial conviction for a felony)	Initial conviction: Statutorily required §190.8(6)(A)(iv) and §164.057(a)(1)(A); suspension to occur by operation of law pursuant to §187.72	Revocation is statutorily required on final conviction - §164.057(b)
Crime: Felony deferred adjudication; Misdemeanor involving moral turpitude deferred adjudication	§204.303(a)(2) & (3) of the Physician Assistant Act; Board Rule 185.17(7)& (11); §205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(A) of the Medical Practice Act (authorizes sanctions for initial convictions and deferred adjudications for felonies and misdemeanors involving moral turpitude)	Agreed Order: Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME in appropriate area	Suspension or Revocation; §164.001(a); Revocation is statutorily required on final conviction of a felony- §164.057(b)
Crime: Misdemeanor conviction of crime involving moral turpitude	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(B) of the Medical Practice Act (authorizes suspension on initial conviction for misdemeanor of moral turpitude, and revocation upon final conviction)	If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require: (-a-) Suspension of license, which may be probated; (-b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication; (-c-) public reprimand; and (-d-) administrative penalty of \$2,000 per violation.	If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.
Crime:	Texas Occupations Code	Suspension	Revocation

<p>Misdemeanor conviction not involving moral turpitude that is connected with the physician's practice of medicine</p>	<p>§53.021; Rule §190.8(6)(B)(iv) stating Chapter 53 of applies to misdemeanor convictions not involving moral turpitude but connected with the physicians practice of medicine and setting out factors showing connection to practice of medicine</p>		
<p>Crime: Misdemeanor initial conviction under Penal Code Chapter 22 (assaultive offenses - see also: arrest or deferred adjudication for assaultive offenses against children) of crime punishable by more than a fine; OR Penal Code §25.07 (violation of court order re: family violence); OR §25.071 (violation of court order re: crime of bias or prejudice); OR one requiring registration as a sex offender under Code of Criminal Procedures Chapter 62</p>	<p>§164.057(a)(1)(B), (C), (D), and (E) (when misdemeanor conviction requires suspension)</p>	<p>Suspension is statutorily required per §164.057(a)(1)(B)</p>	<p>Revocation is statutorily required on final conviction - §164.057(b)</p>
<p>Death certificate, failure to sign electronically</p>	<p>§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's</p>	<p>Remedial Plan: 4 hours of ethics/risk management and \$500</p>	<p>Agreed Order: CME – 8 hours of risk management, 4 – 8 hours medical</p>

	practice of medicine"); Health and Safety Code Chapter 193 (requires electronic filing of death certificates)	administration fee	ethics; \$2,000 admin penalty; JP exam
Delegation of professional medical responsibility or acts to person if the physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts	§164.053(a)(9) (describes the violation as unprofessional conduct, allows sanctions)	Remedial Plan: 12 hours CME in supervision and delegation, 8 hours in risk management, 8 hours in medical ethics; JP exam	Agreed Order: Low sanctions plus no delegation or supervision authority; administrative penalty of \$2,000 per violation
Discipline by peers, may be either an administrative violation or SOC	§164.051(a)(7) (describes offense: includes being subjected to disciplinary action taken by peers in a local, regional, state, or national professional medical ass'n or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other action IF the board finds the action was based on unprofessional conduct or professional incompetence that was likely to harm the public and "was appropriate and reasonably supported by evidence submitted to the board." Expert panel report provides such evidence)	Agreed Order: See the applicable sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible.	Agreed Order: Public reprimand; comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible; and administrative penalty of \$3,000 per violation, plus directed CME and, if SOC case, a chart monitor. If not SOC: IME; anger management; CME in communications
Disciplined by another state or military may be either an administrative violation or a patient care violation	§164.051(a)(9) (describes the violation, requires that acts for which discipline imposed be the same or similar to acts in §164.052 or acts that are the same or similar to acts described in 164.051(a), for example rule violations, SOC	If no standard of care concerns, Remedial Plan with appropriate CME and \$500 administration fee; OR reciprocal Agreed Order as appropriate.	If out-of-state order is revocation, revocation is statutorily required.

	violations, and all forms of impairment) Issue is only whether there was an order--no relitigation of prior facts, e.g., no new expert panel required		
Drug logs - Failure to maintain (see also, violation of state or federal law connected with practice)	§164.053(a)(2) (describes offense and refers to Chapter 481 Health and Safety Code and 21 USC §801 et seq.)	Remedial Plan: 8 hours of ethics/risk management and \$500 administration fee	Agreed Order: Public reprimand; 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
Employing a revoked/cancelled/ or suspended physician (see also aiding and abetting the unlicensed practice)	§164.052(a)(14) (describes offense: "directly or indirectly employs . . ."); §164.052(a)(15) (forbids associating in the practice of medicine with such a person)	Agreed Order: Public reprimand; \$3,000 admin penalty; take and pass JP exam	Agreed Order: Public reprimand; \$5,000 admin penalty; JP exam; no delegation authority
Failing to adequately supervise subordinates and improper delegation	§164.053(a)(8); §164.053(a)(9) - These sections describe the respective violations and define them as unprofessional conduct	Remedial Plan: 12 hours CME in supervision and delegation; consider ordering Rsp to furnish ED copies of delegation orders of develop and furnish delegation orders to ED; \$500 admin fee	Agreed Order: Low category sanctions plus: monitoring of practice; no delegation or supervision authority; administrative penalty of \$2,000 per violation; JP exam
Fails to keep proper medical records	§164.051(a)(3) (authorizes sanctioning rule violations); §164.051(a)(6) (authorizes sanctioning failure to practice acceptably consistent with public welfare); Rule §165.1 describes contents of an adequate medical record	Remedial Plan: CME in appropriate area; \$500 administration fee	Agreed Order: 8 or more hours of medical record-keeping, require in-person attendance if practical; chart monitor 8 – 12 cycles; \$2,000 admin penalty; JP exam; PACE course in medical record-keeping if prior order for inadequate record-keeping
Failure to	§164.052(a)(5) (prohibits	Single incident:	Multiple instances:

Communicate with patient or other providers	conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Remedial Plan--8 hours risk management CME to include patient communications, \$500 administration fee	Agreed Order: Public reprimand, risk management and communications CME, fine, counseling, IME
Failure to display a "Notice Concerning Complaints" sign	Rule §178.3(a)(1) (requires display of sign)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$1,000 admin penalty; JP exam
Failure to report dangerous behavior to governmental body	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Agreed Order: Admin penalty; CME in medical ethics; JP exam	Multiple or egregious: Agreed Order: Low category sanctions plus public reprimand and \$5,000 admin penalty
Failure to Pay/CS	Gov't Code; Family Code Chapter 232 (authorizes suspending licenses of any kind granted by the state to persons who do not pay support payments)	Suspension until such time as the licensee is no longer in default is required – statutorily required	Suspension until such time as the licensee is no longer in default - statutorily required
Failure to Pay Student Loan	§56.003 of the Texas Occupations Code	Agreed Order: public reprimand; within a certain time frame, provide proof of entering into an agreement with the loan servicing agent and/or default has been cured. Auto-suspend if violate order	Suspension until such time as the licensee is no longer in default
Failure to report suspected abuse of a patient by a third party, when the report of that abuse is required by law	§164.052(a)(5)(prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053); Rule §190.8(2)(O)	Remedial Plan; CME- 8 hrs risk management; JP Exam	Agreed Order: Low sanctions plus public reprimand; administrative penalty \$3,000 per violation

Fees, failure to provide explanation of	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.025); §101.351 (establishes requirement and excludes application of §101.351 to physicians who post a billing practice sign in their waiting room)	Remedial Plan: 8 hours of ethics/risk management/billing practices and \$500 administration fee	Agreed Order: 8 - 16 hours of CME in ethics, risk management, billing practices, and CPT coding, \$2,000 admin penalty
Fraud on a diploma/in an exam	§164.052(a)(2); §164.052(a)(3) (describes offense as presenting an illegally or fraudulently obtained credential and cheating on exams)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.
Fraudulent, improper billing practices - requires that Respondent knows the service was not provided or knows was improper, unreasonable, or medically or clinically unnecessary. Should not sanction for an unknowing and isolated episode.	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.0025); §164.053(a)(7) (prohibits violation of Health and Safety Code §311.0025)	Agreed order: Including, but not limited to: monitoring of billing practices; directed CME; restitution; and administrative penalty of \$1,000, but not to exceed the amount of improper billing	Agreed Order: Public reprimand, monitoring of practice, including billing practices; directed CME; restitution; and administrative penalty of \$3,000 per violation
Health care liability claim, failure to report	§160.052(b) (requires reporting health care liability claims to Board) Rule §176.2 and §176.9 (prescribes form for such reporting)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
Impairment (no history and no aggravating factors such as SOC, boundary violation, or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition);	Refer to PHP--Public referral via agreed order required if case involves discharge from PHP, otherwise private	Voluntary surrender or temporary suspension

	§164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	referral is OK if appropriate	
Impairment (with history or SOC violation or boundary violation or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	Agreed Order: IME with report to ED or to panel at re-convened ISC, restrict practice or voluntary suspension pending report; if impairment is found at ISC, suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine, with conditions to be determined by a subsequent panel	Agreed Order: Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine OR Suspension probated for 10 years with terms and conditions including but not necessarily limited to: drug testing; restrictions on practice; AA or NA attendance evidenced by logs; IME for psychiatric/psychological evaluation and treatment; proficiency testing OR revocation.
Intimidation of Complainant	§164.052(a)(5) (prohibits unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	Single Incident: Public reprimand and fine	Multiple/Egregious: Suspension and/or revocation; significant admin penalty; CME in ethics; JP exam
Medical Records: failure to release/ Overcharging for	§159.006 of the Act (information furnished by licensee); §164.051(a)(3) (prohibits rule violations); Rule §165.2 (requires release to proper person as described therein unless release would harm the patient and prescribes allowable charges	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$2,000 admin penalty; JP exam. Also, §159.006 (Board may appoint temp or permanent custodian of patient records held by a physician)

Misleading advertising	§164.051(a)(3); §164.052(6) (prohibits false advertising); Rule §164.3, §164.	Remedial Plan: 8 hours of ethics/risk management, correct the advertisement and \$500 administration fee	Agreed Order: 16 hours of ethics/risk management in person, correct the advertisement, \$5,000 admin penalty, JP exam
Operating an unlicensed pharmacy	§158.001(b) (requires physicians to comply with Occupations Code Chapter 558 to operate a retail pharmacy)	Agreed Order: Must pass JP within 1 year, \$2,000 penalty, CME – medical ethics	Agreed Order: JP exam; cease operating pharmacy; CME – ethics and risk management
Overbilling: See fraudulent, improper billing			
Peer review action: See Discipline by peers			
Physician-patient relationship, Improper termination of	Rule §190.8(1)(J) (requires reasonable notice to patient of termination)	Single incident: Remedial Plan: 8 hours CME - 4 risk management and 4 ethics, \$500 administration fee	Multiple instances: Public reprimand, risk management, fine, CME - in physician-patient communications
Pill mills, unregistered pain clinics, overprescribing – See Delegation, Supervision, Prescribing			Revocation
Prescribing controlled substances to oneself, family members, or others in which there is a close personal relationship absent immediate need, without	§164.051(a)(6); Rule §190.8(1)(L), (M)	Agreed Order CME 8 hours medical recordkeeping, or risk management; 8 hours appropriate prescribing of controlled substances; JP Exam If only one	Agreed Order Low sanctions plus public reprimand; restrictions on prescribing to self, family, and others in which there is a close personal relationship, restrictions on practice including

<p>taking an adequate history, performing a proper physical examination, or creating and maintaining adequate records</p>		<p>prescription and no evidence of pattern, the ISC Panel may consider a remedial plan.</p>	<p>restrictions on prescribing and administering controlled substances and dangerous drugs, administrative penalty of \$3,000 per violation</p>
<p>Prescribing dangerous drugs to oneself, family members, or others in which there is a close personal relationship without taking an adequate history, performing a proper physical examination, or creating and maintaining adequate records</p>	<p>§164.051(a)(6); Rule §190.8(1)(L), (M)</p>	<p>Remedial Plan: CME - 8 hours medical recordkeeping or risk management; JP Exam</p>	<p>Agreed Order: Low sanctions plus restrictions on prescribing to self, family, and others in which there is a close personal relationship and administrative penalty of \$2,000 per violation</p>
<p>Prescribing, writes false or fictitious prescriptions OR prescribes or dispenses drugs to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs OR writes prescriptions for or dispenses to a person who the physician should have known was an abuser of narcotic drugs, controlled</p>	<p>§164.053(a)(3)-(6) (defines the violations under unprofessional conduct)</p>	<p>Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk management; chart monitor at least 8 cycles; if Respondent does not use one, order to develop a pain management contract with specific provisions for termination of physician-patient relationship on a maximum of 3 violations by the patient including a positive test for a controlled substance</p>	<p>Agreed Order Low sanctions plus: restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and increase administrative penalty to \$5,000 per violation.</p> <p>If evidence of false or fictitious prescriptions,</p>

<p>substances, or dangerous drugs OR prescribes, administers, or dispenses in a manner inconsistent with public health and welfare</p>		<p>not prescribed by Respondent, drug screens required by contract; JP Exam; admin penalty of \$3,000 per violation</p>	<p>surrender DEA registration certificate for all controlled substance schedules.</p>
<p>Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, one patient, no prior board disciplinary history related to standard of care or care-related violations</p>	<p>§164.053(a)(5) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)</p>	<p>Remedial Plan CME in appropriate area; \$500 administration fee per year.</p>	<p>Agreed Order: Proficiency testing, CME in appropriate area; chart monitor for 8 cycles; administrative penalty of \$3,000 per violation</p>
<p>Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, more than one patient or prior history of disciplinary action for standard of care or care-related violations</p>	<p>§164.053(a)(5) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)</p>	<p>Agreed Order: Proficiency testing; CME in appropriate area; chart monitor 12 cycles; administrative penalty \$3,000 per violation</p>	<p>Agreed Order: Low sanctions plus restrictions on practice, including prescribing and administering controlled substances and dangerous drugs; and administrative penalty of \$5,000 per violation. If there are aggravating factors, revocation should be considered.</p>
<p>Referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient</p>	<p>§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053); Rule §190.8(2)(H)</p>	<p>Remedial Plan: CME 8 hrs ethics, 8 hrs risk management; within 30 days of order's entry, provide proof of implement of form used to disclose ownership to interest</p>	<p>Agreed Order: Low sanctions plus public reprimand; JP Exam; administrative penalty \$3,000 per violation</p>

Refusal to respond to board subpoena or request for information or action	§160.009 of the Act and Rule §179.4 (relating to Request for Information and Records from Physicians); §164.052(a)(5), as further defined by Board Rule 190.8(2)(B) (prohibits Unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	If records eventually received, Remedial Plan of 8 hours of ethics/risk management and \$500 administration fee	If records never received and intentionally withheld, Agreed Order: public reprimand; JP exam; admin penalty; CME in medical ethics
Reporting false or misleading information on an initial application for licensure or for licensure renewal	§164.052(a)(1) (forbids submission of false or misleading statements of documents in an application for a license)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.
Reporting false or misleading Board (non-licensing matter)	§164.052(a)(5), as further defined by Rule §190.8(2)(C)	Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management JP Exam administrative penalty of \$3,000
Self-Prescribing: See "Prescribing to self."			
Solicitation of patients/Drumming	§165.155 (provides a Class A misdemeanor penalty)	Agreed Order (if no conviction): 8 hours of ethics/risk management and \$500 administration fee	Egregious: Agreed Order: Public reprimand, chart sign off, \$5,000 fine, JP exam, CME in medical ethics OR referral to county attorney for prosecution as Class A misdemeanor under §165.155(e)
Standard of Care - one patient, no prior	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent	Remedial Plan*: CME in appropriate area; \$500	Agreed Order: Proficiency testing; directed CME; chart

SOC or care-related violations	with public health and welfare)	administration fee per year. *No RP if case concerns a patient death	monitor for 8 cycles; administrative penalty of \$3,000 per violation
Standard of care - one patient, one prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)	Agreed Order: Chart monitor for 8 cycles; directed CME, administrative penalty of \$3,000 per violation	Agreed Order: Limiting the practice of the person or excluding one or more specified activities of medicine; proficiency testing; directed CME; monitoring of the practice (either chart monitor for 12 cycles or supervising physician for a number of cases or specified period of time); public reprimand; and administrative penalty of \$5,000 per violation.
Standard of care - one patient, more than one prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence likely to injure the public); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Limiting the practice of the person or excluding one or more specified activities of medicine; proficiency testing; directed CME; monitoring of the practice (either chart monitor for 12 cycles or supervising physician for a number of cases or specified period of time); administrative penalty of \$ 3,000 per violation	Agreed Order: K-STAR or PACE or equivalent proficiency testing; directed CME; chart monitoring (either chart monitor for 16 cycles or supervising physician for a number of cases or specified period of time), restricting the practice; withdrawal of prescribing privileges or delegating privileges; public reprimand; administrative penalty of \$5,000 per

			violation
Standard of care - more than one patient, no prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Chart Monitor for 8 cycles; CME in appropriate area; administrative penalty of \$3,000 per violation	Agreed Order: Proficiency testing; directed CME; chart monitor 12 cycles; public reprimand; and administrative penalty of \$5,000 per violation
Standard of care - more than one patient, prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Proficiency testing; directed CME; monitoring for 12 cycles; requiring oversight or restricting of the practice; public reprimand; and administrative penalty of \$5,000 per violation.	Suspension or revocation
Supervision of midlevels, failure to perform: See "Failing to adequately supervise subordinates and improper delegation."			
Unlicensed practice of medicine	§165.052(a)(see definition of "practice of medicine" at §151.002(a)(13))	Cease and Desist Order and referral of Order to District Attorney or Attorney General	Cease and Desist Order; referral to Attorney General's office for injunction or civil penalties
Unsound Mind - adjudicated (See also "Impairment")	§164.051(a)(5) (enables Board to take action if a licensee or applicant "is found by a court to be of unsound mind")	Suspension of license until such time as the licensee can demonstrate that the licensee is safe	Temporary suspension prior to seeking revocation; show cause hearing under

		and competent to practice medicine; IME and return to ISC panel with results	§164.056
Violation of Board Order	§164.052(a)(5) (enables sanctioning of unprofessional or dishonorable conduct as defined by §164.053 or conduct that injures the public)	Administrative in nature- Agreed Order: Administrative Penalty of \$1,000; Substantive in nature-extension of order and increase the terms of the original order	Agreed Order: Low sanctions plus: public reprimand; admin penalty of \$3,000 - \$5,000
Violation of state or federal law connected with physician's practice	§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine")	If criminal law, see above under "Crime." If civil law, Agreed Order: must pass JP exam and 8 hours of risk management/ethics	Agreed Order: public reprimand; restriction of license; surrender of controlled substance privileges; plus low sanctions

Texas Register

TITLE 22 EXAMINING BOARDS
PART 11 TEXAS BOARD OF NURSING
CHAPTER 213 PRACTICE AND PROCEDURE
RULE §213.33 Factors Considered for Imposition of Penalties/Sanctions
ISSUE 10/23/2015
ACTION Final/Adopted

[Preamble](#)

[Texas Admin Code
Rule](#)

(a)The Board and the State Office of Administrative Hearings (SOAH) shall utilize the Disciplinary **Matrix** set forth in subsection (b) of this section in all disciplinary and eligibility matters.

(b)The Disciplinary **Matrix** is as follows:

[Attached Graphic](#)

(c)The Board and SOAH shall consider the following factors in conjunction with the Disciplinary **Matrix** when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary **Matrix** for a particular violation or multiple violations of the Nursing Practice Act (NPA) and Board rules:

- (1)evidence of actual or potential harm to patients, clients, or the public;
- (2)evidence of a lack of truthfulness or trustworthiness;
- (3)evidence of misrepresentation(s) of knowledge, education, experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
- (4)evidence of practice history;
- (5)evidence of present fitness to practice;
- (6)whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;
- (7)the length of time the person has practiced;
- (8)the actual damages, physical, economic, or otherwise, resulting from the violation;
- (9)the deterrent effect of the penalty imposed;
- (10)attempts by the licensee to correct or stop the violation;
- (11)any mitigating or aggravating circumstances, including those specified in the Disciplinary **Matrix**;

(12)the extent to which system dynamics in the practice setting contributed to the problem;

(13)whether the person is being disciplined for multiple violations of the NPA or its derivative rules and orders;

(14)the seriousness of the violation;

(15)the threat to public safety;

(16)evidence of good professional character as set forth and required by §213.27 of this chapter (relating to Good Professional Character);

(17)participation in a continuing education course described in §216.3(f) of this title (relating to Requirements) completed not more than two years before the start of the Board's investigation, if the nurse is being investigated by the Board regarding the nurse's selection of clinical care for the treatment of tick-borne diseases; and

(18)any other matter that justice may require. The mitigating and aggravating factors specified in the **Matrix** are in addition to the factors listed in this subsection. Further, the presence of mitigating factors in a particular case does not constitute a requirement of dismissal of a violation of the NPA and/or Board rules. If multiple violations of the NPA and/or Board rules are present in a single case, the most severe sanction recommended by the **Matrix** for any one of the individual offenses should be considered by the Board and SOAH pursuant to Tex. Occ. Code §301.4531.

(d)Each specific act or instance of conduct may be treated as a separate violation.

(e)The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions, with or without probationary stipulations:

(1)Denial of temporary permit or licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license);

(2)Approval of temporary permit or licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license), with one or more reasonable probationary stipulations as a condition of issuance, renewal, or reinstatement/reactivation. Additionally, the Board may determine, in accordance with §301.468 of the NPA, that an order denying a license application/petition, license renewal, license reinstatement/reactivation, or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to:

(A)submit to care, supervision, counseling, or treatment by a health provider designated by the Board as a condition for the issuance, renewal, or reinstatement/reactivation of the license or temporary permit or the return to direct patient care from a limited license;

(B)submit to an evaluation as outlined in subsections (k) and (l) of this section and/or pursuant to the Occupations Code §301.4521;

(C)participate in a program of education or counseling prescribed by the Board;

(D)limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E)practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board;

(F)abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G)perform public service which the Board considers appropriate;

(3)Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A)submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

(B)submit to an evaluation as outlined in subsections (k) and (l) of this section and/or pursuant to the Occupations Code §301.4521;

(C)participate in a program of education or counseling prescribed by the Board;

(D)limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E)practice for a specified period of at least one year under the direction of a registered nurse or vocational nurse designated by the Board;

(F)abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G)perform public service which the Board considers appropriate;

(4)Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A)submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

(B)submit to an evaluation as outlined in subsections (k) and (l) of this section and/or pursuant to the Occupations Code §301.4521;

(C)participate in a program of education or counseling prescribed by the Board;

(D)limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E)practice for a specified period of at least two years under the direction of a registered nurse or vocational nurse designated by the Board;

(F)abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G)perform public service which the Board considers appropriate;

(5)Limitation or restriction of the person's license or permit, including limits on specific nursing activities and/or practice settings and/or periodic Board review;

(6)Suspension of the person's license or permit. The Board may determine that the order of suspension be enforced and active for a specific period and/or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:

- (A)submit to care, supervision, counseling, or treatment by a health provider designated by the Board;
 - (B)submit to an evaluation as outlined in subsections (k) and (l) of this section and/or pursuant to the Occupations Code §301.4521;
 - (C)participate in a program of education or counseling prescribed by the Board;
 - (D)limit specific nursing activities and/or practice settings and/or require periodic Board review;
 - (E)practice for a specified period of not less than two years under the direction of a registered nurse or vocational nurse designated by the Board;
 - (F)abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or
 - (G)perform public service which the Board considers appropriate;
 - (7)Remit payment of an administrative penalty or fine;
 - (8)Acceptance of a Voluntary Surrender of a nurse's license(s) or permit;
 - (9)Revocation of the person's license or permit;
 - (10)Require participation in remedial education course or courses prescribed by the Board which are designed to address those competency deficiencies identified by the Board;
 - (11)Assessment of a fine as set forth in §213.32 of this chapter (relating to Corrective Action Proceedings and Schedule of Administrative Fines);
 - (12)Assessment of costs as authorized by the Occupations Code §301.461 and the Government Code §2001.177; and/or
 - (13)Require successful completion of a Board approved peer assistance program.
- (f)Every order issued by the Board shall require the person subject to the order to participate in a program of education or counseling prescribed by the Board, which at a minimum, will include a review course in nursing jurisprudence and ethics.
- (g)The following disciplinary and eligibility sanction policies, as applicable, shall be used by the Executive Director, Board and SOAH when determining the appropriate penalty/sanction in disciplinary and eligibility matters:
- (1)Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;
 - (2)Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;
 - (3)Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; and

(4)Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(h)To the extent that a conflict exists between the Disciplinary **Matrix** and a disciplinary and eligibility sanction policy described in subsection (g) of this section, the Disciplinary **Matrix** controls.

(i)Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(j)The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and the Board's rules.

(k)If the Board has probable cause to believe that a person is unable to practice nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency/substance use disorder, or abuse/misuse of drugs or alcohol, the Board may require an evaluation that meets the following standards:

(1)The evaluation must be conducted by a Board-approved addictionologist, addictionist, medical doctor, neurologist, doctor of osteopathy, psychologist, neuropsychologist, advanced practice registered nurse, or psychiatrist, with credentials appropriate for the specific evaluation, as determined by the Board. In all cases, the evaluator must possess credentials, expertise, and experience appropriate for conducting the evaluation, as determined by the Board. The evaluator must be familiar with the duties appropriate to the nursing profession.

(2)The evaluation must be designed to determine whether the suspected impairment prevents the person from practicing nursing with reasonable skill and safety to patients. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments with valid and reliable validity scales designed to test the person's fitness to practice. The evaluation may include testing of the person's psychological or neuropsychological stability only if the person is suspected of mental impairment, chemical dependency, or drug or alcohol abuse. If applicable, the evaluation must include information regarding the person's prognosis and medication regime.

(3)The person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board. The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(l)When determining evidence of present fitness to practice because of known or reported unprofessional conduct, lack of good professional character, or prior criminal history:

(1)The Board may request an evaluation conducted by a Board-approved forensic psychologist, forensic psychiatrist, or advanced practice registered nurse who:

(A)evaluates the behavior in question or the prior criminal history of the person;

(B)seeks to predict:

(i)the likelihood that the person subject to evaluation will engage in the behavior in question or

criminal activity again, which may result in the person committing a second or subsequent reportable violation or receiving a second or subsequent reportable adjudication or conviction; and

(ii)the continuing danger, if any, that the person poses to the community;

(C)is familiar with the duties appropriate to the nursing profession;

(D)conducts the evaluation pursuant to professionally recognized standards and methods; and

(E)utilizes objective tests and instruments, as determined and requested by the Board, that are designed to test the psychological or neuropsychological stability, fitness to practice, professional character, and/or veracity of the person subject to evaluation.

(2)The person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by Board staff and a release that permits the evaluator to release the evaluation to the Board.

(3)The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(m)Notwithstanding any other provision herein, a person's failure to appear in person or by attorney on the day and at the time set for hearing in a contested case shall entitle the Board to revoke the person's license.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James W. Johnston

General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6821

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Texas Board of Nursing Disciplinary Matrix

In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in Rule 213.33(c), published at 22 Tex. Admin. Code §213.33. The Matrix lists additional aggravating or mitigating factors that should be considered in addition to the factors listed in Rule 213.33. Further, any aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33, may also be considered by the Board, pursuant to the Occupations Code Chapters 53 and 301. If multiple violations of the Nursing Practice Act (NPA) and/or Board rules are present in a single case, the most severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH pursuant to Tex. Occ. Code §301.4531.

Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.

If the person is being disciplined for multiple violations of either Chapter 301, or a rule or order adopted under Chapter 301, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation.

If the person has previously been the subject of disciplinary action by the Board, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

The Board may assess administrative penalties as outlined in 22 Tex. Admin. Code §213.32.

Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by the Occupations Code §301.461.

Further, although also not addressed by this Matrix, the Occupations Code §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency/substance use disorder, or abuse/misuse of drugs or alcohol. Section 301.4521 also authorizes the Board to request an individual to submit to an evaluation for other reasons, such as reported unprofessional conduct, lack of good professional character, or prior criminal history. The Board's rules regarding evaluations are published at 22 Tex. Admin. Code §213.33.

This Matrix also applies to the determination of an individual's eligibility for licensure.

§301.452(b)(1) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301;

<p>First Tier Offense:</p> <p>Isolated failure to comply with procedural Board rule, such as failure to renew license within six (6) months of its due date/renewal date or failure to complete continuing competency requirements*.</p> <p>Failure to comply with a technical, non-remedial requirement in a prior Board order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification forms.</p>	<p>Sanction Level I:</p> <p>Remedial Education, with or without a fine of \$250.00 or more for each additional violation.</p> <p>If stipulations in prior Board order are still outstanding, full compliance with and continuation of prior Board order and a fine of \$250 or more for each additional violation.</p>	<p>Sanction Level II:</p> <p>Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings, periodic board review; and/or a fine of \$500 or more for each additional violation.</p>
<p>Second Tier Offense:</p> <p>Failure to comply with a substantive requirement in a prior Board order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years.</p>	<p>Sanction Level I:</p> <p>Requirement to complete conditions of original Board order and a fine of \$500.00 or more for each additional violation. Respondent may be subject to next higher sanction and an extension of the stipulations. Violations of stipulations that are related to a substance use disorder and/or alcohol or drug abuse/misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations for three (3) years).</p>	<p>Sanction Level II:</p> <p>Denial of Licensure, Suspension, Revocation, or Voluntary Surrender.</p>

<p>Third Tier Offense:</p> <p>Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation.</p>	<p>Sanction Level I:</p> <p>Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or 301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(1): Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator.</p>		
<p>Mitigating Circumstances for §301.452(b)(1): Unforeseen financial or health issues; not practicing nursing during stipulation period.</p>		
<p>*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.</p>		

<p>§301.452(b)(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;</p>		
<p>First Tier Offense:</p> <p>Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license.*</p>	<p>Sanction Level I:</p> <p>Remedial Education and/or a fine of \$250 or more for each additional violation.</p>	<p>Sanction Level II:</p> <p>Denial of Licensure or Revocation of nursing license.</p>

<p>Second Tier Offense:</p> <p>Intentional misrepresentation of previous nurse licensure, education, extensive criminal history, multiple violations/offenses, an offense which is listed in the Occupations Code §301.4535, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure or Revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(2): Multiple offenses, the relevance or seriousness of the hidden information, whether the hidden information, if known, would have prevented licensure.</p>		
<p>Mitigating Circumstances for §301.452(b)(2): Seriousness of the hidden violation; age of applicant at time applicant committed violation; and applicant's justified reliance upon advice of legal counsel.</p>		
<p>*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.</p>		

§301.452(b)(3) a conviction for, or placement on deferred adjudication, community supervision, or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;

Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

Eligibility and Discipline will be reviewed under Board’s Disciplinary Guidelines for Criminal Conduct published at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder’s license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

Sanction:

Issuance of Cease and Desist Order with referral of all information to local law enforcement.

301.452(b)(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

Sanction:

Revocation of license for this offense.

§301.452(b)(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;

First Tier Offense:

Negligently or Recklessly aiding an unlicensed person in connection with unauthorized practice. For example, failing to verify credentials of those who are supervised by the nurse* or allowing Certified Nurse Aids to administer medications or otherwise practice beyond their appropriate scope.

Sanction Level I:

Remedial Education and/or a fine of \$250 for a single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand with Stipulations that may include remedial education; supervised practice; limit specific nursing activities/practice settings; periodic board review; and/or a fine of \$250 or more for each additional violation.

Sanction Level II:

Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death.

<p>Second Tier Offense:</p> <p>Knowingly aiding an unlicensed person in connection with unauthorized practice of nursing.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.</p>
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Aggravating Circumstances of §301.452(b)(7): Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm.

Mitigating Circumstances of §301.452(b)(7): The existence of institutional policies that allow certain practices by unlicensed persons with certified competency.

*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.

§301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;

<p>First Tier Offense:</p> <p>Action in another jurisdiction results from a default order issued due to the nurse's failure to answer violations, and the violations are not those in which the other jurisdiction or Texas would have revoked the license but for the nurse's failure to respond.</p> <p>Action in another jurisdiction based on practice violations or unprofessional conduct and the violations are not those that would result in license revocation in Texas.</p> <p>Action in another jurisdiction is based on mental health condition, diminished capacity, and/or a substance use disorder and/or alcohol or drug abuse/misuse and the nurse is otherwise eligible for licensure, subject to probationary conditions or participation in a Board approved peer assistance program.</p>	<p>Sanction Level I:</p> <p>Remedial Education and/or a fine, Warning or Reprimand with Stipulations, which may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities/practice settings; and/or periodic board review.</p> <p>Action should be at least consistent with action from other jurisdiction.</p> <p>Order to participate in Board approved peer assistance program.</p>	<p>Sanction Level II:</p> <p>Revocation, Suspension, or Denial of Licensure.</p> <p>Action should be at least consistent with action from other jurisdiction.</p>
<p>Second Tier Offense:</p> <p>Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.</p>	<p>Sanction Level I:</p> <p>Revocation, denial of licensure, or voluntary surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(8): Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.</p>		

Mitigating Circumstances for §301.452(b)(8): Nurse's failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.

§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;

First Tier Offense:

A substance use disorder and/ or abuse/misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of substance use disorder and/ or abuse/misuse of drugs or alcohol and no other aggravating circumstances.

Sanction Level I:

Referral to a Board approved peer assistance program for nurses pursuant to Board rules and policy on substance use disorders and other alcohol and drug related conduct.

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>

Sanction Level II:

For individuals receiving a diagnosis of no chemical dependency/substance use disorder and/or no alcohol or substance abuse/misuse, Warning with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings and/or periodic board review. Appropriate when individual declines participation in peer assistance program or is otherwise ineligible for the program.

<p>Second Tier Offense:</p> <p>A substance use disorder and/or abuse/misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation or previous Board order.</p>	<p>Sanction Level I:</p> <p>Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board rules and policy on substance use disorders and other alcohol and drug related conduct. Includes individuals with non disciplinary history of peer assistance participation.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html</p> <p>For individuals receiving a diagnosis of no chemical dependency/substance use disorder and/or no alcohol or substance abuse/misuse, Reprimand with Stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings, and/or periodic board review.</p>	<p>Sanction Level II:</p> <p>Suspension of License until treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings, and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation.</p> <p>For individuals receiving a diagnosis of no chemical dependency/substance use disorder and/or no alcohol or substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings, and/or periodic board review.</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
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<p>Third Tier Offense:</p> <p>A substance use disorder and/or abuse/misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.</p>	<p>Sanction Level I:</p> <p>Referral to a Board approved peer assistance program if no actual patient harm, no previous history of drug or alcohol misuse, and no other aggravating circumstances.</p> <p>Board ordered participation in an approved peer assistance program if no actual patient harm and no other aggravating circumstances.</p> <p>For individuals receiving a diagnosis of no chemical dependency/substance use disorder and/or no alcohol or substance abuse/misuse, Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings, and/or periodic board review.</p> <p>Denial of Licensure until applicant establishes he/she has received treatment and demonstrates one (1) year of verifiable sobriety, then license with stipulations that include supervision; limited practice; abstention from drugs/alcohol; and random drug testing through urinalysis.</p>	<p>Sanction Level II:</p> <p>Suspension of License until treatment, verifiable proof of at least one year sobriety, thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings; and/or periodic board review.</p> <p>For individuals receiving a diagnosis of no chemical dependency/substance use disorder and/or no alcohol or substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings, and/or periodic board review.</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
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<p>Fourth Tier Offense:</p> <p>A substance use disorder and/or abuse/misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(9): Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved, criminal justice probation; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy.</p>		
<p>Mitigating Circumstances for §301.452(b)(9): Self-remediation, including participation in inpatient treatment, intensive outpatient treatment, and after care program. Verifiable proof of sobriety by random, frequent drug/alcohol screens.</p>		

<p>§301.452(b)(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;</p>		
<p>First Tier Offense:</p> <p>Isolated failure to comply with Board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects.</p> <p>Isolated violation involving minor unethical conduct where no patient safety is at risk, such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.*</p>	<p>Sanction Level I:</p> <p>Remedial Education and/or a fine of \$250 or more for each additional violation. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.</p>	<p>Sanction Level II:</p> <p>Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities/practice settings; and/or periodic Board review; and/or a fine of \$500 or more for each additional violation. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations.</p>

<p>Second Tier Offense:</p> <p>Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.</p>	<p>Sanction Level I:</p> <p>Warning or Reprimand with Stipulations, which may include remedial education, supervised practice, and/or perform public service. Fine of \$250 or more for each violation. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings, and/or periodic Board review. Board will use its rules and disciplinary sanction polices related to substance use disorders and other alcohol and drug related conduct in analyzing facts.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html</p>	<p>Sanction Level II:</p> <p>Denial of Licensure, Suspension, or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstention from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings and/or periodic Board review. Board will use its rules and disciplinary sanction polices related to substance use disorders and other alcohol and drug related conduct in analyzing facts.</p> <p>Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.</p>
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<p>Third Tier Offense:</p> <p>Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Physical abuse of patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of \$4,999.99.</p>	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p> <p>Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(10): Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct.</p>		
<p>Mitigating Circumstances for §301.452(b)(10): Voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.</p>		
<p>*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.</p>		

<p>§301.452(b)(11) adjudication of mental incompetency;</p>		
	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.</p>

§301.452(b)(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

First Tier Violation:

Any mental health condition, diminished capacity, or physical health condition that may impair an individual's behavior, judgment, or ability to function in school or work.

Sanction Level I:

If, after an individualized assessment, it is determined that the individual's practice poses a potential risk of harm to patients/public, referral to a Board approved Peer Assistance Program or Warning with Stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings and/or periodic Board review.

If evidence of substance use disorder and/or drug or alcohol abuse/misuse also present, refer to Sanctions in 301.452(b)(9).

Sanction Level II:

Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings and/or periodic Board review.

If evidence of substance use disorder and/or drug or alcohol abuse/misuse also present, refer to Sanctions in 301.452(b)(9).

<p>Second Tier Violation:</p> <p>Lack of fitness based on any mental health condition, diminished capacity, or physical health condition with potential harm or adverse patient effects or other serious practice violations.</p> <p>“Lack of fitness” includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.</p>	<p>Sanction Level I:</p> <p>Referral to a Board approved Peer Assistance Program or Warning or Reprimand with Stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings and/or periodic Board review.</p> <p>If evidence of substance use disorder and/or drug or alcohol abuse/misuse also present, refer to Sanctions in 301.452(b)(9).</p>	<p>Sanction Level II:</p> <p>Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings and/or periodic Board review.</p> <p>If evidence of substance use disorder and/or drug or alcohol abuse/misuse also present, refer to Sanctions in 301.452(b)(9).</p>
<p>Third Tier Violation:</p> <p>Lack of fitness based on any mental health condition, diminished capacity, or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.</p> <p>“Lack of fitness” includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.</p>	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances of §301.452(b)(12): Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.</p>		
<p>Mitigating Circumstances of §301.452(b)(12): Self report, length of time since condition was relevant, successful response to treatment, positive evaluation from a board approved evaluator who has opportunity to review the Board’s file.</p>		

§301.452(b)(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board’s opinion, exposes a patient or other person unnecessarily to risk of harm.

<p>First Tier Offense:</p> <p>Practice below standard with a low risk of patient harm.</p>	<p>Sanction Level I:</p> <p>Remedial Education and/or fine of \$250 when there is isolated incident or a fine of more than \$250 for each additional violation.</p>	<p>Sanction Level II:</p> <p>Warning or Reprimand with Stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings and/or periodic board review and/or fine of \$500 or more for each additional violation.</p>
<p>Second Tier Offense:</p> <p>Practice below standard with patient harm or risk of patient harm.</p>	<p>Sanction Level I:</p> <p>Warning or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities/practice settings and/or periodic board review and/or a fine of \$500 or more for each additional violation.</p>	<p>Sanction Level II:</p> <p>Denial, suspension of license, revocation of license, or request for voluntary surrender.</p>
<p>Third Tier Offense:</p> <p>Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.</p> <p>In addition, any intentional act or omission that risks or results in serious harm.</p>	<p>Sanction Level I:</p> <p>Denial, suspension of license; revocation of license or request for voluntary surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>

Aggravating Circumstances for §301.452(b)(13): Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.

Mitigating Circumstances for §301.452(b)(13): Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.

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Texas Administrative Code

[TITLE 22](#)

EXAMINING BOARDS

[PART 15](#)

TEXAS STATE BOARD OF PHARMACY

[CHAPTER 281](#)

ADMINISTRATIVE PRACTICE AND PROCEDURES

[SUBCHAPTER C](#)

DISCIPLINARY GUIDELINES

RULE §281.60

General Guidance

(a) This subchapter is promulgated to:

(1) promote consistency and guidance in the exercise of sound discretion by the agency in licensure and disciplinary matters;

(2) provide notice as to the types of conduct that constitute violations of the Act and as to the disciplinary action that may be imposed; and

(3) provide a framework of analysis for administrative law judges in making recommendations in licensure and disciplinary matters.

(b) Board's role. The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act. The board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the board is not bound by such recommendations. A sanction should be consistent with sanctions imposed in other similar cases and should reflect the board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the board. The appropriate sanction is not a proper finding of fact or conclusion of law. This subchapter shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the APA and the Act's provisions related to types of discipline and administrative penalties. This subchapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

(c) Purpose of guidelines. These guidelines are designed to provide guidance in assessing sanctions for violations of the Act. The ultimate purpose of disciplinary sanctions is to protect and inform the public, deter future violations, offer opportunities for rehabilitation, if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined in the subchapter apply to cases involving a single violation of the Act, and in which there are no aggravating factors that apply. The board may impose more restrictive sanctions when there are multiple violations of the Act. In cases which do not have standard sanctions outlined in the subchapter, the board may consider any aggravating and/or mitigating factors listed in §281.62 of this title (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The standard and minimum sanctions outlined in the subchapter are applicable to first time violators. The board shall consider revoking the person's license if the person is a repeat offender.

(3) The maximum sanction in all cases is revocation of the licensee's license, which may be

accompanied by an administrative penalty of up to \$5,000 per violation. Each day the violation continues is a separate violation.

(4) Each statutory violation constitutes a separate offense, even if arising out of a single act.

Source Note: The provisions of this §281.60 adopted to be effective September 3, 2006, 31 TexReg 6722; amended to be effective December 7, 2010, 35 TexReg 10689

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RULE §281.61

Definitions of Discipline Authorized

For the purpose of the Act, §565.051 and §568.0035:

- (1) "Probation" means the suspension of a sanction imposed against a license or registration during good behavior, for a term and under conditions as determined by the board.
- (2) "Reprimand" means a public and formal censure against a license or registration.
- (3) "Restrict" means to limit, confine, abridge, narrow, or restrain a license or registration for a term and under conditions determined by the board.
- (4) "Revoke" means a license or registration is void and may not be reissued; provided, however, upon the expiration of 12 months from and after the effective date of the order revoking a license or registration, application may be made to the board by the former licensee or registrant for the issuance of a license or registration upon the successful completion of any requirements determined by the board.
- (5) "Suspend" means a license or registration is of no further force and effect for a period of time as determined by the board.
- (6) "Retire" means a license or registration has been withdrawn and is of no further force and effect.

Source Note: The provisions of this §281.61 adopted to be effective September 3, 2006, 31 TexReg 6722; amended to be effective June 12, 2013, 38 TexReg 3591

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RULE §281.62

Aggravating and Mitigating Factors

The following factors may be considered in determining the disciplinary sanctions imposed by the board if the factors are applicable to the factual situation alleged. The factors are not applicable in situations involving criminal actions (in which case §281.63 of this title (relating to Considerations for Criminal Offenses) applies).

(1) Aggravation. The following may be considered as aggravating factors so as to merit more severe or more restrictive action by the board:

- (A) patient harm and the severity of patient harm;
- (B) economic harm to any individual, entity, or the environment, and the severity of such harm;
- (C) increased potential for harm to the public;
- (D) attempted concealment of the conduct which serves as a basis for disciplinary action under the Act;
- (E) premeditated conduct which serves as a basis for disciplinary action under the Act;
- (F) intentional conduct which serves as a basis for disciplinary action under the Act;
- (G) motive for conduct which serves as a basis for disciplinary action under the Act;
- (H) prior conduct of a similar or related nature;
- (I) disciplinary actions taken by any regulatory agency of the federal government or any state;
- (J) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the conduct which serves as a basis for disciplinary action under the Act;
- (K) violation of a board order;
- (L) failure to implement remedial measures to correct or mitigate harm from the conduct which serves as a basis for disciplinary action under the Act;
- (M) lack of rehabilitative potential or likelihood for future conduct of a similar nature;
- (N) relevant circumstances increasing the seriousness of the conduct which serves as a basis for disciplinary action under the Act; and

(O) circumstances indicating intoxication due to ingestion of alcohol and/or drugs.

(2) Extenuation and Mitigation. The following may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive action by the board:

(A) absence of potential harm to the public;

(B) self-reported and voluntary admissions of the conduct which serves as a basis for disciplinary action under the Act;

(C) absence of premeditation to commit the conduct which serves as a basis for disciplinary action under the Act;

(D) absence of intent to commit the conduct which serves as a basis for disciplinary action under the Act;

(E) absence of prior conduct of a similar or related nature;

(F) absence of disciplinary actions taken by any regulatory agency of the federal government or any state;

(G) implementation of remedial measures to correct or mitigate harm from the conduct which serves as a basis for disciplinary action under the Act;

(H) rehabilitative potential;

(I) prior community service and present value to the community;

(J) relevant circumstances reducing the seriousness of the conduct which serves as a basis for disciplinary action under the Act;

(K) relevant circumstances lessening responsibility for the conduct which serves as a basis for disciplinary action under the Act; and

(L) treatment and/or monitoring of an impairment.

Source Note: The provisions of this §281.62 adopted to be effective September 3, 2006, 31 TexReg 6722; amended to be effective March 25, 2007, 32 TexReg 1508; amended to be effective September 7, 2008, 33 TexReg 7218

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RULE §281.63

Considerations for Criminal Offenses

(a) The purpose of this section is to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain a license or registration from the board and on the disciplinary actions taken by the board. The section applies to all criminal convictions and to all deferred adjudication community supervisions or deferred dispositions, as authorized by the Act, for all types of licenses and registrations.

(b) The board may suspend, revoke, or impose other authorized disciplinary action on a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license or registration because of a person's conviction or deferred adjudication of a crime that serves as a ground for discipline under the Act, and that the board determines directly relates to the duties and responsibilities of a licensee, a registrant, or of an owner of a pharmacy. This subsection applies to persons who are not imprisoned at the time the board considers the conviction or deferred adjudication.

(c) The board shall revoke a license or registration upon the imprisonment of the licensee, the registrant, or the owner of a pharmacy following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.

(d) A person in prison is not eligible for a license or registration.

(e) An applicant for a license or registration from the board shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of application. A current licensee or registrant shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of renewal.

(f) The board shall by rule determine and list in this section which criminal offenses directly relate to the occupation of a licensee or registrant, or the operation of a pharmacy. For all other offenses not listed in this section, in considering whether a criminal conviction or deferred adjudication directly relates to the occupation of a licensee or a registrant, or the operation of a pharmacy, the board shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license or registration to engage in the occupation of the licensee or registrant, or the operation of a pharmacy;
- (3) the extent to which a license or registration might afford the licensee or registrant an opportunity to repeat the criminal activity in which the person had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensee or registrant.

(g) The board has the authority to impose disciplinary action as authorized by the Act, for those criminal offenses that provide grounds for discipline under the Act. In reaching a decision regarding the severity of the disciplinary sanction to impose on a license or registration, the board shall, in its discretion and unless otherwise specified in §281.64 of this title (relating to Sanctions for Criminal Offenses), also determine the person's fitness to perform the duties and discharge the responsibilities of a licensee or registrant by evaluating and balancing these factors in the following priority with the first being the highest priority:

- (1) the extent and nature of the person's past criminal activity;
- (2) the amount of time that has elapsed since the person's last criminal activity;
- (3) the person's rehabilitation or rehabilitative effort while incarcerated or following release as corroborated by extrinsic evidence;
- (4) the age of the person at the time of the commission of the crime, if younger than 21 years of age at the time of the crime;
- (5) the conduct and work activity of the person prior to and following the criminal activity; and
- (6) other evidence of the person's present fitness, including letters of recommendation from:
 - (A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff and chief of police in the community where the person resides; and
 - (C) any other persons in contact with the person.

(h) In order to establish the factors in subsection (g) of this section, a person with a conviction or deferred adjudication shall:

- (1) to the extent possible, secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities specified in subsection (g)(6) of this section;
- (2) cooperate with the board by providing the information required by this section, including proof that he or she has:
 - (A) maintained a record of steady employment, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment;
 - (B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment, and a recommendation from the spouse or either parent;
 - (C) maintained a record of good conduct as evidenced by recommendations, absence of other criminal activity or documentation of community service since conviction or deferred adjudication;
 - (D) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, as evidenced by certified copies of a court release or other documentation from the court system that all monies have been paid; and

(E) obtained appropriate treatment and/or counseling, if applicable.

(i) The board has determined that the following crimes directly relate to duties and responsibilities of board licensees or registrants. The commission of each indicates an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration, because commission of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. Even if the commission of these crimes did not occur while the licensee or registrant was on-duty or employed at a pharmacy, the board has determined that the crimes directly relate to the practice of pharmacy based on a lack of integrity and good moral character exhibited by the commission of the crimes. In addition, the direct relationship to a license or registration is presumed when any crime occurs in connection with the practice of pharmacy or the operation of a pharmacy. The crimes are as follows:

(1) practicing or operating a pharmacy without a license or registration and other violations of the Pharmacy Act;

(2) deceptive business practices under the Texas Penal Code;

(3) Medicare or Medicaid fraud;

(4) a misdemeanor or felony offense under the Texas Penal Code involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) failure to report abuse;

(N) bribery;

(O) harassment;

(P) insurance claim fraud;

(Q) driving while intoxicated;

(R) solicitation of professional employment under the Penal Code §38.12(d) or Occupations Code, Chapter 102;

(S) mail fraud; or

(T) any criminal offense which requires the individual to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure.

(5) any crime of moral turpitude;

(6) a misdemeanor or felony offense under Chapters 431 and 481 through 486, Health and Safety Code and the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(7) other misdemeanors or felonies which serve as grounds for discipline under the Act, including violations of the Penal Code, Titles 4, 5, 6, 7, 8, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or registrant, or to be unfit for licensure or registration, if action by the board will promote the intent of the Pharmacy Act, board rules including this chapter, and Occupations Code, Chapter 53.

Source Note: The provisions of this §281.63 adopted to be effective September 3, 2006, 31 TexReg 6722; amended to be effective March 25, 2007, 32 TexReg 1508; amended to be effective June 8, 2008, 33 TexReg 4304; amended to be effective September 7, 2008, 33 TexReg 7218; amended to be effective December 7, 2010, 35 TexReg 10689; amended to be effective September 8, 2013, 38 TexReg 5721

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RULE §281.64

Sanctions for Criminal Offenses

(a) The guidelines for disciplinary sanctions apply to criminal convictions and to deferred adjudication community supervisions or deferred dispositions, as authorized by the Act, for all types of licensees and registrants including applicants for such licenses and registrations issued by the board. The board considers criminal behavior to be highly relevant to an individual's fitness to engage in pharmacy practice and has determined that the sanctions imposed by these guidelines promote the intent of §551.002 of the Act. The "date of disposition," when referring to the number of years used to calculate the application of disciplinary sanctions, refers to the date a conviction, a deferred adjudication, or a deferred disposition is entered by the court. The use of the term "currently on probation" is construed to refer to individuals currently serving community supervision or any other type of probationary term imposed by an order of a court for a conviction, deferred adjudication, or deferred disposition.

(b) The sanctions imposed by the guidelines can be used in conjunction with other types of disciplinary actions, including administrative penalties, as outlined in this section.

(c) The board has determined that the nature and seriousness of certain crimes outweigh other factors to be considered in §281.63(g) of this title (relating to Considerations for Criminal Offenses) and necessitate the disciplinary action listed in paragraphs (1) - (3) of this subsection. In regard to the crimes enumerated in this rule, the board has weighed the factors, which are required to be considered from §281.63(g) of this title, in a light most favorable to the individual, and even if these factors were present, the board has concluded that the following sanctions apply to individuals with the criminal offenses as described in paragraphs (1) - (3) of this subsection:

(1) Criminal offenses which require the individual to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure--denial or revocation;

(2) Felony offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

(i) Offenses involving manufacture, delivery, possession with intent to deliver, or illegal dispensing:

(I) Currently on probation--denial or revocation;

(II) 0-5 years since date of disposition--denial or revocation;

(III) 6-10 years since date of disposition--denial or revocation;

(IV) 11-20 years since date of disposition--5 years probation;

(V) Over 20 years since date of disposition--3 years probation;

(ii) Offenses involving possession of drugs, fraudulent prescriptions, theft of drugs, or alcohol:

(I) If the offense involved only the personal use of the drugs or alcohol and/or chemical impairment:

(-a-) Currently on probation--90-day to one-year suspension followed by 5 years probation;

(-b-) 0-5 years since date of disposition--5 years probation;

(-c-) 6-10 years since date of disposition--3 years probation;

(-d-) 11-20 years since date of disposition--1 year probation; or

(II) Otherwise:

(-a-) Currently on probation--denial or revocation;

(-b-) 0-5 years since date of disposition--denial or one-year suspension followed by 5 years probation;

(-c-) 6-10 years since date of disposition--180-day suspension followed by 5 years probation;

(-d-) 11-20 years since date of disposition--3 years probation;

(-e-) Over 20 years since date of disposition--1 year probation;

(B) Offenses involving sexual contact or violent acts, or offenses considered to be felonies of the first degree under the Texas Penal Code:

(i) Currently on probation--denial or revocation;

(ii) 0-5 years since date of disposition--denial or revocation;

(iii) 6-10 years since date of disposition--denial or revocation;

(iv) 11-20 years since date of disposition--5 years probation;

(v) Over 20 years since date of disposition--1 year probation;

(C) Other felony offenses:

(i) Currently on probation--denial, revocation, or 30- to 180-day suspension followed by 5 years probation;

(ii) 0-5 years since date of disposition--5 years probation;

(iii) 6-10 years since date of disposition--3 years probation;

(iv) 11-20 years since date of disposition--1 year probation;

(3) Misdemeanor offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

- (i) Offenses involving manufacture, delivery, or possession with intent to deliver:
 - (I) Currently on probation--denial or revocation;
 - (II) 0-10 years since date of disposition--30- to 180-day suspension followed by 5 years probation;
 - (III) 11-20 years since date of disposition--1 year probation;
- (ii) Offenses involving possession of drugs, fraudulent prescriptions, or theft of drugs:
 - (I) Pharmacists:
 - (-a-) 0-5 years since date of disposition--5 years probation;
 - (-b-) 6-10 years since date of disposition--3 years probation;
 - (II) Pharmacy Technicians and Pharmacy Technician Trainees:
 - (-a-) 0-5 years since date of disposition and offense determined to be in violation of §568.003(a)(5) or (9) of the Act--5 years probation;
 - (-b-) 0-5 years since date of disposition and determined not to be in violation of §568.003(a)(5) or (9) of the Act--1 year probation;
 - (-c-) 6-10 years since date of disposition and offense determined to be in violation of §568.003(a)(5) or (9) of the Act--3 years probation;
 - (III) If 0-5 years since date of disposition, and the offense did not involve only personal use of the drugs and/or chemical impairment, an additional 30- to 90-day suspension will be imposed preceding the probation for the offenses in this clause;
- (B) Intoxication and alcoholic beverage offenses as defined in the Texas Penal Code, if two such offenses involving intoxication due to ingestion of alcohol occurred in the previous five years or if one such offense involving intoxication due to ingestion of controlled substances or dangerous drugs occurred in the previous five years:
 - (i) Pharmacists: 0-5 years since date of disposition and offense determined to be in violation of §565.001(a)(4) or (7) of the Act--5 years probation;
 - (ii) Pharmacy Technicians and Pharmacy Technician Trainees: 0-5 years since date of disposition and offense determined to be in violation of §568.003(a)(5) or (9) of the Act--5 years probation;
- (C) Other misdemeanor offenses involving moral turpitude: 0-5 years since date of disposition--reprimand.
- (d) When an individual has multiple criminal offenses or other violations, the board shall consider imposing additional more severe types of disciplinary sanctions, as deemed necessary.
- (e) An individual who suffers from an impairment as described by §565.001(a)(4) or (7) or §568.003(a)(5) or (9), may provide mitigating information including treatment, counseling, and monitoring in order to mitigate the sanctions imposed.

Source Note: The provisions of this §281.64 adopted to be effective September 3, 2006, 31 TexReg 6722; amended to be effective March 25, 2007, 32 TexReg 1508; amended to be effective March 6, 2008, 33 TexReg 1783; amended to be effective June 8, 2008, 33 TexReg 4304; amended to be effective September 7, 2008, 33 TexReg 7218; amended to be effective May 30, 2010, 35 TexReg 4164; amended to be effective September 14, 2010, 35 TexReg 8356; amended to be effective December 7, 2010, 35 TexReg 10689; amended to be effective June 7, 2012, 37 TexReg 4046; amended to be effective September 9, 2012, 37 TexReg 6916; amended to be effective June 19,2014, 39 TexReg 4655

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RULE §281.65

Schedule of Administrative Penalties

The board has determined that the assessment of an administrative penalty promotes the intent of §551.002 of the Act. In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failure to provide patient counseling: \$1,000;

(B) failure to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A): \$1,000;

(C) failure to clarify a prescription with the prescriber: \$1,000;

(D) failure to properly supervise or improperly delegating a duty to a pharmacy technician: \$1,000;

(E) failure to identify the dispensing pharmacist on required pharmacy records: \$500;

(F) failure to maintain records of prescriptions: \$500;

(G) failure to respond or failure to provide all requested records within the time specified in a board audit of continuing education records: \$100 per hour of continuing education credit not provided;

(H) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$1,000;

(I) shortages of prescription drugs following an accountability audit: up to \$5,000;

(J) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to \$5,000;

(K) dispensing unauthorized prescriptions: up to \$5,000;

(L) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to \$5,000;

(M) violating a disciplinary order of the Board or a contract under the program to aid impaired pharmacists or pharmacy students under Chapter 564 of the Act: \$500 - \$1,000;

(N) failure to report or to assure the report of a malpractice claim: up to \$1,000;

(O) failure to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to \$1,000;

(P) practicing pharmacy with a delinquent license: \$250 - \$1,000;

(Q) operating a pharmacy with a delinquent license: \$1,000 - \$5,000;

(R) allowing an individual to perform the duties of a pharmacy technician without a valid registration: \$500 - \$2,000;

(S) failure to comply with the requirements of the Official Prescription Program: up to \$1,000;

(T) aiding and abetting the unlicensed practice of pharmacy, if the pharmacist knew or reasonably should have known that the person was unlicensed at the time: up to \$5,000;

(U) a conviction or deferred adjudication for a misdemeanor or felony, which serves as a ground for discipline under the Act: up to \$5,000;

(V) unauthorized substitutions: \$1,000;

(W) false or fraudulent claims to third parties for reimbursement of pharmacy services: up to \$5,000;

(X) sale, purchase, or trade or offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to \$1,000;

(Y) sale, purchase, or trade or offer to sell, purchase, or trade of prescription drug samples as provided by §281.7(a)(27) of this title (relating to Grounds for Discipline for a Pharmacist License): up to \$1,000;

(Z) failure to keep, maintain or furnish an annual inventory as required by §291.17: \$1,000;

(AA) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,000;

(BB) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(CC) failure to inform the board of any notification or information required to be reported by the Act or rules: \$250 - \$500.

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failure to provide patient counseling: \$1,500;

(B) failure to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A) of this title (relating to Operational Standards): \$1,500;

(C) failure to clarify a prescription with the prescriber: \$1,500;

- (D) failure to properly supervise or improperly delegating a duty to a pharmacy technician: \$1,500;
- (E) failure to identify the dispensing pharmacist on required pharmacy records: \$500;
- (F) failure to maintain records of prescriptions: \$500;
- (G) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$1,000;
- (H) shortages of prescription drugs following an accountability audit: up to \$5,000;
- (I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to \$5,000;
- (J) dispensing unauthorized prescriptions: up to \$5,000;
- (K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to \$5,000;
- (L) violating a disciplinary order of the Board: \$1,000 - \$5,000;
- (M) failure to report or to assure the report of a malpractice claim: up to \$1,000;
- (N) failure to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to \$1,000;
- (O) allowing a pharmacist to practicing pharmacy with a delinquent license: \$250 - \$1,000;
- (P) operating a pharmacy with a delinquent license: \$1,000 - \$5,000;
- (Q) allowing an individual to perform the duties of a pharmacy technician without a valid registration: \$500 - \$3,000;
- (R) failure to comply with the requirements of the Official Prescription Program: up to \$1,000;
- (S) aiding and abetting the unlicensed practice of pharmacy, if an employee of the pharmacy knew or reasonably should have known that the person engaging in the practice of pharmacy was unlicensed at the time: up to \$5,000;
- (T) a conviction or deferred adjudication for a misdemeanor or felony which serves as a ground for discipline under the Act: up to \$5,000;
- (U) unauthorized substitutions: \$1,000;
- (V) false or fraudulent claims to third parties for reimbursement of pharmacy services: up to \$5,000;
- (W) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to \$1,000;

(X) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drug samples as provided by §281.8(b)(2) of this title (relating to Grounds for Discipline for a Pharmacy License): up to \$1,000;

(Y) failure to keep, maintain or furnish an annual inventory as required by §291.17 of this title (relating to Inventory Requirements): \$1,000;

(Z) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,500;

(AA) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(BB) failure to inform the board of any notification or information required to be reported by the Act or rules: \$250 - \$500.

(3) The following violations by a pharmacy technician may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failure to respond or failure to provide all requested records within the time specified in a board audit of continuing education records: \$30 per hour of continuing education credit not provided;

(B) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$500;

(C) shortages of prescription drugs following an accountability audit: up to \$5,000;

(D) violating a disciplinary Order of the Board: \$250 - \$500;

(E) failure to report or to assure the report of a malpractice claim: up to \$500;

(F) performing the duties of a pharmacy technician without a valid registration: \$250 - \$1,000;

(G) a conviction or deferred adjudication for a misdemeanor or felony, which serves as a ground for discipline under the Act: up to \$5,000;

(H) false or fraudulent claims to third parties for reimbursement of pharmacy services: up to \$5,000;

(I) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,000;

(J) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(K) failure to inform the board of any notification or information required to be reported by the Act or rules: \$100 - \$250.

(4) Any of the violations listed in this section may be appropriate for disposition by the administrative penalties in this section in conjunction with any other penalties in §281.61 of this chapter.

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.

(6) The amount, to the extent possible, shall be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any

prohibited act, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) efforts to correct the violation; and

(F) and other matter that justice may require.

Source Note: The provisions of this §281.65 adopted to be effective September 3, 2006, 31 TexReg 6722; amended to be effective September 7, 2008, 33 TexReg 7218; amended to be effective June 7, 2009, 34 TexReg 3390; amended to be effective December 6, 2009, 34 TexReg 8690

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DISCIPLINARY GUIDELINES

RULE §281.66

Application for Reissuance or Removal of Restrictions of a License or Registration

(a) A person whose pharmacy license, pharmacy technician registration, or license or registration to practice pharmacy has been canceled, revoked, or restricted, whether voluntary or by action of the board, may, after 12 months from the effective date of such cancellation, revocation, or restriction, apply to the board for reinstatement or removal of the restriction of the license or registration.

(1) The application shall be given under oath and on the form prescribed by the board.

(2) A person applying for reinstatement or removal of restrictions may be required to meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs.

(3) A person applying for reinstatement or removal of restrictions has the burden of proof.

(4) On investigation and hearing, the board may in its discretion grant or deny the application or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification.

(5) If such application is denied by the board, a subsequent application may not be considered by the board until 12 months from the date of denial of the previous application.

(6) The board in its discretion may require a person to pass an examination or examinations to reenter the practice of pharmacy.

(7) The fee for reinstatement of a license or registration shall be \$100 which is to be paid to the Texas State Board of Pharmacy and includes the processing of the reinstatement application.

(b) In reinstatement cases not involving criminal offenses, the board may consider the following items in determining the reinstatement of an applicant's previously revoked or canceled license or registration:

(1) moral character in the community;

(2) employment history;

(3) financial support to his/her family;

(4) participation in continuing education programs or other methods of maintaining currency with the practice of pharmacy;

(5) criminal history record, including arrests, indictments, and convictions relating to felonies or

misdemeanors involving moral turpitude;

(6) offers of employment in pharmacy;

(7) involvement in public service activities in the community;

(8) failure to comply with the provisions of the board order revoking or canceling the applicant's license or registration;

(9) action by other state or federal regulatory agencies;

(10) any physical, chemical, emotional, or mental impairment;

(11) the gravity of the offense for which the applicant's license or registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare;

(12) the length of time since the applicant's license or registration was canceled, revoked or restricted, as a factor in determining whether the time period has been sufficient for the applicant to have rehabilitated himself/herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare;

(13) competency to engage in the practice of pharmacy; or

(14) other rehabilitation actions taken by the applicant.

(c) If reinstatement cases involves criminal offenses, the sanctions specified in §281.64 of this chapter (relating to Sanctions for Criminal Offenses) apply.

Source Note: The provisions of this §281.66 adopted to be effective March 25, 2007, 32 TexReg 1508; amended to be effective December 14, 2008, 33 TexReg 10026; amended to be effective December 6, 2009, 34 TexReg 8690; amended to be effective September 14, 2010, 35 TexReg 8356; amended to be effective September 8, 2013, 38 TexReg 5721

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RULE §281.67

Sanctions for Out-of-State Disciplinary Actions

(a) When determining the appropriate sanction for a disciplinary action taken by a regulatory board of another state under §565.001(a)(16), §565.002(a)(13), or §568.003(a)(13), the board has determined that the following shall be applicable for all types of licensees and registrants for such licenses and registrations issued by the board.

(1) If the other state's disciplinary action resulted in the license or registration being restricted, suspended, revoked, or surrendered, the appropriate sanction shall be the same as the sanction imposed by the other state, such that the licensee or registrant has the same restriction against practice in Texas.

(2) If the license or registration is subject to any other type of disciplinary sanctions, the appropriate sanction shall be equivalent to or less than that imposed by the other state unless contrary to board policy.

(b) The sanctions imposed by this chapter can be used in conjunction with other types of disciplinary actions, including administrative penalties, as outlined in this chapter.

(c) When a licensee or registrant has additional violations of the Texas Pharmacy Act, the board shall consider imposing additional more severe types of disciplinary sanctions, as deemed necessary.

Source Note: The provisions of this §281.67 adopted to be effective June 7, 2012, 37 TexReg 4046; amended to be effective September 8, 2013, 38 TexReg 5721

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DISCIPLINARY GUIDELINES

RULE §281.68

Remedial Plan

(a) The board may issue a remedial plan by agreement with the respondent to resolve the investigation of a complaint relating to the Act unless the complaint involves:

- (1) a death;
- (2) a hospitalization;
- (3) the commission of a felony;
- (4) the unlicensed practice of a licensee or registrant;
- (5) audit shortages;
- (6) diversion of controlled substances;
- (7) impairment by chemical abuse or mental or physical illness of a licensee or registrant;
- (8) unauthorized dispensing of a prescription drug;
- (9) gross immorality as defined by the board;
- (10) engaging in fraud, deceit, or misrepresentation as defined by board rule;
- (11) disciplinary action by another regulatory board of this state or another state; or
- (12) any other matter determined by the board.

(b) The board shall not impose a remedial plan if the appropriate resolution of the complaint involves a restriction on the manner in which a license holder practices pharmacy.

(c) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding 24 months for the resolution of a different complaint relating to this subtitle.

(d) If a license holder complies with and successfully completes the terms of a remedial plan, the board shall remove all records of the remedial plan from the board's records on the fifth anniversary of the date the board issued the terms of the remedial plan.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount of \$1,000 to recover the costs of administering the plan.

Source Note: The provisions of this §281.68 adopted to be effective December 10, 2013, 38 TexReg 8834

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DENTAL BOARD OF CALIFORNIA
DISCIPLINARY GUIDELINES WITH MODEL LANGUAGE

August 30, 2010

Issued by
Dental Board of California
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INTRODUCTION

In keeping with its obligation to protect the consumers of dental services from the unsafe, incompetent, negligent or impaired dentists and dental auxiliaries, the Dental Board of California ("Board") has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Dental Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount and to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of the licensee. Consequently, the Board requests that the Administrative Law Judge ("ALJ") clearly state the factual basis for his or her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons for the deviation and to evaluate the appropriateness of the decision.

These guidelines are for use by administrative law judges, attorneys and any licensee involved in settlement of disciplinary actions or statement of issues proceedings. It is emphasized that these are guidelines and the Board acknowledges that there may be departures in individual cases depending upon mitigating or aggravating circumstances. Probation conditions are divided into two categories: (1) Standard conditions, to be used in all cases of probation; and (2) Optional conditions, to be imposed dependent upon the circumstances and nature of an individual case. Optional conditions will be used to define the extent of the disciplinary action if a given case warrants a penalty above the minimum established but below the established maximum. In a Statement of Issues, optional conditions should also be used if a probationary license is issued depending upon the nature and circumstances of the matter.

If, at the time of hearing, the ALJ finds that the Respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the Respondent has demonstrated a capacity to practice dentistry safely, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the dentist or dental auxiliary is suspended in order to correct deficiencies in skills, education or rehabilitation.

FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation should be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and variety of violations.
6. Mitigation evidence.
7. Aggravating evidence.
8. Rehabilitation evidence.
9. In case of a criminal conviction, compliance with conditions of sentence and court-ordered probation.
10. Criminal record.
11. Time passed since the act(s) or offense(s) occurred.
12. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

Evidence of Rehabilitation:

The following documents are examples of evidence the Respondent may submit to demonstrate his or her rehabilitative efforts and dental competency:

- Successful completion of drug or alcohol treatment program
- Individual or group counseling
- Random, documented biological fluid screening
- Participation in dental support groups
- Education courses taken related to addictive disease

- Adherence to a 12-step recovery program philosophy, or equivalent
- Written documentation of participation in 12-step recovery groups, or equivalent
- Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the Respondent has attended, the counselor's diagnosis of Respondent's condition and current state of rehabilitation improvement, the counselor's basis for determining improvement, and the credentials of the counselor and records from a treatment facility.
- For licensees, statement from employers documenting that the employer is aware of the previous drug or alcohol abuse problems. Statement must also substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed dental functions in a safe and competent manner. Each statement should include the period of time and capacity in which the person worked with the Respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- Recent, dated laboratory analyses or drug screen reports, where appropriate.
- Recent, dated performance evaluations from Respondent's employer.
- Recent, dated physical examination reports by a licensed physician and surgeon, nurse practitioner, or physician assistant.
- Certificates or transcripts of courses related to dentistry that Respondent completed since the date of the violation. A dentist or dental auxiliary whose license has been revoked can use his or her former license number to obtain continuing education credit or hours or for any other purpose.

Mitigation Evidence:

- Length of time in practice
- No prior disciplinary action

- Illness or death of a family member or other personal circumstances affecting licensee's performance at the time of the incident
- Early admissions

OTHER SITUATIONS IN WHICH REVOCATION IS THE RECOMMENDED PENALTY

Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.

Violation of a condition(s) of the Board's Probation Program.

Substantiated evidence or convictions of physical abuse or sexual offenses.

PROBATION TERMS AND CONDITIONS

The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

Generally, the Board recommends a minimum of three years of probation unless a longer or shorter term is warranted.

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Dental Board of California or its designee.

LIST OF STANDARD PROBATIONARY TERMS AND CONDITIONS

1. Obey all laws
2. Quarterly Reports
3. Comply with the Board's Probation Program
4. Address Change, Name Change, License Status
5. Meetings and Interviews
6. Status of Residency, Practice or Licensure Outside of State
7. Submit Documentation
8. Cost Recovery
9. Probation Monitoring Costs
10. License Surrender
11. Function as a Licensee
12. Continuance of Probationary Term/Completion of Probation
13. Sale or Closure of an Office or Practice
14. Notification

LIST OF ADDITIONAL PROBATIONARY TERMS AND CONDITIONS

15. Suspension of License
16. Remedial Education
17. Examination
18. Supervised Practice
19. Restricted Practice

20. Third Party Chaperone Monitor
21. Restitution
22. Community Service
23. Psychological Evaluation
24. Psychotherapy
25. Physical Evaluation
26. Diversion Program
27. Biological Testing
28. Abstain from Use of Alcohol, Controlled Substances, and Dangerous Drugs
29. Surrender/Partial Surrender of Drug Enforcement Agency Permit
30. Ethics Course
31. Billing Monitor
32. Solo Practice
33. Controlled Substance-Maintenance of Records and Inventory
34. Clinical Training Program

**MODEL INTRODUCTORY LANGUAGE
TO BE USED FOR ALL PROBATIONARY ORDERS**

The following introductory language is to be included in decisions that place the respondent's license on probation.

IT IS HEREBY ORDERED that (INSERT APPROPRIATE LICENSE CATEGORY) Number (INSERT LICENSE NUMBER) issued to Respondent is revoked. However, the revocation is stayed and Respondent's (INSERT LICENSE CATEGORY) is placed on probation for (INSERT NUMBER OF YEARS) years on the following conditions.

In order to provide clarity and consistency in its decisions, the following language should be used in proposed decisions or stipulated agreements for exam applicants, credential applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

Exam applicants who are placed on probation:

The application of respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of-- _____ years on the following conditions:

Credential applicants who are placed on probation:

The application of respondent _____ licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements including payment of all fees. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of _____ years on the following conditions:

Reinstatement of licensure with conditions of probation:

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

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by a petitioner, a probation condition requiring payment of the original cost recovery on a payment plan must be included in the reinstatement and decision.

Language for Additional Permits

It is further ordered that (INSERT TYPE OF ADDITIONAL LICENSE OR PERMIT) Number (INSERT LICENSE OR PERMIT NUMBER) issued to Respondent is revoked. However, the revocation is stayed and Respondent's (INSERT TYPE OF ADDITIONAL LICENSE OR PERMIT) name the certificates) is placed on probation for (INSERT NUMBER OF YEARS) years on the following conditions.

STANDARD PROBATION CONDITIONS FOR ALL DECISIONS AND ORDERS

SEVERABILITY CLAUSE – Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

RATIONALE: The severability clause is required for all decisions and orders and stipulated agreements where there are conditions of probation, to avoid the possibility of all probation conditions being invalidated upon a successful appeal.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws and all rules and regulations governing the practice of dentistry in California, and remain in full compliance with any court ordered criminal probation, payments and other requirements. A full and detailed account of all misdemeanor and felony arrests and convictions shall be reported by Respondent to the Board in writing within seven (7) days of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit a completed California Department of Justice state and federal Livescan fingerprint form, unless previously submitted as part of the licensure application process. Fingerprints shall be submitted within 15 calendar days of the effective date of the Decision and Order.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

RATIONALE: All licensees are responsible for abiding by federal, state, and local laws. Licensees are also responsible for complying with criminal court orders. If a licensee is subject to other health-care related board or regulatory agency orders, violations of those orders may impact the status of his or her discipline by the Board. This condition

emphasizes the Respondent's responsibility and specifies the Board's authority to take more immediate and severe action if other violations occur. If a licensee whose license is on probation violates other probationary conditions or order they may be unsafe to practice in this state.

(2) QUARTERLY REPORTS - Respondent shall submit quarterly reports signed under penalty of perjury stating whether there has been compliance with all the conditions of probation. Respondent shall submit a quarterly report no later than seven (7) calendar days from the beginning of the assigned quarter.

RATIONALE: This provides the Board with a mechanism for maintaining communication with the Respondents between meetings; gathering pertinent information from Respondent's; obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. This also allows coordination with other state agencies that discipline dentists and dental auxiliaries.

(3) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of probation established by the Board and all requirements necessary to implement the conditions of probation. Respondent shall cooperate with the Board in its monitoring and investigation of the Respondent's compliance with the conditions of probation. Respondent shall respond to all requests and inquiries from the Board within the time period specified by the Board.

Upon successful compliance with the conditions of probation, and completion of the probation term, Respondent's license shall be fully restored.

RATIONALE: Full compliance with conditions of probation demonstrate a Respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.

(4) ADDRESS CHANGE, NAME CHANGE, LICENSE STATUS - Respondent shall inform the Board in writing within 15 calendar days of any change in his or her address of record, physical employment address, physical residence address, and any legal name change. Respondent shall maintain an active, current license with the Board, including while suspended from practice of dentistry unless otherwise specified by the disciplinary orders.

Any misrepresentation by Respondent of his or her restricted license status to the public shall be a violation of the probation conditions.

RATIONALE: Informing the Board of address and name changes is necessary to ensure ongoing Board monitoring and contact with the Respondent.

(5) MEETINGS AND INTERVIEWS - Respondent shall appear in person for meetings and shall be available by telephone for interviews as directed by the Board.

RATIONALE: This provides a means for the Board representatives to make periodic assessments of the Respondent, to determine compliance with probation conditions and to give guidance and directions to licensees on probation.

(6) STATUS OF RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - In the event Respondent should leave California to reside or practice outside the state, Respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Period of practice outside of California will not apply to the reduction of the probationary period.

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as a dentist or dental auxiliary or held any health-care related professional license or certificate. Respondent shall further provide information regarding the status of each license and certificate and any changes in the license or certificate status during the term of probation. Respondent shall inform the Board if he or she applies for or obtains a dental or dental auxiliary license or certificate outside of California during the term of probation.

For purposes of this condition, non-practice due to Board ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

RATIONALE: Ensures that Respondents may not complete probation without being fully monitored for their period of probation in California. This further ensures that the Board is aware of all licensure outside of California as a dentist or dental auxiliary or in any health care related capacity.

(7) SUBMIT DOCUMENTATION - Upon request, Respondent shall submit documentation to the Board including, but not limited to the following: Livescan forms, quarterly reports, authorization for release of confidential information.

Such documentation shall be submitted under penalty of perjury, as required by the Board. On a case-by-case basis, documents shall be required to contain statements

relative to Respondent's compliance with all the conditions of probation, and compliance with Board instructions.

RATIONALE: This provides the Board with a mechanism for maintaining communication with the Respondent between meetings; gathering pertinent information from the Respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis.

(8) COST RECOVERY – Respondent is hereby ordered to reimburse the Board the amount of \$_____ within ninety (90) calendar days from the effective date of this decision for its investigative and prosecution costs up to the date of the hearing. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probationary order, unless the Board or its designee agrees in writing to payment by an installment plan because of financial hardship. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. However, full payment of any and all costs required by this condition must be received by the Board no later than one (1) year prior to the scheduled termination of probation. Periods of non-practice by Respondent shall not relieve Respondent of his or her obligation to reimburse the Board for its costs.

RATIONALE: The Board has statutory authority to collect probation monitoring costs and all orders should contain this provision.

(9) PROBATION MONITORING COSTS: All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board and must be received by the dates specified.

If Respondent is unable to submit costs for any month, he or she shall be required, instead to submit an explanation of why he or she is unable to submit the costs, and the dates he or she will be able to submit the costs including payment amounts. Supporting documentation and evidence of why the Respondent is unable to make such payments must accompany this submission.

In addition to any other disciplinary action taken by the Board, the probationary period will be extended.

RATIONALE: The Board has statutory authority to collect probation monitoring costs and all orders should contain this provision.

(10) LICENSE SURRENDER - If Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his or her license to the Board. The Board shall evaluate 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. Such surrender shall be accomplished through a written stipulated agreement, without the filing of an accusation or petition to revoke probation, and without further hearing. Upon formal acceptance of the surrender, Respondent shall deliver his or her wallet and wall certificate to the Board or its designee and Respondent shall no longer practice dentistry or be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. If Respondent re-applies for a dental license, the application shall be treated as a petition for reinstatement of a revoked license.

(11) FUNCTION AS A LICENSEE – Respondent, during the period of probation, shall engage in the practice of [INSERT APPROPRIATE LICENSING CATEGORY, e.g. dentistry, dental hygiene, dental hygiene in extended functions, etc.] in California for a minimum of sixteen (16) hours per week or sixty-four (64) hours per calendar month. For the purpose of compliance with this section, “engaged in the practice of [INSERT APPROPRIATE LICENSING CATEGORY] may include, when approved by the Board, volunteer work in [INSERT APPROPRIATE LICENSING CATEGORY], or work in any non-direct patient position that requires licensure.

In the event Respondent should leave California to practice outside the state, Respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Periods of practice outside of California will not apply to the reduction of the probationary period. In the event Respondent ceases to practice a minimum of sixteen (16) hours per calendar week or sixty-four hours per calendar month in California, Respondent must provide written notification of that fact to the Board. The period when the Respondent is not practicing, the minimum number of hours, will not apply to the reduction of the probationary period. Absence from practice shall not relieve the Respondent from maintaining a current license or from fulfilling all of the terms and conditions of probation. For purposes of this condition, non-practice due to Board ordered suspension shall not be considered a period of non-practice. If

Respondent stops practicing in California for a total of five (5) years, Respondent's license shall be automatically cancelled.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if Respondent is in compliance with all other probation conditions, the Board, in its sole discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply unless they have been modified by the Board via a petition for modification of probation.

RATIONALE: This provides the Board with an opportunity to monitor Respondents and determine if they can perform the functions and duties of his or her licensing category in a competent manner. It also prevents Respondents from merely "sitting out" the probation and avoiding the necessity of demonstrating competence and compliance with probation conditions.

(12) CONTINUANCE OF PROBATIONARY TERM/COMPLETION OF PROBATION -

If Respondent violates the terms of this probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation or suspension of the Respondent's license. If, during the period of probation, an accusation and/or a petition to revoke probation or both has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation and/or a petition to revoke probation or both against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation and/or the petition to revoke probation has been acted upon by the Board. Upon successful completion of probation, Respondent's license will be fully restored.

RATIONALE: The provision ensures that the Board will be able to continue monitoring the practice of licensees who are either out of compliance with his or her probation conditions or have allegedly committed further acts that constitute a violation of the Dental Practice Act. This is necessary to protect the public from licensees who have already demonstrated a lack of compliance.

(13) SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE -

If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records.

Respondent shall also ensure that patients are refunded money for dental work not completed, and shall not misrepresent to anyone the reason for the sale or closure of

the office and/or practice. The provisions of this condition in no way authorize the practice of dentistry by the Respondent during any period of license suspension.

RATIONALE: This provision is intended to protect patients whose dentist of record has been disciplined and he or she needs to or chooses to sell or close his or her practice.

(14) NOTIFICATION - Prior to engaging in the practice of dentistry, the Respondent shall provide a true copy of the Decision and Accusation to his or her employer, and at any other facility where Respondent engages in the practice of dentistry. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in place of employment.

RATIONALE: The condition provides the Board with a mechanism for ensuring that the employer providing dental services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

ADDITIONAL CONDITIONS OF PROBATION MODEL LANGUAGE

(15) SUSPENSION - Commencing from the effective date of this decision, Respondent shall be suspended from the practice of dentistry for a minimum period of (minimum of 14 days). Respondent shall not mislead patients regarding the reasons for suspension from practicing dentistry.

During the suspension Respondent shall not practice dentistry directly or indirectly, including the supervision of dental auxiliaries, nor shall Respondent receive or have set aside for future receipt, any new monies derived from the practice of dentistry as defined by the provisions of Business and Professions Code Section 1625, which includes managing or conducting as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed.

If Respondent operates his or her own office as a solo practitioner or as a one person professional corporation, said office is to be closed except for administrative purposes (making future appointments when suspension is over, opening mail, referring patients, accepting payments on account, and general office administration); and Respondent shall not lease the dental office nor make any monetary gain from the practice earned during the period of time that the office is closed.

During the suspension period, all probation conditions are in full force and effect except those relating to the actual practice of [INSERT APPROPRIATE LICENSE CATEGORY.]

RATIONALE: This provision is necessary for the protection of the public because in some cases the licensee needs to stop practicing and participate in either rehabilitation or remedial education before resuming practice. And, it is appropriate in cases where the serious nature of the misconduct warrants a period of suspension from practice.

(16) REMEDIAL EDUCATION – Within (90 days) of the effective date of this decision, Respondent shall submit to the Board for its prior approval, an appropriate program of remedial education related to (*the cause of disciplinary action*) in an educational facility or program which must also to be approved by the Board. (*If appropriate, Respondent shall be evaluated by a dental educational institution prior to submitting remedial education courses for approval.*) The exact number of hours and specific content of the program shall be determined by the Board or its designee. Respondent shall successfully complete the remedial education program and may be required to pass an examination administered by the Board or its designee related to the program's content. (*If appropriate, Respondent shall be restricted from the practice of {areas where a*

deficiency has been identified} until the remedial education program has been successfully completed.) Respondent shall pay all costs of the remedial education program.

RATIONALE: In those instances where a licensee has demonstrated negligence or incompetence, or has been found to have performed work or attempting treatment beyond the scope of training or experience, the Board will impose a program of remedial education. This program shall specify the areas and hours of education remediation required, and may also dictate the institution(s) where the education will be received. A remedial education program is usually required prior to allowing the licensee to return to the identified deficient area of practice, and requires prior approval by the Board. Continuing education courses used for renewal of licensure will not fulfill the remedial education requirement. This program is for dentists and auxiliaries who have demonstrated deficiencies in skill but do not constitute a present danger to patients in other areas of practice.

(17) EXAMINATION – Respondent shall not practice dentistry until he or she has passed the California clinical examination or the Western Regional Examination Board examination. Respondent shall pay all fees related to the examination. If Respondent fails the examination three times, a period of one year must pass prior to retaking the required examination. Under the condition of failure for three times, the Respondent must also show evidence of remediation in the deficient area(s) prior to retaking the examination. Respondent must be successful in each section of the examination in order to fulfill this requirement and may not practice until totally successful. The probation period is tolled until Respondent passes either examination.

RATIONALE: This condition concerns itself with those individuals who are significantly deficient in the practice of dentistry or who have had a prior revocation and are petitioning the Board for reinstatement of their license. This condition will also apply to licensees who have had prior restrictions on practicing in a particular area or specialty field. This condition is particularly recommended in cases where Respondent has been found to have committed gross negligence, incompetence or repeated negligence.

(18) SUPERVISED PRACTICE - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which Respondent's practice would be supervised. The Board will advise Respondent within two weeks whether or not the proposed supervisor and plan of supervision are approved. Respondent shall not practice until receiving notification of Board approval of Respondent's choice of a supervisor and plan of supervision.

The plan of supervision shall be *(direct and require the physical presence of the supervising dentist in the dental office during the time dental procedures are performed.) (general and not require the physical presence of the supervising dentist during the time dental procedures are performed but does require an occasional random check of the work performed on the patient as well as quarterly monitoring visits at the office or place of practice)*. Additionally, the supervisor shall have full and random access to all patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies.

Each proposed supervisor shall be a California licensed dentist who shall submit written reports to the Board on a quarterly basis verifying that supervision has taken place as required and include an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely manner. Each supervisor shall have been licensed in California for at least five (5) years and not have ever been subject to any disciplinary action by the Board. An administrative citation and fine does not constitute discipline and therefore, in and of itself is not a reason to deny an individual as a supervisor.

The supervisor shall be independent, with no prior business or professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner or associate of Respondent. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by the Respondent.

RATIONALE: This condition allows the Board to monitor the competency of Respondent by use of a fellow practitioner. It is most appropriate in those cases involving incompetence, negligence,, and sexual misconduct. The type of supervision needs to be clearly defined relative to the necessity for the presence of the supervisor. Direct supervision would require the physical presence of the supervisor during the time dental procedures are performed. General supervision does not require the physical presence of the supervising dentist. The type of required supervision depends on the severity of the violation(s).

(19) RESTRICTED PRACTICE - Respondent shall not practice which includes consulting, examining and treating in *(area of noted deficiency) (shall not treat {male}{female}{minors} patients {without the presence of another party})*. Within 30 days from the effective date of this decision, Respondent shall submit to the Board, for

prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board of compliance with this term of probation.

Respondent shall notify all current and prospective patients of the inability to perform the dental procedure of _____ by posting a written notification visible to all patients before they receive any dental treatment. Respondent shall submit documentation which provides satisfactory evidence of compliance with this term of probation.

RATIONALE: The condition prevents the Respondent from engaging in the practice of dentistry in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances.

(20) THIRD PARTY CHAPERONE MONITOR - During probation, Respondent shall have a third party Board-approved monitor present at all times while consulting, examining or treating (INSERT PATIENT CATEGORY, e.g., male, female, or minors) patients. Respondent shall, within (30) calendar days of the effective date of the Decision, submit to the Board for prior approval names of persons who will act as the third party monitor. Each third party monitor shall initial and date each patient dental record at the time the monitor's services are provided. Each third party monitor shall read the Decision(s) and the Accusation(s) and fully understand the role of the third party monitor.

Respondent shall maintain a log of all patients seen for whom a third party monitor is required. The log shall contain the; 1) monitor's name, patient name, age, gender, address, and telephone number; and 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, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party monitor, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

Respondent shall provide written notification prior to treatment to Respondent's affected patients that a third party monitor shall be present during all consultations, examination, or treatment with (e.g., male, female, or minor) 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, and shall retain the notification for the entire term of probation.

Respondent shall submit documentation to the Board that provides satisfactory evidence of compliance with this term of probation.

RATIONALE: This condition should only be imposed in those rare instances where the Respondent has shown evidence of rehabilitation and is no longer considered a danger to patients. In those instances where Respondent is still considered a danger to patients, revocation should be imposed.

NOTE: In those cases where practice is restricted by either scope of practice or by the age or gender of patients, the Respondent must notify all current and prospective patients of the restriction. Respondents found to have violation(s) or conviction(s) of sexual misconduct shall also be placed in a supervised environment.

(21) RESTITUTION - Within (30 to 90) days of the effective date of this decision, Respondent shall make arrangements for restitution to (*patient or entity*) in the amount of (*dollar amount*). (Insert who payment is to be made and when it is due. If a payment plan is imposed, insert specifics regarding payment plan.)

RATIONALE: Where there has been patient harm resulting from negligent or incompetent treatment or a determination has been made concerning fraudulent billing, restitution may be warranted. Careful scrutiny should be made to ensure that proper restitution is made to either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.

(22) COMMUNITY SERVICE - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program for the (*first year of probation or a specified period of probation*) in which Respondent shall provide volunteer services on a regular basis to a non-profit community or charitable facility or agency for at least (*number of hours per month/year for the first year or specified period of probation*). Such community service shall be (*dental or non-dental*) related.

Community service required by this condition shall be performed in the State of California. Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

Prior to engaging in any community service Respondent shall provide a true copy of the Decision 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 comply to any change(s) in community service.

All community services must be completed no later than one hundred and twenty (120) calendar days prior to the scheduled termination of probation.

RATIONALE: The Dental Practice Act authorizes the Board to impose as a condition of probation the fulfillment of community service. This is appropriate in those cases where the Respondent has violated the public's trust. If the violation relates to quality of care, the community service shall not be dentally related.

(23) PSYCHOLOGICAL EVALUATION - Within 60 days of the effective date of this decision, and on a periodic basis thereafter as required by the Board or its designee, Respondent shall undergo a psychological evaluation by a licensed psychiatrist or psychologist approved by the Board. The psychiatrist or psychologist shall have been licensed for a minimum of five years and shall not have been subject to discipline by a regulatory agency. The evaluator shall furnish a detailed written report to the Board regarding Respondent's judgment and ability to practice dentistry independently and safely and other information as the Board may require. The cost of the evaluation shall be paid by Respondent. Respondent shall execute a Release of Information form authorizing the evaluator to release all information to the Board. Respondent shall comply with all of the recommendations of the evaluator unless excused by the Board in its sole discretion. This evaluation shall be confidential by the Board and is not subject to discovery. Psychological evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement.

OPTION: Respondent shall not engage in the practice of dentistry until notified by the Board in writing of its determination that Respondent is safe to practice dentistry independently and safely. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation.

Respondent's failure to undergo and complete the psychological evaluation, recommended therapy or comply with any other recommendations by the evaluator is a violation of probation.

RATIONALE: This condition shall be applied, but not limited to, any licensee who may be affected by a psychological problem, who has committed an act of sexual misconduct or who has suffered a substantially related conviction. This evaluation may be ordered and the results evaluated prior to allowing practice by the Respondent.

(24) PSYCHOTHERAPY - Within 45 days of the effective date of this decision, or within 45 days of a determination that psychotherapy is required, Respondent shall submit a proposed therapist and plan of therapy to be approved by the Board. The cost of therapy shall be borne by Respondent. The plan of therapy shall include the nature of the treatment and its proposed duration. The psychotherapist shall agree to submit quarterly reports to the Board regarding the progress and participation of Respondent. The treatment program shall not be terminated except upon Board approval after submission of the results of the program by the psychotherapist.

If there is a need for ongoing psychiatric psychological treatment, Respondent shall, within 30 days of the requirement notice, submit to the Board for its prior approval the name and qualifications of a psychotherapist psychiatrist licensed mental health professional of Respondent's choice. If the psychological evaluation recommends that Respondent seek treatment from a specific type of mental health professional (e.g. psychiatrist, psychologist, licensed clinical social worker or marriage and family therapist), Respondent shall only submit for consideration those who meet that recommendation. Respondent shall undergo and continue psychotherapy until further notice from the Board or its designee. Respondent shall have the treating psychotherapist mental health care professional submit quarterly status reports to the Board or its designee indicating whether the Respondent is capable of practicing dentistry safely.

RATIONALE: This condition should be imposed whenever there is evidence that the Respondent may have a psychological problem that may impact his or her being able to practice safely. If the Respondent is already in therapy this condition should be imposed to ensure that he or she continues to receive help.

(25) PHYSICAL EVALUATION - Within 45 days of the effective date of this decision, Respondent, at his or her expense, shall have a licensed physician and surgeon, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a dentist. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board.

If Respondent is determined to be unable to practice dentistry safely with or without restrictions, the licensed physician and surgeon making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board in writing. During this period of cessation of practice,

Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of cessation of practice shall not apply to the reduction of this probationary time period.

If the Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent's license is immediately suspended and he or she shall immediately cease practice and shall not resume practice until notified by the Board in writing. This period of suspension of practice shall not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

Physical evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement.

OPTION: Respondent shall not engage in the practice of dentistry until notified by the Board in writing of its determination that Respondent is safe to practice dentistry independently and safely. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation.

RATIONALE: This condition shall be applied, but not limited to, any licensee whose ability to practice safely may be affected by a physical condition. This evaluation may be ordered and the results evaluated prior to allowing practice by the Respondent.

(26) DIVERSION PROGRAM - Within 7 days of the effective date of this Decision, Respondent shall contact the Program Manager of the Board's Diversion Program or his or her designee to schedule an intake and assessment and drug testing for evaluation by the Diversion Evaluation Committee (DEC). If Respondent fails to participate in the time required by the Diversion Program in the initial intake and assessments before his or her meeting with the DEC, this shall constitute a violation of probation and shall be reported to the enforcement program. If the Board notifies Respondent in writing of such failure to participate in the time required for the initial intake and assessment, he or she shall immediately cease practicing. If the DEC determines that Respondent is not appropriate for the program for reasons other than Respondent's failure to cooperate or make a good faith effort to participate, this condition of probation will have been met. If accepted into the program, Respondent shall fully comply with the terms and conditions of treatment and any other requirements imposed by the DEC. Any costs incurred shall

be paid by Respondent. Failure to successfully complete the DEC treatment Diversion Program shall constitute a violation of probation.

RATIONALE: Where it has been determined that in order to protect the public, a licensee or applicant should be evaluated to determine if he or she should participate in the Board's Diversion Program due to drug or alcohol impairment, this condition of probation should be imposed.

(27) BIOLOGICAL TESTING - Respondent shall submit to and pay for any random biological fluid or hair sample, breath alcohol or any other mode of testing required by the Board. Respondent shall have the test performed by a Board-approved laboratory within twelve (12) hours upon request by the Board, or sooner if so requested by the Board and this shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a positive drug screen and constitutes a violation of probation. If a test results in a determination that the urine admission was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If an "out of range result" is obtained, the Board may require Respondent to immediately undergo a physical examination and to complete laboratory or diagnostic test to determine if any underlying physical condition has contributed to the diluted result and to cease practice. Any such examination or laboratory and testing costs shall be paid by respondent. An "out of range result" is one in which, based on scientific principles, indicates the Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the board.

RATIONALE: This probation condition will allow the Board to monitor the Respondent in order to ascertain if he/she is substance and/or chemical free. It is to be required when the Respondent has violated any alcohol and/or substance abuse prohibitions.

(28) ABSTAIN FROM USE OF ALCOHOL, CONTROLLED SUBSTANCES AND DANGEROUS DRUGS - Respondent shall abstain completely from the possession, injection, or consumption of any route, including inhalation, of all psychotropic (mood altering) drugs, including alcohol, and including controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drug as defined by Business and Professions Code Section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed by a physician and

surgeon, dentist, or nurse practitioner for a bona fide illness or condition. Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the Board in writing of the following: prescriber's name, address, and telephone number; medication name and strength, issuing pharmacy name, address, and telephone number, and specific medical purpose for medication. Respondent shall also provide a current list of prescribed medication with the prescriber's name, address, and telephone number on each quarterly report submitted. Respondent shall provide the Board with a signed and dated medical release covering the entire probation period.

Respondent shall identify for the Board's approval a single coordinating physician and surgeon who shall be aware of Respondent's history of substance abuse and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, psychotropic or mood altering drugs. Once a Board-approved physician and surgeon has been identified Respondent shall provide a copy of the accusation and decision to the physician and surgeon. The coordinating physician and surgeon shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of such substances.

The Board may require that only a physician and surgeon who is a specialist in addictive medicine be approved as the coordinating physician and surgeon.

If Respondent has a positive drug screen for any substance not legally authorized, and the Board files a petition to revoke probation or an accusation, Respondent shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

RATIONALE: Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.

(29) SURRENDER/PARTIAL SURRENDER OF DRUG ENFORCEMENT AGENCY PERMIT -

Option 1:

Controlled Substances - Within 60 days of the effective date of this decision, Respondent shall submit to the Board proof of surrender of Respondent's Drug Enforcement Agency Permit. Respondent shall not apply for a new permit without prior written approval from the Board.

OR

Option 2:

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, (*except for those drugs listed in Schedule(s)_____*) of the Act and/or prescribed to Respondent for a bona fide illness or condition by another practitioner. Respondent shall ensure that the DEA Permit is modified to reflect this restriction and proof submitted to the Board of this modification within 60 days.

RATIONALE: In cases of substance abuse/or violation of statutes regulating the procurement, dispensing or administration of controlled substances and dangerous drugs, this condition must be imposed.

(30) ETHICS COURSE - Within 30 days of the effective date of this decision, Respondent shall submit for prior Board approval a course in ethics that will be completed within the first year of probation. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. No correspondence or Internet courses shall be allowed. 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, be accepted towards the fulfillment of this condition.

RATIONALE: In those cases involving fraud, false advertising, excessive billing, or negligence this condition of probation will be imposed and may also be imposed in other cases if applicable.

(31) BILLING MONITOR – Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications

of one or more persons to act as a billing monitor. The proposed billing monitor(s) shall have been licensed dentist for at least five (5) years be approved and not have ever been subject to any disciplinary action by the Board. Once the Board has approved a billing monitor, Respondent shall submit a plan by which the billing monitor will provide monitoring of Respondent billing practices.

All proposed billing monitors shall be independent, with no professional or personal relationship with Respondent, including a familial relationship with or be an employee, partner, or associate of Respondent. If at any time during the period of probation, the billing monitor quits or is otherwise unavailable to perform his or her monitoring duties, within fifteen (15) calendar days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to be the monitor.

The billing monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner.

Respondent shall give the monitor access to all of Respondent's dental practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Respondent's records. This review shall take place in Respondent's office and or place of employment. If the monitor prepares a quarterly report to the Board which finds substantial errors or omissions in, and/ or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall immediately comply therewith. All costs of monitoring shall be borne by the Respondent.

Each supervising monitor shall have read this Decision and the related Accusation.

RATIONALE: Recommended in cases involving capping, steering, fees for patient referrals or any other type of billing irregularities or fraud.

(32) SOLO PRACTICE - Respondent is prohibited from engaging in the solo practice of dentistry.

RATIONALE: Like similar conditions, this condition prevents the respondent from engaging as a sole practitioner in the practice of dentistry in situations where there is no close supervision and/or where the respondent could have undue authority over others and/or access to controlled substances.

(33) CONTROLLED SUBSTANCE-MAINTENANCE OF 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 patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were 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.

RATIONALE: In cases of substance abuse/or violation of statutes regulating the procurement, dispensing or administration of controlled substances and dangerous drugs, this condition must be imposed.

(34) CLINICAL TRAINING PROGRAM - Within 60 days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program offered by an approved California Dental School. The program shall consist of a comprehensive assessment comprised of a two-day assessment of respondent's basic clinical and communication skills common to all clinicians; and dental knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty (if he or she has one), and at a minimum, a 40 hour program of clinical education in the area of practice for which respondent was alleged to be deficient and that takes into account data obtained from the assessment, administrative decisions and accusations, and any other information that the Board deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the program will advise the Board of its recommendations for the scope and length of any additional education or clinical training or anything else affecting respondent's practice of dentistry.

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

Respondent shall complete the program no later than six months after respondent's initial enrollment unless the Board agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program as outlined above is a violation of probation.

Option #1: Condition Precedent

Respondent shall not practice dentistry until he or she has successfully completed the program and has been so notified by the Board in writing, except that respondent may practice in a clinical training program approved by the Board. Respondent's practice of dentistry shall be restricted to that which is required by the program.

Option #2 Condition Subsequent

If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of dentistry within 72 hours after being notified by the Board that respondent failed to successfully complete the program.

RECOMMENDED PENALTIES

B&P Refers to Business and Professions Code

Section 123 B&P Subversion of Examinations

Maximum Penalty: Revocation of license or Statement of Issues denying admission into examination.

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard conditions (1-14)
- 2. Community Service, 40 hours per year (22)
- 3. Ethics Course (30)

Section 125.6 B&P Refusal to Treat Patient

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation.

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)

Additional Condition if Warranted Based Upon Nature and Extent of Violation(s):

- 1. Suspension, 30 days (15)

Section 125.9B&P Failure to Comply with Citation

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard conditions (1-14)
- 2. Suspension, 30 days (15), as an additional condition if warranted
- 3. Compliance with citation, if applicable

Section 498 B&P License Secured by Fraud or Misrepresentation

Maximum Penalty: Revocation, Revocation in all cases in which the licensee is not qualified for the license.

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard conditions (1-14)
- 2. Suspension, 30 days (15)
- 3. Community Service, 40 hours per year (22)
- 4. Ethics Course (30)

**Section 650 B&P Accepting or Receiving Rebates
Section 1680(g) B&P**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard conditions (1-14)
- 2. Suspension, 30 days (15)
- 3. Community Service , 40 hours per year (22)
- 4. Ethics Course (30)

For more serious cases, the following additional condition should be imposed:

- 1. Suspension, 30 days (15)

Section 650.2(i) B&P Patient Referral Service-Failure to Disclose

Maximum Penalty: Revocation of registration of dental service.

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard conditions (1-14)
- 2. Community Service , 40 hours per year(22)
- 3. Ethics Course (30)

Also see Section 1680(g)

Section 651 B&P False, Misleading or Deceptive Public Communications

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising

1. Standard Conditions (1-14)
2. Community Service , 40 hours per year (22)
3. Ethics Course (30)

See Section 1680(h)-(l)

Section 654.1 B&P Prohibits Referral of Patients to Laboratories without Disclosure of Beneficial Interest

Maximum Penalty: Revocation of registration of dental referral service.

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard Conditions (1-14)
2. Ethics Course (30)

Section 654.2 B&P Prohibits charges, billings, solicitations or referrals without disclosure of beneficial interest.

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard Conditions (1-14)
2. Community Service, 40 hours per year (22)
3. Ethics Course (30)

Section 725 B&P Excessive Prescribing or Treatment or Administration of Drugs

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Remedial Education, Prescribing Practice Course (16)
- 3. Community Service, 40 hours per year (22)
- 4. Surrender/Partial Surrender of DEA Permit (19)
- 5. Ethics Course (30)
- 6. Controlled Substance-Maintenance of Records and Inventories (33)

In more serious cases the following additional conditions should be imposed:

- 1. Suspension, 60 days (15)
- 2. Examination (17)
- 3. Supervised Practice (18)

See Section 1680(p)

Section 726 B&P Commission of Act of Sexual Abuse or Misconduct With Patient.

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five years probation for consensual sex with one patient

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)
- 3. Professional Boundaries program
- 4. Psychiatric Evaluation
- 5. Third Party Chaperone
- 6. Suspension, 60 days, additional condition if warranted
- 7. Psychotherapy, additional condition if warranted
- 8. Restricted Practice, additional condition if warranted

Section 732 B&P Failure to Refund Overpayments to Patients

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Restitution (21)
- 3. Ethics Course (30)

Section 810 B&P Insurance Fraud

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Remedial Education, in book keeping (16)
- 4. Restitution (21)
- 5. Community Service , 50 hours (22)
- 6. Ethics Course (30)
- 7. Billing Monitor (31)

See Section 1680(a)

Section 822 B&P Psychological or Physical Illness

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation, depending on severity.

Psychological Illness:

- 1. Standard conditions (1-14)
- 2. Psychological Evaluation (23)
- 3. Psychotherapy (24)

Additional conditions if the licensee is suffering from a serious psychological illness:

- 1. Suspension from practice until determined safe to practice after completing psychological evaluation (23).
- 2. Supervised practice (18)
- 3. Solo practice (32)

Physical Illness:

- 1. Standard conditions (1-14)
- 2. Physical evaluation (25)
- 3. Solo practice (32)

Additional conditions if the licensee is suffering from a serious physical illness:

- 1. Suspension from practice until determined safe to practice after completing physical evaluation (25)
- 2. Supervised practice (18)
- 3. Solo practice (32)

Section 1611.5 B&P Inspection of Books, Records, and Premises

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)

Section 1645 B&P Continuing Education Violations

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation, 30 days actual suspension, and compliance within one (1) year

- 1. Standard Conditions (1-14)
- 2. Community service, 40 hours per year (22)
- 3. Ethics Course (30)

For More Serious Cases, the Following Additional Condition Should be Imposed:

1. Suspension, 30 days (15)

Section 1680(n)

Section 1646.1 B&P Administration of General Anesthesia (GA) Without a Permit/Failure to Renew a Permit

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
3. Ethics Course (30)

Section 1647.2 B&P Administration of Conscious Sedation Without a Permit/Failure to Renew a Permit

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
3. Ethics Course (30)

Section 1647.11 B&P Administration of Oral Conscious Sedation Without a permit - Minors

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) if practicing without ever having been issued a permit.

3. Ethics Course (30)

Section 1647.19 B&P Administration of Oral Conscious Sedation Without a permit -Adults

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
3. Ethics Course (30)

Section 1670 B&P Gross Negligence, Incompetence, Repeated Acts of Negligence

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation depending on nature and extent of the violation

1. Standard Conditions (1-14)
2. Remedial Education (16)
3. Supervised Practice (18)
4. Community Service, 40 hours per year (22), as an additional condition if warranted

Additional conditions if warranted based on nature and extent of violation(s):

1. Suspension (15)
2. Examination (17)
3. Restricted practice (19)
4. Solo practice (32)
5. Clinical training program (34)

Section 1670.1 B&P Conviction of a Crime

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) to five (5) years probation depending upon the nature of the criminal offense

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) depending on the nature of the criminal offense
3. Community Service , 40 hours per year (22)
4. Ethics Course (30)

Section 1671 B&P Violation of Probation

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed and extension of probationary period probation depending upon the nature of the violation

The maximum penalty should be given for repeated similar offenses.

**Section 1680(a) B&P or Obtaining Any Fee by Fraud or Misrepresentation
Section 810 B&P Insurance Fraud**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Remedial Education (16)
4. Restitution (21)
5. Community Service , 50 hours (22)
6. Ethics Course (30)
7. Billing Monitor (31)

Section 1680(b) B&P Employment of Any Student or Suspended or Unlicensed Dentist

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15), as an additional condition, if warranted
- 3. Community Service , 40 hours (22)
- 4. Ethics Course (30)

Section 1680(c) B&P Aiding or Abetting Unlicensed Practice

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15), as an additional condition, if warranted
- 3. Community Service , 50 hours per year (22)
- 4. Ethics Course (30)

Section 1680(d) B&P Aiding or Abetting Licensed Person to Practice Dentistry Unlawfully

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15), as an additional condition, if warranted
- 3. Remedial Education (16)
- 4. Restitution (21)
- 5. Community Service , 40 hours per year (22)
- 6. Ethics Course (30)

Section 1680(e) B&P Sexual Abuse, Misconduct, or Relations with a Patient

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Remedial Education (16)
4. Supervised Practice (18)
5. Third Party Chaperone Monitor (20)
6. Community Service, 50 hours per year (22)
7. Psychological Evaluation (23)
8. Psychotherapy (24)
9. Ethics Course (30)
10. Solo Practice (32)

Section 1680(f) B&P Use of False or Fictitious Name

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 day (15) suspension where the use of the name involved substantial deception of the public related to the practice of dentistry.
3. Ethics Course (30)

Section 1680(h) B&P Use of Deceptive or Misleading Advertising Statements

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation and correct advertising

1. Standard Conditions (1-14)
2. Community Service , 40 hours per year(22)

3. Ethics Course (30)

Section 1680(i) B&P Advertising of Professional Superiority

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation and correct advertising

- 1. Standard Conditions (1-14)
- 2. Community Service , 40 hours per year (22)
- 3. Ethics Course (30)

Section 1680(j) B&P Employing or Making use of Solicitors

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Community Service , 40 hours per year (22)
- 3. Ethics Course (30)

Section 1680(k) B&P Any Advertising that Violates Section 651 of the Business and Professions Code

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising

Please see Section 651 B&P for proposed penalty.

Section 1680(l) B&P Advertising to Guarantee Any Dental Service or to Perform Dental Operations Painlessly

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising as appropriate

1. Standard Conditions (1-14)
2. Community Service , 50 hours per year (22)
3. Ethics Course (30)

Section 1680(m) B&P Violation of any Law Regulating the Dispensing or Administration of Dangerous Drugs or Controlled Substances

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Suspension , 60 days (15), as additional condition if warranted
3. Remedial Education (16)
4. Supervised environment (18)
5. Ethics Course (30)
6. Controlled Substances-Maintenance of Records and Inventories (33)

Additional conditions:

1. Community Service, 40 hours per year (22)
2. Diversion (26)
3. Biological Testing (27)
4. Abstain from use of alcohol, controlled substances and dangerous drugs(28)
5. Surrender/partial surrender of DEA permit (29)

**Section 1680(o) B&P Permitting any Person to Operate Radiographic
equipment in Violation of the Law**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Community Service , 40 hours per year (22)
4. Ethics Course (30)

Section 1680(p) B&P Clearly Excessive Prescribing or Treatment

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-12)
2. Remedial Education (14)
3. Community Service, 40 hours per year (22)
4. Surrender/Partial Surrender of DEA Permit (29)
5. Ethics Course (30)
6. Controlled substance-Maintenance of Records and Inventories (33)

For more serious cases, the following additional conditions should be imposed:

1. Suspension, 60 days (13)
2. Supervised practice (18)
3. Restitution (21)
4. Clinical Training Program (34)

Section 1680(q) B&P Use of Threats or Harassment to Dissuade Testimony

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Community Service, 40 hours per year (22)
- 4. Ethics Course (30)

Section 1680(r) B&P Suspension or Revocation by Another State

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Impose similar conditions as indicated by other state.
- 3. Ethics Course (30)

Section 1680(s) B&P Alteration of Patient Records

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation, correction of condition

- 1. Standard Conditions (1-14)
- 2. Remedial Education (16)
- 3. Supervised Environment (18)
- 4. Community Service, 40 hours per year (22)
- 5. Ethics Course (30)

For more serious violations, the following additional condition should be imposed:
Suspension, 60 days (15)

Section 1680(t) Unsanitary Conditions

Maximum Penalty: Revocation

Minimum Penalty: Revocation, stayed three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Remedial Education (16)

If violation does not warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in infection control approved by the Board.

In more serious cases:
Suspension, 30 days (15)

Section 1680(u) B&P Abandonment of Patient

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Community Service, 40 hours per year (22)
- 3. Ethics Course (30)

For those more serious violations, the following condition should be imposed:
Suspension, 30 days (15)

Section 1680(v) B&P Misrepresenting the Facts Regarding Disciplinary Action

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation.

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)

Section 1680(w) B&P Fraud in the Procurement of Any License

Maximum Penalty: Revocation. Revocation in all cases in which the licensee is not qualified for the license.

Minimum Penalty: Revocation, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15)
3. Community Service, 40 hours per year (22)
4. Ethics Course (30)

Section 1680(x) B&P Actions that would Warrant Denial of a License

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14); and

Any other conditions as appropriate and consistent with these guidelines based on the particular action.

Section 1680(y) B&P Aiding or Abetting Negligent or Incompetent Practice

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard conditions (1-14)
2. Suspension, 30 days (15)
3. Remedial Education (16)
4. Examination (17) if appropriate
5. Supervised Environment (18)
6. Restricted practice (19)
7. Ethics Course (30)

Section 1680(z) B&P Failure to Report Patient Death

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, 5 years probation

- 1. Standard conditions (1-14)
- 2. Ethics Course (30)

For more serious cases, the following additional condition should be imposed:

- 1. Suspension, 30 days (15)

Section 1680(aa) B&P Participating In or Operating Any Group Advertising or Referral Services that is not Registered by the Board

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, six (6) months suspension from advertising through referral services
- 3. Community Service, 40 hours per year (22)
- 4. Ethics Course (30)

(Section 650.2 B&P)

Section 1680(ab)B&P Failure to use a Fail-Safe Machine

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Terms (1-14)
- 2. Proof of Correction Through Obtaining and Using Correct Machine
- 3. Remedial Education (16)

Section 1680(ac) Engaging in Practice of Dentistry with an Expired License

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15), as an additional condition, if warranted
- 3. Ethics (30)

Section 1680(ad) Unsafe and Sanitary Conditions

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15)
- 3. Remedial Education in infection control (16)
- 4. Proof of correction of the condition

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in infection control approved by the Board

Section 1680(ae) The Use of Auxiliaries Beyond the Scope of the License

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15), as an additional condition if warranted
- 3. Remedial Education in scope of practice for dental auxiliaries (16)
- 4. Proof of correction of the condition

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in the scope of practice of a dental auxiliary approved by the Board.

Section 1681(a) B&P Substance Abuse, Possession or Control, Alcohol Abuse, or Conviction related to Controlled Substances

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years

1. Standard Conditions (1-14)
2. Supervised Practice (18)
3. Abstain from use of alcohol, Controlled substances and dangerous drugs (28)
4. Surrender/Partial surrender of DEA permit (29)
5. Ethics Course (30)
6. Controlled Substance-Maintenance of Records and Inventories (33)

Optional Conditions Where Appropriate:

1. Psychological Evaluation (23)
2. Psychotherapy (24)
3. Diversion (26)
4. Biological Fluid Testing (27)

Section 1681 (b) B&P Use of drugs/alcohol causing danger to patient

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, seven (7) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Supervised Practice (18)
4. Psychological Evaluation (23)
5. Psychotherapy(24)
6. Diversion(26)
7. Biological Fluid Testing (27)
8. Abstain from use of Alcohol, Controlled Substances and Dangerous Drugs (28)

- 9. Surrender/Partial Surrender of DEA permit (29)
- 10. Ethics Course (30)
- 11. Controlled Substance-Maintenance of Records and Inventories (33)

Section 1681 (c) B&P Conviction of violating state drug statutes

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, 5 years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Supervised Practice (18)
- 4. Psychological Evaluation (23)
- 5. Psychotherapy (24)
- 6. Diversion (26)
- 7. Biological Testing (27)
- 8. Abstain from use of Alcohol, Controlled Substances and Dangerous Drugs (28)
- 9. Surrender/Partial Surrender of DEA permit (29)
- 10. Ethics Course (30)
- 11. Controlled Substance-Maintenance of Records and Inventories (33)

**Section 1682 B&P Violation of Requirements re Patients Undergoing
Conscious Sedation or General Anesthesia**

Maximum Penalty: Revocation of licensure and/or Permit

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Remedial Education (16)
- 3. Examination (17)
- 4. Supervised Practice (18)
- 5. Restricted Practice (19)
- 6. Ethics Course (30)

Section 1647 B&P

Section 1683 B&P Treatment Entries in Patient Records

Maximum Penalty: Revocation of licensure and/or Permit

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Remedial Education(16)

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period or public reprimand with a requirement to take a course approved by the Board in how to maintain patient records.

Section 1684 B&P Service Beyond the Scope of License

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Community Service, 40 hours per year (22)
- 3. Ethics Course (30)

Options and additions where appropriate

- 1. Suspension (15)
- 2. Remedial Education (16)
- 3. Examination (17)
- 4. Supervised Practice (18)
- 5. Restricted Practice (19)
- 6. Restitution (31)
- 7. Clinical Training Program (34)

Section 1685 B&P Permitting Dental Care that Discourages Necessary or Encourages Excessive or Improper Treatment

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Ethics Course (30)

Options and additions where appropriate

1. Suspension, 30 days (15)
2. Remedial Education (16)
3. Examination (17)
4. Restitution (21)
5. Clinical Training Program (34)

F. Monitors shall be required to submit practice monitor reports on form(s) supplied by the Board and on a schedule to be determined by the Board.

G. Monitors approved by the Board shall be deemed to be consultants of the Board.

Rule XXIII. Fining Schedule for Violations of the Dental Practice Act and Board Rules

(Adopted January 22, 2015, Effective March 30, 2015)

Pursuant to section 12-35-129.1(6), C.R.S., when a licensed dentist, including one issued an academic license, or dental hygienist violates a provision of the Dental Practice Act or a Board rule, the Board may impose a fine on the licensee. The amount of an administrative fine assessed will be based on the following criteria:

- Severity of the violation,
- Type of violation,
- Whether the licensee committed repeated violations, and
- Any other mitigating or aggravating circumstances.

A. If the licensee is a dentist, the fine must not exceed \$5,000. If the violation(s) involve:

1. Substandard Care, Fraud, or Attempting to Deceive the Board

- a. First offense, may be fined up to \$3,000.
- b. Second offense, may be fined up to \$4,000.
- c. Third offense, may be fined up to \$5,000.

2. Record Keeping Violations

- a. First offense, may be fined up to \$1,250.
- b. Second offense, may be fined up to \$2,500.
- c. Third offense, may be fined up to \$5,000.

3. Failure to Maintain or Provide Complete Records

- a. First offense, may be fined up to \$1,250.
- b. Second offense, may be fined up to \$2,500.
- c. Third offense, may be fined up to \$5,000.

4. Failure to Comply with Continuing Education Requirements

- a. First offense, may be fined up to \$1,250.
- b. Second offense, may be fined up to \$2,500.

- c. Third offense, may be fined up to \$5,000.
- 5. Practicing on an Expired License
 - a. 0 – 12 months, may be fined up to \$1,250.
 - b. 1 -2 years, may be fined up to \$2,500.
 - c. 2 or more years, may be fined up to \$5,000.
- 6. Administering Anesthesia/Sedation without a Permit
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
- 7. Failure to Appropriately Supervise Dental Personnel
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
- 8. Failure to Meet Generally Accepted Standards for Infection Control – each day a violation continues or occurs may be considered a separate violation for the purpose of imposing a fine under this category.
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
- 9. False Advertising
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
- 10. Failure to Register for the Prescription Drug Monitoring Program (PDMP) – applicable only if the licensee maintains a current United States Drug Enforcement Agency (DEA) registration
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.

11. Failure to Respond in an Honest, Materially Responsive, and Timely Manner to a Complaint
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
 12. Failure to Maintain Professional Liability Insurance
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
 13. Violation of the Practice Ownership Laws
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
 14. Aiding and Abetting the Unlicensed Practice of Dentistry or Dental Hygiene
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
 15. Failure to Comply with a Board Order or Subpoena
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
 16. Other Violations
 - a. First offense, may be fined up to \$1,250.
 - b. Second offense, may be fined up to \$2,500.
 - c. Third offense, may be fined up to \$5,000.
- B. If the licensee is a dental hygienist, the fine must not exceed \$3,000. If the violation(s) involve:
1. Substandard Care, Fraud, or Attempting to Deceive the Board
 - a. First offense, may be fined up to \$1,000.

- b. Second offense, may be fined up to \$2,000.
 - c. Third offense, may be fined up to \$3,000.
- 2. Record Keeping Violations
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
- 3. Failure to Maintain or Provide Complete Records
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
- 4. Failure to Comply with Continuing Education Requirements
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
- 5. Practicing on an Expired License
 - a. 0 – 12 months, may be fined up to \$750.
 - b. 1 -2 years, may be fined up to \$1,500.
 - c. 2 or more years, may be fined up to \$3,000.
- 6. Administering Local Anesthesia without a Permit
 - a. 0 – 12 months, may be fined up to \$750.
 - b. 1 -2 years, may be fined up to \$1,500.
 - c. 2 or more years, may be fined up to \$3,000.
- 7. Failure to Meet Generally Accepted Standards for Infection Control – each day a violation continues or occurs may be considered a separate violation for the purpose of imposing a fine under this category.
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.

8. False Advertising
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
9. Failure to Respond in an Honest, Materially Responsive, and Timely Manner to a Complaint
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
10. Failure to Maintain Professional Liability Insurance
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
11. Violation of the Practice Ownership Laws
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
12. Aiding and Abetting the Unlicensed Practice of Dentistry or Dental Hygiene
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
13. Failure to Comply with a Board Order or Subpoena
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.
 - c. Third offense, may be fined up to \$3,000.
14. Other Violations
 - a. First offense, may be fined up to \$750.
 - b. Second offense, may be fined up to \$1,500.

c. Third offense, may be fined up to \$3,000.

C. A fine is subject to an additional surcharge imposed by the Executive Director of the Department of Regulatory Agencies (DORA), pursuant to section 24-34-108, C.R.S.

Rule XXIV. Use of Lasers

(Adopted January 22, 2015, Effective March 30, 2015; Adopted April 30, 2015, Effective June 30, 2015)

- A. The requirements in this rule do not apply to use of non-adjustable laser units for purposes of diagnosis and curing.
- B. Only a dentist may employ a laser capable of the removal of hard and/or soft tissue in the treatment of a dental patient.
- C. Laser use by a dental hygienist can only be performed under the indirect or direct supervision of a dentist, and must be limited to pocket disinfection at settings that preclude hard and soft tissue removal, except for incidental gingival curettage.
- D. Effective June 30, 2015, a licensee who is a first time laser user must first successfully complete training that covers at a minimum laser physics, safety, and appropriate use prior to utilizing the laser.
 - 1. Training must be obtained through a course provided or recognized by any of the following organizations (or a successor organization):
 - a. A Commission on Dental Accreditation (CODA) accredited institution;
 - b. The American Dental Association (ADA) Continuing Education Recognition Program (CERP);
 - c. The Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE); or
 - d. The American Medical Association (AMA).
 - 2. A licensee utilizing a laser, other than what is described in section A of this rule, must maintain evidence of training as required in subparagraph D.1 of this rule. Upon request of the Board, the licensee must submit evidence of such training or submit proof of laser use prior to June 30, 2015, if applicable.
- E. All lasers must be used in accordance with accepted safety guidelines.

64B5-13.005 Disciplinary Guidelines.

(1) When the Board finds an applicant, licensee, or certificate holder whom it regulates under Chapter 466, F.S., has committed any of the acts set forth in Section 456.072(1) or 466.028, F.S., it shall issue a final order imposing appropriate penalties as recommended in these disciplinary guidelines. For any violation found that is for fraud or making a false or fraudulent representation, the Board will impose a fine of \$10,000.00 per count or offense. The use of terms to describe the offenses herein within the individual guidelines is intended to be only a generally descriptive use of the terms. For an accurate description of the actual offenses, the reader should refer to the statutory disciplinary provisions. The maximum penalties set forth in any individual offense guideline include all of the less severe penalties that would fall in between the maximum and the minimum penalties stated:

VIOLATION	PENALTY RANGE	
	MINIMUM	MAXIMUM
(a) Attempting to obtain, obtaining or renewing a license by bribery, fraudulent misrepresentations or error of the Board. (Sections 466.028(1)(a), 456.072(1)(h), F.S.)		
First Offense	Denial \$500 fine and referral to State Attorney's office if not licensed	Denial/revocation \$10,000 fine and referral to State Attorney's office if not licensed
Second Offense	Probation with conditions \$500 fine	Revocation \$10,000 fine permanent denial and revocation
(b) Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country. (Sections 466.028(1)(b), 456.072(1)(f), F.S.)		
First Offense	\$1,000 fine	Suspension/denial until the license is unencumbered and active in the jurisdiction in which the disciplinary action was originally taken, or up to five years followed by probation and \$10,000 fine or revocation
Second Offense	Imposition of discipline which would have been imposed if the substantive violation occurred in Florida. Probation and \$1,000 fine	Revocation until the license is unencumbered in the jurisdiction in which disciplinary action was taken and \$10,000 fine
Third Offense	One year suspension followed by probation and	Revocation and permanent denial and \$10,000 fine

\$5,000 fine

(c) Guilty of a crime directly relating to practice or ability to practice.
(Sections 466.028(1)(c), 456.072(1)(c), F.S.)

First Offense	\$1,000 fine	Denial or 2 years suspension, 2 years probation with conditions and \$10,000 fine, or revocation
Second Offense	One year suspension followed by probation and \$1,000 fine	Denial or revocation and \$10,000 fine, with conditions
Third Offense	Revocation and \$2,500 fine	Revocation and \$10,000 fine

(d) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form.
(Section 466.028(1)(d), F.S.)

First Offense	\$500 fine	1 year probation with conditions and \$10,000 fine
Second Offense	1 year probation with conditions and \$3,000 fine	1 year suspension 2 years probation with conditions and \$10,000 fine
Third Offense	2 years probation with conditions and \$5,000 fine	Revocation and \$10,000 fine

(e) Advertising, practicing, or attempting to practice under a name other than one's own.
(Section 466.028(1)(e), F.S.)

First Offense	\$1,000 fine	1 year suspension and \$10,000 fine
Second Offense	Probation with conditions and \$3,000 fine	Denial or revocation and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Revocation and \$10,000 fine

(f) Failing to report any person in violation of this chapter or of the rules of the department or the board.
(Sections 466.028(1)(f), 456.072(1)(i), F.S.)

First Offense	\$500 fine	1 year probation with conditions and \$1,000 fine
Second Offense	1 year probation with conditions and \$1,000 fine	6 months suspension, 1 year probation with conditions and \$3,000 fine
Third Offense	1 year probation with conditions and \$3,000 fine	1 year suspension, 1 year probation with conditions and \$5,000 fine

(g) Aiding, assisting, procuring, or advising any unlicensed person to practice dentistry or dental hygiene.
(Sections 466.028(1)(g), 456.072(1)(j), F.S.)

First Offense	\$1,000 fine	6 months suspension, 1 year probation with conditions and \$10,000 fine
Second Offense	1 year suspension, 2 years probation with conditions and \$5,000 fine	2 years suspension, 2 years probation with conditions and \$10,000 fine
Third Offense	2 years suspension followed by 2 years probation with conditions and \$10,000 fine	Denial/revocation and \$10,000 fine

(h) Being employed by any corporation, organization, group, or person other than a dentist or a professional corporation or limited liability company composed of dentists to practice dentistry.
(Section 466.028(1)(h), F.S.)

First Offense	\$1,000 fine	2 years probation with conditions and up to suspension, and \$10,000 fine
Second Offense	1 year probation with conditions, reprimand and \$3,000 fine	Suspension, 1 year probation with conditions and \$10,000 fine
Third Offense	1 year suspension, reprimand and \$5,000 fine	Revocation and \$10,000 fine

(i) Failing to perform any statutory or legal obligation placed upon a licensee.
(Sections 466.028(1)(i), 456.072(1)(k), F.S.)

First Offense	\$500 fine	2 years probation with conditions and
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\$10,000 fine

Second Offense	1 year probation with conditions and \$1,000 fine	2 years probation with conditions and \$10,000 fine
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Third Offense	2 years probation with conditions and \$2,000 fine	1 year suspension and \$10,000 fine
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(j) Making or filing a false report, failing to file a report or record required by state or federal law, knowingly impeding or obstructing such filing.
(Sections 466.028(1)(j), 456.072(1)(l), F.S.)

First Offense	\$1,000 fine	1 year probation with conditions and up to suspension, and \$10,000 fine
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Second Offense	1 year probation with conditions and \$2,500 fine	Suspension, probation with conditions and \$10,000 fine
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Third Offense	2 years probation with conditions and \$5,000 fine	Denial/revocation and \$10,000 fine
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(k) Sexual battery, as defined in Chapter 794, F.S., upon a patient.
(Sections 466.028(1)(k), 456.072(1)(u), F.S.)

First Offense	6 months suspension followed by probation and \$2,500 fine	Denial or revocation and \$10,000 fine
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Second or Subsequent Offense	5 years suspension followed by probation with conditions and \$5,000 fine	Denial/revocation and \$10,000 fine
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(l) Making deceptive, untrue, or fraudulent representations in or related to the practice of dentistry.
(Sections 466.028(1)(l), 456.072(1)(a), F.S.)

First Offense	\$1,000 fine	6 months probation with conditions and \$10,000 fine
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Second Offense	1 year probation with conditions and \$1,000 fine	6 months suspension and \$10,000 fine
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Third Offense	2 years probation with conditions and \$2,500 fine	Revocation and \$10,000 fine
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(m) Failing to keep written records and history justifying the course of treatment of the patient.

(Section 466.028(1)(m), F.S.)

First Offense	\$500 fine	Probation with conditions and \$7,500 fine
Second Offense	Probation with conditions and \$1,000 fine	Suspension and \$10,000 fine
Third Offense	Probation with conditions and \$2,500 fine	Revocation and \$10,000 fine

(n) Failing to make available to a patient or client, copies of documents which relate to the patient or client.

(Section 466.028(1)(n), F.S.)

First Offense	\$500 fine	Probation with conditions and \$7,500 fine
Second Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Third Offense	\$2,500 fine	Revocation and \$10,000 fine

(o) Performing professional services which have not been authorized by the patient or client.

(Section 466.028(1)(o), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$8,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Suspension and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Revocation and \$10,000 fine

(p) Prescribing a legend drug, other than in the course of the professional practice of the dentist.

(Section 466.028(1)(p), F.S.)

First Offense	\$500 fine	Probation with conditions, \$10,000 fine and up to suspension
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Second Offense	Probation with conditions and \$2,500 fine	Suspension and \$10,000 fine
Third Offense	Suspension followed by probation and \$5,000 fine	Revocation and \$10,000 fine
(q) Prescribing any medicinal drug scheduled in Chapter 893, F.S., to herself or himself. (Section 466.028(1)(q), F.S.)		
First Offense	\$500 fine	Suspension followed by probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Suspension and \$10,000 fine
Third Offense	Suspension followed by probation and \$5,000 fine	Revocation and \$10,000 fine
(r) Prescribing any drug which is a Schedule II amphetamine or a Schedule II sympathomimetic amine drug, pursuant to Chapter 893, F.S. (Section 466.028(1)(r), F.S.)		
First Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Suspension followed by probation and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Revocation and \$10,000 fine
(s) Being unable to practice her or his profession with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. (Sections 466.028(1)(s), 456.072(1)(y), F.S.)		
First Offense	Denial, or suspension until licensee petitions the Board and demonstrates ability to	

practice with reasonable skill and safety, followed by probation with conditions and up to \$5,000 fine

Second Offense

Denial, or suspension until licensee petitions the Board and demonstrates ability to practice with reasonable skill and safety, followed by probation with conditions and up to \$5,000 fine

Suspension followed by probation and \$10,000 fine

Third Offense

Denial, or suspension until licensee petitions the Board and demonstrates ability to practice with reasonable skill and safety, followed by probation with conditions and up to \$10,000 fine

Revocation and \$10,000 fine

(t) Fraud, deceit, or misconduct in the practice of dentistry or dental hygiene.

(Section 466.028(1)(t), F.S.)

First Offense

\$2,500 fine

Probation with conditions and \$8,000 fine

Second Offense

Probation with conditions and \$8,000 fine

Suspension followed by probation and \$10,000 fine

Third Offense

Probation with conditions and \$10,000 fine

Revocation and \$10,000 fine

(u) Failure to provide and maintain reasonable sanitary facilities and conditions.

(Section 466.028(1)(u), F.S.)

First Offense

\$500 fine

Probation with conditions and \$8,000 fine

Second Offense

Probation with conditions and \$3,000 fine

Suspension, probation with conditions and \$10,000 fine

Third Offense

Probation with conditions and \$8,000 fine

Revocation and \$10,000 fine

(v) Failure to provide adequate radiation safeguards.
(Section 466.028(1)(v), F.S.)

First Offense	\$500 fine	Probation with conditions and \$8,000 fine
Second Offense	Probation with conditions and \$3,000 fine	Suspension followed by probation and \$10,000 fine
Third Offense	Probation with conditions and \$8,000 fine	Revocation and \$10,000 fine

(w) Performing any procedure which would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.
(Section 466.028(1)(w), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$3,000 fine
Second Offense	Probation with conditions and \$3,500 fine	Suspension followed by probation and \$10,000 fine
Third Offense	Suspension followed by probation and \$5,000 fine	Revocation and \$10,000 fine

(x) Being guilty of incompetence or negligence, including, but not limited to, being guilty of dental malpractice.
(Section 466.028(1)(x), F.S.)

First Offense	\$500 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$1,000 fine	Suspension and \$10,000 fine
Third Offense	\$2,500 fine	Revocation and \$10,000 fine

(y) Practicing beyond the scope that she or he is competent to perform.
(Sections 466.028(1)(y), 456.072(1)(o), F.S.)

First Offense	\$500 fine	Probation with conditions and \$10,000 fine
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Second Offense	Probation with conditions and \$1,000 fine	Suspension and \$10,000 fine
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Third Offense	\$2,500 fine	Revocation and \$10,000 fine
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(z) Delegating or contracting for professional responsibilities to a person who is not qualified to perform them.
(Sections 466.028(1)(z), 456.072(1)(p), F.S.)

First Offense	\$2,500 fine	Probation with conditions, \$10,000 fine and suspension
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Second Offense	Probation with conditions and \$5,000 fine	Suspension followed by probation and \$10,000 fine
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Third Offense	Probation with conditions and \$7,500 fine	Revocation and \$10,000 fine
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Any violation of Section 466.028(1)(z), F.S., will result in a minimum licensure suspension of six months, in addition to any other penalty authorized for this violation, except where revocation is imposed.

(aa) The violation of a lawful order of the board, or failure to comply with subpoena of the board or department.
(Sections 466.028(1)(aa), 456.072(1)(q), F.S.)

First Offense	\$5,000 fine	Suspension until compliant with order or subpoena, probation with conditions and \$10,000 fine
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Second Offense	\$10,000 fine	Suspension until compliant with order or subpoena followed by probation with conditions and \$10,000 fine
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Third Offense	Revocation and \$10,000 fine	Revocation and \$10,000 fine
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(bb) Conspiring with another licensee or with any person to commit an act, which would tend to coerce, intimidate, or preclude another licensee from advertising services.
(Section 466.028(1)(bb), F.S.)

First Offense	\$1,000 fine	\$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Probation with conditions and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Suspension and \$10,000 fine

(cc) Being adjudged mentally incompetent in this or any other state, the discipline for which shall last only so long as the adjudication.
(Section 466.028(1)(cc), F.S.)

First and any subsequent offense	Suspension until adjudged competent by same court	Suspension until adjudged competent by same court
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(dd) Presigning blank prescription forms.

First Offense	\$500 fine	Probation with conditions and \$500 fine
Second Offense	\$1,000 fine	Probation with conditions and \$7,500 fine
Third Offense	Probation with conditions and \$2,500 fine	Suspension and \$10,000 fine

(ee) Prescribing growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance.
(Section 466.028(1)(ee), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Probation with conditions and \$10,000 fine
Third Offense	\$5,000 fine	Suspension and \$10,000 fine

(ff) Operating a dental office such as to result in dental treatment that

is below minimum acceptable standards of performance for the community.
(Section 466.028(1)(ff), F.S.)

First Offense	\$500 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Suspension and \$10,000 fine
Third Offense	Probation with conditions and \$4,000 fine	Revocation and \$10,000 fine

(gg) Administering anesthesia in a manner which violates rules of the board.
(Section 466.028(1)(gg), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Suspension and \$10,000 fine
Third Offense	Probation with conditions and \$4,000 fine	Revocation and \$10,000 fine

(hh) Failing to report any licensee under Chapter 458 or 459, F.S., who the dentist knows has violated the grounds for disciplinary action.
(Section 466.028(1)(hh), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Second Offense	\$2,500 fine	\$10,000 fine
Third Offense	\$3,500 fine	\$10,000 fine

(ii) Failing to report to the board, within 30 days action has been taken against one's license to practice dentistry in another state, territory, or country.
(Section 466.028(1)(ii), F.S.)

First Offense	\$1,000 fine	Denial, revocation and \$8,000 fine
Second Offense	Probation and \$1,500 fine	Denial, revocation and \$10,000 fine
Third Offense	Suspension followed by probation and \$3,000 fine	Denial, revocation and \$10,000 fine

(jj) Advertising specialty services in violation of this chapter.
(Section 466.028(1)(jj), F.S.)

First Offense	\$1,000 fine	\$7,500 fine
Second Offense	\$2,500 fine	Probation with conditions and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Suspension followed by probation and \$10,000 fine

(kk) Allowing any person to interfere with a dentist's clinical judgment.
(Section 466.028(1)(kk), F.S.)

First Offense	\$1,000 fine	\$5,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Probation with conditions and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Suspension and \$10,000 fine

(ll) Violating any provision of Chapters 456 and 466, F.S., or any rules adopted pursuant thereto.
(Sections 466.028(1)(ll), 456.072(1)(b), 456.072(1)(cc), F.S.)

First Offense	\$750 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$1,000 fine	Probation with conditions and \$10,000 fine
Third Offense	Probation with conditions and \$2,500 fine	Suspension followed by probation and \$10,000 fine

(mm) Failing to comply with the educational course requirements for HIV.
(Section 456.072(1)(e), F.S.)

First Offense	\$500 fine	Probation with conditions and \$1,500 fine
Second Offense	\$1,000 fine	Probation with conditions and \$5,000 fine
Third Offense	\$1,500 fine	Probation with conditions and \$7,500 fine

(nn) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.
(Section 456.072(1)(g), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$8,000 fine
Second Offense	\$3,500 fine	Probation with conditions and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Suspension and \$10,000 fine

(oo) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.
(Section 456.072(1)(m), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$8,000 fine
Second Offense	\$3,500 fine	Probation with conditions and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Suspension and \$10,000 fine

(pp) Exercising influence on the patient or client for the purpose of

financial gain of the licensee or a third party.
(Section 456.072(1)(n), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Suspension and \$10,000 fine
Third Offense	Probation with conditions and \$3,500 fine	Revocation and \$10,000 fine

(qq) Wrong patient, wrong-site procedure, a wrong procedure, medically unnecessary.
(Section 456.072(1)(aa), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,000 fine	Suspension followed by probation with conditions and \$10,000 fine
Third Offense	Suspension followed by probation with conditions and \$3,000 fine	Revocation and \$10,000 fine

(rr) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.
(Section 456.072(1)(r), F.S.)

First Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Suspension followed by probation and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Revocation and \$10,000 fine

(ss) Failing to comply with the educational course requirements for domestic violence.
(Section 456.072(1)(s), F.S.)

First Offense	\$500 fine	Probation with conditions and
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		\$2,500 fine
Second Offense	Probation with conditions and \$1,000 fine	Probation with conditions and \$4,000 fine
Third Offense	\$2,500 fine	Probation with conditions and \$8,000 fine
(tt) Failing to comply with Sections 381.026 and 381.0261, F.S., patient rights and how to file a patient complaint. (Section 456.072(1)(t), F.S.)		
First Offense	\$500 fine	Probation with conditions and \$2,500 fine
Second Offense	Probation with conditions and \$1,000 fine	Probation with conditions and \$4,000 fine
Third Offense	\$2,500 fine	Probation with conditions and \$8,000 fine
(uu) Engaging or attempting to engage in sexual misconduct as defined and prohibited in Section 456.063(1), F.S. (Section 456.072(1)(u), F.S.)		
First Offense	\$2,500 fine	Revocation or probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$5,000 fine	Suspension followed by probation with conditions or revocation, and \$10,000 fine
Third Offense	Suspension followed by probation with conditions and \$8,000 fine	Revocation and \$10,000 fine
(vv) Failing to report to the board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to regardless of adjudication, a crime in any jurisdiction. (Section 456.072(1)(w), F.S.)		
First Offense	\$500 fine	Probation with conditions and

		\$10,000 fine
Second Offense	Probation with conditions and \$1,000 fine	Probation with conditions and \$10,000 fine
Third Offense	Suspension followed by probation with conditions and \$2,500 fine	Revocation and \$10,000 fine
(ww) Using information about people involved in motor vehicle accidents which has been derived from accident reports. (Section 456.072(1)(x), F.S.)		
First Offense	\$500 fine	Probation with conditions and \$5,000 fine
Second Offense	\$1,000 fine	Probation with conditions and \$8,000 fine
Third Offense	\$2,500 fine	Suspension followed by probation and \$10,000 fine
(xx) Leaving a foreign body in a patient. (Section 456.072(1)(bb), F.S.)		
First Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Second Offense	Probation with conditions and \$2,500 fine	Suspension followed by probation with conditions and \$10,000 fine
Third Offense	Probation with conditions and \$5,000 fine	Suspension and/or revocation and \$10,000 fine
(yy) Testing positive for any drug, on any preemployment or employer-ordered drug screening. (Section 456.072(1)(z), F.S.)		
First Offense	\$500 fine	Probation with conditions and \$8,000 fine
Second Offense	\$1,000 fine	Suspension followed by probation with conditions and \$10,000 fine

Third Offense	\$2,500 fine	Revocation and \$10,000 fine
(zz) Intentionally submitting a personal injury protection claim required by Section 627.736, F.S., statement that has been “upcoded” as defined in Section 627.732, F.S. (Section 456.072(1)(dd), F.S.)		
First Offense	\$500 fine	Probation with conditions and \$8,000 fine
Second Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Third Offense	\$2,500 fine	Suspension followed by probation with conditions and \$10,000 fine
(aaa) Intentionally submitting a personal injury protection claim required by Section 627.736, F.S., for services that were not rendered. (Section 456.072(1)(ee), F.S.)		
First Offense	\$500 fine	Probation with conditions and \$8,000 fine
Second Offense	\$1,000 fine	Probation with conditions and \$10,000 fine
Third Offense	\$2,500 fine	Suspension followed by probation with conditions and \$10,000 fine
(bbb) Engaging in a pattern of practice of prescribing medicinal drugs or controlled substances which demonstrates a lack of reasonable skill or safety to patients. (Section 456.072(1)(ff), F.S.)		
First Offense	\$1,500 fine	Probation with conditions and \$8,000 fine
Second Offense	Probation with conditions and \$3,000 fine	Suspension and \$10,000 fine

Third Offense	\$5,000 fine	Revocation and \$10,000 fine
<p>(ccc) Failing to comply with, failing to successfully complete, or being terminated from an impaired practitioner treatment program. (Section 456.072(1)(gg), F.S.)</p>		
First Offense	Suspension, until compliant, followed by 2 years probation with conditions and \$2,000 fine	Suspension until compliant, followed by 5 years probation with conditions and \$5,000 fine
Second or Subsequent Offense	Three years suspension followed by 5 years probation with conditions and \$10,000 fine	Revocation and \$10,000 fine
<p>(ddd) Being convicted of, or entering a plea of nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program. (Section 456.072(1)(ii), F.S.)</p>		
First Offense	Misdemeanor – Reprimand, \$10,000 fine, suspension	Misdemeanor – \$10,000 fine, revocation
Second Offense	Felony – Revocation	Felony – revocation
<p>(eee) Failing to remit the sum owed to the state for any overpayment from the Medicaid program pursuant to a final order, judgement, or stipulation or settlement. (Section 456.072(1)(jj), F.S.)</p>		
First Offense	\$1,000 fine, letter of concern	\$10,000 fine suspension
Second Offense	\$7,500 fine, reprimand	\$10,000 fine, revocation
<p>(fff) Being terminated from the state Medicaid program pursuant to Section 409.913, F.S., any other state Medicaid program, or the federal Medicare program,</p>		

unless eligibility to participate in the program from which the practitioner was terminated has been restored.
(Section 456.072(1)(kk), F.S.)

First Offense	\$1,000 fine, letter of concern	\$10,000 fine, suspension
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Second Offense	\$7,500 fine, reprimand	\$10,000 fine, revocation
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(ggg) Being convicted of, or entering a plea of guilty or nolo contendere, to any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud.
(Section 456.072(1)(ll), F.S.)

First Offense	Misdemeanor – \$10,000 fine, Reprimand	Misdemeanor – \$10,000 fine, suspension
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Second Offense	\$10,000 fine, revocation	\$10,000 fine, revocation
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(hhh) Failure to comply with the controlled substance prescribing requirements of Section 456.44, F.S.
(Section 456.072(1)(mm), F.S.)

First Offense	Suspension of license for a period of six (6) months followed by a period of probation and an administrative fine in the amount of \$10,000.00	Revocation and an administrative fine of \$10,000.00
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Second Offense	Suspension of license for a period of one (1) year followed by probation and an administrative fine in the amount of \$10,000.00	Revocation and an administrative fine in the amount of \$10,000.00
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(iii) Providing false or deceptive expert witness testimony related to the practice of dentistry.
(Section 466.028(1)(ll), F.S.)

First Offense	Reprimand and an administrative fine of \$5,000.00	Revocation and an administrative fine of \$10,000.00
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Second Offense

Revocation and an
administrative fine of
\$10,000.00

Revocation and an administrative fine
of \$10,000.00

(2) Based upon consideration of aggravating or mitigating factors, present in an individual case, except for explicit statutory maximum and minimum penalty requirements, the Board may deviate from the penalties recommended in subsections (1) above and (3) below. The Board shall consider as aggravating or mitigating factors the following:

- (a) The danger to the public;
- (b) The number of specific offenses, other than the offense for which the licensee is being punished.;
- (c) Prior discipline that has been imposed on the licensee;
- (d) The length of time the licensee has practiced;
- (e) The actual damage, physical or otherwise, caused by the violation and the reversibility of the damage;
- (f) The deterrent effect of the penalty imposed;
- (g) The effect of the penalty upon the licensee;
- (h) Efforts by the licensee towards rehabilitation;
- (i) The actual knowledge of the licensee pertaining to the violation;
- (j) Attempts by the licensee to correct or stop the violation or refusal by the licensee to correct or stop the violation; and
- (k) Any other relevant mitigating or aggravating factor under the circumstances.

(3) Penalties imposed by the Board pursuant to subsections (1) and (2) above may be imposed in combination or individually, and are as follows:

(a) Issuance of a reprimand or letter of concern, which may be imposed in any disciplinary case, regardless of whether the penalty is referenced in any individual offense guideline;

(b) Imposition of an administrative fine not to exceed \$10,000.00 for each count or separate offense; for any violation found that is for fraud or making a false or fraudulent representation, the Board will impose a fine of \$10,000.00 per each count or offense, pursuant to Section 456.072(2)(d), F.S.;

(c) Restriction of the authorized scope of practice or license. In taking disciplinary action against any person, whether or not the action also involves placing a licensee on probation, or imposing any penalty, the Board may impose restrictions on the practice or the license that include, but are not limited to the following:

1. Requiring remedial education as a requirement of continued practice;
2. Restricting the licensee from practicing in certain settings;
3. Restricting the licensee to work in only certain settings or under designated conditions;
4. Restricting the licensee from performing or providing designated clinical and administrative services;
5. Restricting the licensee from practicing a designated number of hours;
6. Any other restriction found to be necessary for the protection of the public health, safety, and welfare.

(d) Placement of the licensee on probation for a period of time and subject to such conditions as the Board may specify:

1. Probation Term. Unless otherwise specified above within each individual offense guideline, or unless a lesser period of time is stated in the order imposing probation, the period of probation will be for a period of five (5) years;

2. Probation Conditions. Probation conditions may include but not be limited to the following and may be imposed regardless of whether the term "conditions" is referenced in an individual offense guideline:

a. Requiring the licensee to attend additional continuing education courses or remedial education,

b. Requiring the licensee to pass an examination on the content and requirements of Chapters 456 and 466, F.S., and Chapter 64B5, F.A.C.,

c. Requiring the licensee to work under the supervision of another licensee, including the submission of documents and reports from the supervisor and licensee,

d. Tolling of the running of the probationary period when the licensee ceases to practice in Florida, or fails to maintain compliance with the probation requirements,

e. Compliance with all terms of the order that imposes probation,

f. Evaluation by an impaired practitioners network or program and entering or maintaining compliance with a recommended

impaired practitioners program contract,

g. Submitting to a continuing education audit for the next two consecutive biennial licensure renewal periods beginning with the date of the order imposing probation

h. Corrective action related to the violation, including but not limited to the repayment of any fees billed and collected from a patient or third party on behalf of the patient.

i. The licensee is responsible for all costs associated with compliance with the terms of probation.

(e) Suspension of a license. Unless otherwise specified above within each individual offense guideline, or unless a lesser period of time is stated in the order imposing suspension, the period of suspension will be for a period of three years;

(f) Revocation of a license; which shall be permanent unless specified otherwise in the final order;

(g) Denial of an application for licensure, any violation of a provision of Section 456.072(1) or Section 466.028(1), F.S., may be the basis for denial or issuance of licensure with restrictions or conditions; and

(h) Costs. The licensee is responsible for payment of all costs of investigation and prosecution related to a disciplinary case. Additionally, all costs related to compliance with an order taking disciplinary action are the obligation of the licensee.

(4) The provisions of subsections (1) through (3) above are not intended and shall not be construed to limit the ability of the Board to informally dispose of disciplinary actions by stipulation, agreed settlement or consent order pursuant to Section 120.57(4), F.S.

(5) The provisions of subsections (1) through (4) above are not intended and shall not be construed to limit the ability of the Board to pursue or recommend the Agency pursue collateral civil or criminal actions when appropriate.

Rulemaking Authority 456.079(1) FS. Law Implemented 456.072(2), 456.079(1), 466.028 FS. History—New 12-31-86, Amended 2-21-88, 1-18-89, 12-24-91, Formerly 21G-13.005, 61F5-13.005, 59Q-13.005, Amended 4-2-02, 8-25-03, 2-27-06, 12-25-06, 6-11-07, 9-15-10, 12-2-10, 1-24-12.

9.03: continued

(c) Dismissal without Prejudice. A complaint may be dismissed without prejudice when the Board determines that the facts supporting the alleged conduct have not been or cannot be proven due to lack of evidence or insufficient evidence. The complaint may be revisited by the Board if new evidence becomes available.

(d) Dismissal with an Advisory Letter. Dismissal with an Advisory Letter is an official written notice retained in the Board's files delineating the Board's concerns with the licensee's professional practice. An advisory letter does not constitute formal disciplinary action.

(e) Stayed Probation. Stayed Probation is a non-disciplinary agreement between the licensee and the Board and consists of a period of time during which a dentist, registered dental hygienist, or dental assistant who holds a valid license may continue to practice in the Commonwealth under terms and conditions specified by the Board. Stayed Probation does not constitute formal discipline, but may include provisions for the Board to subject the licensee to disciplinary action if the Board finds that the licensee has failed to comply with the terms and conditions of his or her agreement with the Board.

(2) Disciplinary Actions. The disciplinary actions set forth in 234 CMR 9.03(2)(a) through (g) constitute disciplinary actions the Board may impose on a licensee of the Board, or on the right of a licensee to renew his or her license. The Board may only impose disciplinary action as part of a final decision and order issued in connection with the adjudication of a complaint, or under the terms of an agreement entered into between a licensee and the Board in resolution of any complaint or complaints.

Where the Board initiates adjudicatory proceedings, the Board shall conduct such proceeding in accordance with M.G.L. c. 30A: *State Administrative Procedure Act* and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*.

The Board may, after a hearing in accordance with the provisions of M.G.L. c. 30A and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure* or by agreement of the parties, reprimand, place on probation, censure, suspend, or revoke any license, registration or permit issued by the Board and/or otherwise limit the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth as the Board deems necessary and appropriate.

A disciplinary action against a license to practice dentistry, dental hygiene, or dental assisting in the Commonwealth constitutes a public record and is reportable by the Board to other licensing entities and to the appropriate national disciplinary reporting systems as a disciplinary action on a license to practice dentistry, dental hygiene, or dental assisting or on the right to renew such license.

(a) Reprimand. A Reprimand is a written statement issued by the Board which describes the manner in which the licensee has failed to comply with M.G.L. c. 112, §§ 43 through 53 and 61, or 234 CMR, or any rule, advisory or written policy adopted by the Board related to the practice of dentistry, dental hygiene, or dental assisting. A reprimand may include terms or conditions specified by the Board. Failure of a licensee to comply with such terms or conditions may result in further disciplinary action by the Board.

(b) Probation. Probation consists of a period of time during which a licensee who holds a valid license may continue to practice in the Commonwealth under terms and conditions specified by the Board. A licensee whose license is subject to probation must comply with the terms and conditions of probation in order to continue to practice dentistry, dental hygiene, or dental assisting in the Commonwealth. A licensee's failure to comply with terms and conditions may result in the imposition of a suspension or other discipline, as deemed appropriate by the Board.

(c) Censure. Censure is a severe reprimand.

(d) Voluntary Surrender. Pursuant to an agreement with the Board, a licensee may surren-

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der his or her license to practice dentistry, dental hygiene, or dental assisting in the Commonwealth. A licensee's Voluntary Surrender of a license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth terminates the licensee's right to practice dentistry, dental hygiene, or dental assisting in the Commonwealth and to represent himself or herself by title or other designation as a licensed dentist, dental hygienist, and/or dental assistant.

(e) Suspension. Suspension of a license or the right to renew said license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth, is the temporary denial by the Board of the right of a licensee to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth, and represent himself or herself by title or other designation as a licensed dentist, dental hygienist, or dental assistant.

9.03: continued

(f) Stayed Suspension. A stayed suspension is a period of suspension on a license to practice dentistry, dental hygiene, or dental assisting in the Commonwealth which suspension the Board does not activate pending compliance by a licensee with specified terms and conditions described in a Final Decision and Order or in a consent agreement between the licensee and the Board.

(g) Revocation. A revocation of a license or the right to renew said license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth terminates the licensee's right to practice dentistry, dental hygiene, or dental assisting in the Commonwealth, and to represent himself or herself by title or other designation as a licensed dentist, dental hygienist, and/or dental assistant.

9.04: Suspension Prior to a Hearing

If, based upon affidavits or other documentary evidence, the Board determines that a licensee is an immediate or serious threat to the public health, safety, or welfare, the Board may suspend or refuse to renew a license pending a final hearing on the merits of the allegations regarding the licensee. A hearing limited to the determination of the necessity of the summary action shall be afforded the licensee within seven days of the Board's action pursuant to M.G.L. c. 112, § 52F.

9.05: Grounds for Discipline

The Board may impose disciplinary action against an individual licensed by the Board to practice dentistry, dental hygiene, or dental assisting on one or more of the following grounds for discipline:

- (1) Engaging in misconduct in the practice of dentistry, unprofessional conduct, and/or conduct that undermines public confidence in the integrity of the dental profession.
- (2) Violating any of the duties and standards set out in 234 CMR or any rule, advisory, or written policy adopted by the Board pursuant to its authority under M.G.L. c. 112, §§ 43 through 53 and 61;
- (3) Failing to provide services and maintain the dental office, in compliance with the *CDC Guidelines* and the requirements of the Occupational Safety and Health Regulations at 29 CFR described in 234 CMR 5.05: *Infection Control, Occupational Safety and Health Standards, and Radiation Control Requirements*;
- (4) Practicing while the ability to practice is impaired by substance abuse, or any physical or mental condition;
- (5) Engaging in the illegal use or abuse of prescription drugs or controlled substances;
- (6) Continuing to practice dentistry, in the Commonwealth, after his or her license is expired, suspended, revoked or surrendered;
- (7) Violation of a consent agreement, Final Decision and Order, or any other order of, or agreement with, the Board;
- (8) Engaging in conduct that places the public health, safety, or welfare at risk;

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(9) Being convicted of any crime, except minor traffic offenses, including any guilty verdict or finding of guilt and any admission to or finding of sufficient facts, a continuance without a finding, and any plea of guilty or nolo contendere which has been accepted by the court, whether or not sentence has been imposed;

(10) Fraudulently procuring a certificate of licensure or a permit or its renewal;

(11) Providing false information on an application for registration or renewal of a license or permit;

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9.05: continued

- (12) Cheating or attempting to compromise the integrity of any dental licensing or certification examination;
- (13) Failing to comply with a Board subpoena or failing to furnish the Board, its investigators, or representatives with records, documents, information, or testimony to which the Board is legally entitled;
- (14) Committing an act that violates recognized standards of care;
- (15) Failing to maintain professional dentist, dental hygienist, or dental assistant patient boundaries;
- (16) Engaging in conduct with a patient which is sexual or may be reasonably interpreted by the patient as sexual or engaging in behavior, gestures, or expressions, verbal or nonverbal, that are seductive, suggestive or sexually demeaning to a patient;
- (17) Failing to comply with established ethical standards of the profession and/or specialty;
- (18) Falsifying, altering or willfully making incorrect entries or failing to make essential entries in patient records;
- (19) Violating M.G.L. c. 94C: *Controlled Substances Act*;
- (20) Issuing a prescription for medication(s) or prosthesis (pursuant to M.G.L. c. 112, § 50), including but not limited to, internet or other electronic process, without a medical history or without conducting an appropriate dental examination or without recording a corresponding diagnosis and treatment plan;
- (21) Any disciplinary action against a licensee in another state or jurisdiction for conduct similar to conduct that would constitute grounds for discipline by the Board;
- (22) Charging a patient or third party payor for a service not performed;
- (23) Failing, without just cause, to refund a prepayment for treatment and services not completed and/or not performed;
- (24) Offering, giving or receiving commissions, rebates or other forms of remuneration for the referral of patients;
- (25) Failing to file any report required pursuant to M.G.L. chs. 19A, 19C, or 119, § 51A;
- (26) Failing to report or failing to accurately report to the Board in writing, within 30 days, any disciplinary action, as defined by 234 CMR 9.00, taken against the licensee by an entity or its agent, including but not limited to, a governmental authority, a health care facility, an employer, a dental insurance company, or a professional dental or medical society (international, national, state or local);
- (27) Failing to report to the Board, in writing, within 30 calendar days, any final action taken regarding one's license to practice dentistry, dental hygiene, dental assisting or other health care

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related professional license by any other governmental authority in this state or another jurisdiction;

(28) Failing to report to the Board, in writing, within 30 calendar days any criminal charge or conviction as defined in 234 CMR 2.03: *Definitions* in Massachusetts or any other jurisdiction.

(29) Failing to comply with a plan for corrective action required by an agreement with or an order of the Board;

(30) Nothing in 234 CMR 9.00 shall limit the Board's adoption of policies and grounds for discipline through adjudication and rule-making.

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9.06: Civil Administrative Penalties for Unlicensed Practice of Dentistry, Dental Hygiene, or Dental Assisting

A civil administrative penalty may be assessed for unlicensed practice of dentistry, dental hygiene, or dental assisting in the Commonwealth pursuant to M.G.L. c. 112, §§ 65(b) and 65A.

REGULATORY AUTHORITY

234 CMR 9.00: M.G.L. c. 13, § 19; c. 112, §§ 43 through 53, 61, 65 and 65A; c. 30A, § 13A.

OHIO STATE DENTAL BOARD DISCIPLINARY GUIDELINES

Disciplinary Guidelines are primarily for the Ohio State Dental Board's (Board) reference and guidance. They are subject to revision at the Board's discretion without notice to the public. Disciplinary Guidelines are intended to promote consistency in Board-imposed sanctions, but are not binding on the Board.

The Board recognizes that individual matters present unique sets of circumstances (mitigating/aggravating factors) which merit individual consideration by the Board.

(Revised June, 1998)
(Approved October, 1998)

CATEGORIES OF VIOLATIONS

1. Improper Prescribing, Dispensing, or Administering of Drugs
2. Minimal Standards of Care
3. Fraud, Misrepresentation, or Deception
4. Lewd and Immoral Conduct
5. Unauthorized Practice
6. Criminal Convictions
7. Impairment of Ability to Practice
8. Infection Control Violations
9. CE Violations
10. Miscellaneous Violations

APPENDICES

- Appendix A: Applicability of Guidelines to Licensure Applicants
- Appendix B: Aggravating and Mitigating Factors
- Appendix C: All Categories: Conditions for Reinstatement and Probation
- Appendix D: Category 1 (Prescribing) Violations:
Optional Conditions for Reinstatement and Probation
- Appendix E: Category 2 (Minimal Standards/Quality of Care) Violations:
Optional Conditions for Reinstatement and Probation
- Appendix F: Category 4 (Lewd and Immoral Conduct) Violations:
Optional Conditions for Reinstatement and Probation
- Appendix G: Category 7 (Impairment) Violations:
Optional Conditions for Reinstatement and Probation
- Appendix H: Category 8 (Infection Control) Violations:
Optional Conditions for Reinstatement and Probation
- Appendix I: Category 9: Standard CE Orders
- Appendix J: All Categories: Optional Provisions for Violation of
Probation and Completion of Probation
- Appendix K: Definitions of Penalties

CATEGORY 1

IMPROPER PRESCRIBING, DISPENSING OR ADMINISTERING OF DRUGS

- A. PRESCRIBING, DISPENSING, OR ADMINISTERING OF CONTROLLED SUBSTANCES FOR EXCESSIVE PERIODS OF TIME AND/OR IN EXCESSIVE AMOUNTS

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 6 months, with conditions for reinstatement, subsequent probation, minimum 3 years

- B. IMPROPER PRESCRIBING, DISPENSING, OR ADMINISTERING OF ANY DRUGS TO DETRIMENT OF PATIENT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 6 months, with conditions for reinstatement, subsequent probation, minimum 3 years

- C. IMPROPER PRESCRIBING, DISPENSING, OR ADMINISTRATION OF ANY DRUG

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 6 months, with conditions for reinstatement, subsequent probation, minimum 3 years

- D. FAILING TO KEEP ADEQUATE PATIENT RECORDS OF SUBSTANCES PRESCRIBED, DISPENSED, OR ADMINISTERED

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 30 days, with conditions for reinstatement, subsequent probation, minimum 3 years

E. PURCHASING AND MISADMINISTRATION OF CONTROLLED SUBSTANCES

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 30 days, with conditions for reinstatement, subsequent probation, minimum 3 years

F. KNOWINGLY MAINTAINING AN ADDICT ON DRUGS

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 90 days, with conditions for reinstatement, subsequent probation, minimum 3 years

G. SELLING, PRESCRIBING, GIVING AWAY, OR ADMINISTERING OF ANY DRUGS FOR OTHER THAN LEGAL AND LEGITIMATE THERAPEUTIC PURPOSES

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 90 days, with conditions for reinstatement, subsequent probation, minimum 3 years

H. PRESCRIBING, DISPENSING OR ADMINISTERING OF ANY DRUGS WITHOUT MEDICAL INDICATION TO THE DETRIMENT OF A PATIENT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 6 months, with conditions for reinstatement, subsequent probation, minimum 3 years

I. PRESCRIBING, DISPENSING OR ADMINISTERING OF DRUGS FOR SEXUAL FAVORS OR OTHER REASONS MOTIVATED BY SELF INTEREST

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 6 months, with conditions for reinstatement, subsequent probation, minimum 3 years

J. DRUG RELATED FELONY CONVICTION

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 1 year, with conditions for reinstatement, subsequent probation, minimum 3 years

K. DRUG RELATED MISDEMEANOR CONVICTION

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 60 days, with conditions for reinstatement, subsequent probation, minimum 3 years

SEE APPENDIX FOR CONDITIONS FOR REINSTATEMENT AND CONDITIONS OF PROBATION FOR CATEGORY 1 VIOLATIONS

NOTE: WHERE APPROPRIATE, PERMANENT LIMITATIONS AND RESTRICTIONS MAY ALSO BE IMPOSED

CATEGORY 2

MINIMAL STANDARDS OF CARE

- A. PROVIDING CARE THAT DEPARTS FROM OR FAILS TO CONFORM TO THE MINIMUM ACCEPTED STANDARDS OF CARE FOR THE PROFESSION

Maximum Penalty: Revocation

Minimum Penalty: Probation, minimum 2 years

- B. PROVIDING CARE THAT DEPARTS FROM OR FAILS TO CONFORM TO THE MINIMUM ACCEPTED STANDARDS OF CARE FOR THE PROFESSION TO THE DETRIMENT OF THE PATIENT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 90 days, with conditions for reinstatement, subsequent probation, minimum 3 years

- C. ALLOWING DENTAL HYGIENISTS OR OTHER PRACTITIONERS OF AUXILIARY DENTAL OCCUPATIONS WORKING UNDER SUPERVISION TO PROVIDE CARE THAT DEPARTS FROM OR FAILS TO CONFORM TO THE MINIMUM ACCEPTED STANDARDS OF CARE FOR THE PROFESSION

Maximum Penalty: Revocation

Minimum Penalty: Probation, minimum 2 years

SEE APPENDIX FOR CONDITIONS FOR REINSTATEMENT AND CONDITIONS OF PROBATION FOR CATEGORY 2 VIOLATIONS

NOTE: WHERE APPROPRIATE, PERMANENT LIMITATIONS AND RESTRICTIONS MAY ALSO BE IMPOSED

CATEGORY 3

FRAUD, MISREPRESENTATION OR DECEPTION

A. FRAUD IN APPLYING FOR OR OBTAINING A LICENSE OR PERMIT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 1 year,
with conditions for reinstatement, subsequent
probation, minimum 3 years

B. MISREPRESENTATION OR DECEPTION IN APPLYING FOR, RENEWING
OR SECURING A LICENSE OR PERMIT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 60 days,
with conditions for reinstatement, subsequent
probation, minimum 3 years

C. PUBLISHING A FALSE, FRAUDULENT, DECEPTIVE OR MISLEADING
STATEMENT

Maximum Penalty: Revocation

Minimum Penalty: Formal written reprimand

D. FALSE, DECEPTIVE OR MISLEADING ADVERTISING

Maximum Penalty: Revocation

Minimum Penalty: Formal written reprimand

E. OBTAINING, OR ATTEMPTING TO OBTAIN MONEY OR ANYTHING OF
VALUE BY INTENTIONAL MISREPRESENTATION OR MATERIAL
DECEPTION IN THE COURSE OF PRACTICE

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 90 days,
with conditions for reinstatement, subsequent
probation, minimum 3 years

CATEGORY 4

LEWD AND IMMORAL CONDUCT

A. LEWD AND IMMORAL CONDUCT IN CONNECTION WITH THE PROVISION OF DENTAL SERVICES

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 60 days, with conditions for reinstatement, subsequent probation, minimum 3 years

B. SEXUAL MISCONDUCT IN THE COURSE OF PRACTICE

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 90 days, with conditions for reinstatement, subsequent probation, minimum 3 years

SEE APPENDIX FOR CONDITIONS FOR REINSTATEMENT AND CONDITIONS OF PROBATION FOR CATEGORY 4 VIOLATIONS

NOTE: WHERE APPROPRIATE, PERMANENT LIMITATIONS AND RESTRICTIONS MAY ALSO BE IMPOSED

CATEGORY 5

UNAUTHORIZED PRACTICE

- A. PRACTICE DURING SUSPENSION IMPOSED BY BOARD ORDER, OR PURSUANT TO TERMS OF FULLY EXECUTED CONSENT AGREEMENT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 60 days, with conditions for reinstatement, subsequent probation, minimum 3 years

- B. PRACTICE DURING SUSPENSION FOR FAILURE TO RENEW

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 60 days, with conditions for reinstatement, subsequent probation, minimum 3 years

- C. PRACTICE IN VIOLATION OF LIMITATIONS/RESTRICTIONS IMPOSED BY BOARD ORDER OR TERMS OF FULLY EXECUTED CONSENT AGREEMENT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 60 days, with conditions for reinstatement, subsequent probation, minimum 3 years

- D. APPLICANT'S PRACTICE PRIOR TO LICENSURE OR PERMIT ISSUANCE

Maximum Penalty: Denial of license or permit

Minimum Penalty: Grant license or permit, immediate suspension, minimum 30 days, with conditions for reinstatement, subsequent probation, minimum 3 years

- E. PERMITTING THE UNAUTHORIZED PRACTICE BY UNLICENSED PERSONNEL

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 30 days,
with conditions for reinstatement, subsequent
probation, minimum 3 years

F. PRACTICE OUTSIDE SCOPE OF LICENSE, SPECIALTY OR PERMIT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 30 days,
with conditions for reinstatement, subsequent
probation, minimum 3 years

CATEGORY 6

CRIMINAL CONVICTIONS

A. CONVICTION OF A FELONY

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 6 months, with conditions for reinstatement, subsequent probation, minimum 3 years

B. CONVICTION OF A MISDEMEANOR COMMITTED IN THE COURSE OF PRACTICE

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 30 days, with conditions for reinstatement, subsequent probation, minimum 3 years

CATEGORY 7

IMPAIRMENT OF ABILITY TO PRACTICE

- A. INABILITY TO PRACTICE ACCORDING TO THE ACCEPTED STANDARDS OF THE PROFESSION BECAUSE OF PHYSICAL OR MENTAL DISABILITY

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum as appropriate, with conditions for reinstatement, subsequent probation, minimum 3 years

- B. INABILITY TO PRACTICE ACCORDING TO THE ACCEPTED STANDARDS OF THE PROFESSION BECAUSE OF EXCESSIVE USE OR DEPENDENCE ON ALCOHOL OR OTHER DRUGS

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum as appropriate, with conditions for reinstatement, subsequent probation, minimum 3 years

SEE APPENDIX FOR CONDITIONS FOR REINSTATEMENT AND CONDITIONS OF PROBATION APPLICABLE TO CATEGORY 7 VIOLATIONS

CATEGORY 8

INFECTION CONTROL VIOLATIONS

- A. **FAILURE TO USE UNIVERSAL BLOOD AND BODY FLUID PRECAUTIONS ESTABLISHED BY BOARD RULES (Eg., failure to properly utilize sterilization; failure to wear gloves/mask; failure to properly dispose of disposable products, etc)**

Maximum Penalty: Revocation

Minimum Penalty: Probation, minimum 1 year

- B. **FAILURE TO HAVE PROOF OF IMMUNIZATION TO HEPATITIS B FOR SELF/EMPLOYEES**

Maximum Penalty: Revocation

Minimum Penalty: Probation, minimum 1 year

SEE APPENDIX FOR CONDITIONS FOR REINSTATEMENT AND CONDITIONS OF PROBATION APPLICABLE TO CATEGORY 8 VIOLATIONS

CATEGORY 9

CE VIOLATIONS

A. FAILURE TO COMPLETE CE AS REQUIRED FOR RENEWAL

Standard Penalty: Failure to complete required continuing education hours within the required timeframe constitutes the failure to renew registration. The statutory penalty for failure to renew is automatic suspension (by law). Therefore, there will be conditions for reinstatement, subsequent probation, minimum 3 years.

SEE APPENDIX FOR STANDARD ORDERS FOR CATEGORY 9 VIOLATIONS

CATEGORY 10

MISCELLANEOUS VIOLATIONS

- A. ADVERTISING IN VIOLATION OF BOARD RULES GOVERNING TIME, PLACE AND MANNER OF ADVERTISING

Maximum Penalty: Revocation

Minimum Penalty: Formal written reprimand

- B. WAIVING THE PAYMENT OF ALL OR ANY PART OF A DEDUCTIBLE OR COPAYMENT THAT A PATIENT WOULD OTHERWISE BE REQUIRED TO PAY IF THE WAIVER IS USED AS AN ENTICEMENT

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 30 days, with conditions for reinstatement, subsequent probation, minimum 2 years

- C. ADVERTISING THAT A COPAYMENT OR DEDUCTIBLE THAT A PATIENT IS OTHERWISE REQUIRED TO PAY WILL BE WAIVED

Maximum Penalty: Revocation

Minimum Penalty: Indefinite suspension, minimum 30 days, with conditions for reinstatement, subsequent probation, minimum 2 years

- D. VIOLATION OF ANY PROVISION OF THE DENTAL PRACTICE ACT (LAWS/RULES)

Maximum Penalty: Revocation

Minimum Penalty: Formal written reprimand

APPENDIX A

APPLICABILITY OF GUIDELINES TO LICENSURE APPLICANTS

The penalties specified in Categories 1 through 11 are generally tailored to apply to violations of the Dental Practice Act by licensees. When applicants for licensure are found to have committed like violations, the appropriate penalties will be formulated in terms of either grant or denial of licensure, and should be proportionate to penalties for licensees.

For example, if the violation is such that a licensee might be temporarily deprived of licensure, the appropriate guideline for a like violation by a licensure applicant might be:

Maximum Penalty:	Denial of licensure
Minimum Penalty:	Grant of licensure subject to prerequisite conditions and/or subsequent to probationary terms once issued

If the violation is such that a licensee might receive a minimum penalty, the appropriate guidelines for licensure applicants might be:

Maximum Penalty:	Denial of licensure; conditions for reconsideration
Minimum Penalty:	Grant of licensure subject to prerequisite conditions and/or subsequent to probationary terms once issued

If the violation is such that permanent denial of licensure might be justified, the following language should be used:

It is hereby ORDERED that the application of _____ for a certificate to practice (dentistry/dental hygiene/dental assistant radiography) be DENIED. Further, _____ is hereby advised that reapplication is not encouraged, as the grounds for denial found herein may be considered as grounds for denial of any future applications submitted.

APPENDIX B

AGGRAVATING AND MITIGATING FACTORS

After a violation has been established, the Board may consider aggravating and mitigating factors/circumstances in determining the penalty to be imposed. If the Board deems such circumstances to be sufficient to justify a departure from the disciplinary guidelines, the reasons should be specified by the Board.

AGGRAVATING FACTORS

Aggravating factors/circumstances are any considerations or factors which might justify an increase in the degree of discipline to be imposed. Aggravating factors may include, but are not limited to:

- a. Prior disciplinary actions
- b. Dishonest or selfish motive
- c. A pattern of misconduct
- d. Multiple violations
- e. Submission of false statements, false evidence, or other deceptive practices during the disciplinary process
- f. Refusal to acknowledge wrongful nature of conduct
- g. Adverse impact of misconduct on others
- h. Vulnerability of the victim
- I. Willful or reckless misconduct

MITIGATING FACTORS

Mitigating factors/circumstances are any considerations which might justify a reduction in the degree of discipline to be imposed. Mitigating factors may include, but are not limited to:

- a. Absence of a prior disciplinary record
- b. Absence of a selfish or dishonest motive
- c. Isolated incident, unlikely to recur
- d. Full and free disclosure to Board
- e. Physical or mental disability or impairment
(NOTE: It is the Board's policy that impairment shall not excuse acts which result in conviction or which potentially have an adverse impact on others.)
- f. Interim rehabilitation or remedial measures
- g. Remorse
- h. Absence of adverse impact of misconduct on others
- I. Absence of willful or reckless misconduct

APPENDIX C

ALL CATEGORIES: STANDARD CONDITIONS FOR REINSTATEMENT AND PROBATION

A. STANDARD CONDITIONS FOR REINSTATEMENT

- Board discretion if out of practice for more than three (3) years:

In the event that the Respondent has not been actively engaged in the practice of dentistry/dental hygiene for a period of three (3) years prior to reinstatement, the Board may exercise its discretion to require additional evidence of Respondent's fitness to resume practice.

B. STANDARD CONDITIONS FOR PROBATION

- Obey laws:

The Respondent shall obey all federal, state and local laws, and all rules governing the practice of dentistry/dental hygiene in Ohio

- Quarterly declarations:

The Respondent shall submit quarterly declarations stating whether or not there has been compliance with all of the provisions of probation.

- Personal appearances:

The Respondent shall appear in person before the Board or its designated representative at quarterly intervals (or at intervals deemed appropriate) or as otherwise requested by the Board.

APPENDIX D

CATEGORY 1 (PRESCRIBING) VIOLATIONS OPTIONAL CONDITIONS FOR REINSTATEMENT AND PROBATION

A. OPTIONAL CONDITIONS FOR REINSTATEMENT

- CE in prescribing and/or pharmacology:

The Respondent shall provide acceptable documentation indicating successful completion of a course dealing with the prescribing of controlled substances and/or pharmacology, approved in advance by the Board Secretary.

- Clinical education program related to violation:

The Respondent shall provide acceptable documentation indicating successful completion of a clinical education program, approved in advance by the Board Secretary, related to the violations of the particular case. The exact number of hours and specific content of the program shall be determined by the Board Secretary. The Board may require that Respondent pass an examination related to the content of the program. The program shall be in addition to the CE required for licensure reinstatement/renewal.

B. OPTIONAL CONDITIONS FOR PROBATION

- Restriction of DEA and controlled substance privileges until Board approval:

The Respondent shall be ineligible to reapply for or to hold registration with the United States Drug Enforcement Administration, and may not prescribe, order, dispense, administer or possess (except as prescribes for Respondent's use by another so authorized by law) any controlled substances without prior Board approval.

- Permanent total restriction of DEA and controlled substance privilege:

The Respondent shall hereafter be ineligible to reapply for or to hold registration with the United States Drug Enforcement Administration, and may not prescribe, order, dispense, administer or possess (except as prescribes for Respondent's use by another so authorized by law) any controlled substances.

- Partial DEA restriction, specified schedules, until Board approval:

The Respondent shall be ineligible to reapply for or to hold registration with the United States Drug Enforcement Administration, to prescribe, order, dispense, administer or possess controlled substances in schedules _____ without prior Board approval.

- Controlled substance log after Board approval of controlled substance privileges or otherwise:

Respondent is required, upon reinstatement of his controlled substance privileges pursuant to Board approval or otherwise, to keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted to the Board as directed by the Board. Further, Respondent shall make his patient records with regard to such prescribing available for review by the Board Secretary upon request.

- Restriction of specific drugs:

The Respondent shall not prescribe, administer, dispense, order, or possess (except as prescribes for Respondent's use by another so authorized by law) the following drugs _____.

- Log of specific drugs:

Respondent shall keep a log of the following controlled substances prescribed, ordered, dispensed, or administered: _____. Such log shall be submitted to the Board as directed by the Board. Further, Respondent shall make his patient records with regard to such prescribing available for review by the Board Secretary upon request.

- Documentation of CE hours related to violations:

Respondent shall submit acceptable documentation for the next renewal period, _____ hours of continuing education approved in advance by the Board Secretary, in courses determined by the Board.

- Prohibition against treating self and family members:

Respondent shall refrain from self-treating and from treating any family members, except in the event of a life-threatening emergency.

APPENDIX E

CATEGORY 2 (MINIMUM STANDARDS/QUALITY OF CARE) VIOLATIONS OPTIONAL CONDITIONS FOR REINSTATEMENT AND PROBATION

(Note: See Appendix D if violations include improper prescribing)

A. OPTIONAL CONDITIONS FOR REINSTATEMENT

- Continuing educational program related to violations:

The Respondent shall provide acceptable documentation indicating successful completion of a continuing education program, approved in advance by the Board Secretary, related to the violations of the particular case. The exact number of hours and specific content of the program shall be determined by the Board Secretary. The Board may require that Respondent pass an examination related to the content of the program. The program shall be in addition to the CE required for licensure reinstatement/renewal.

- Jurisprudence exam:

Respondent shall take and pass an examination to be administered by the Board or its designee related to the content of Ohio's statute and rules of the Board relating to the practice of dentistry/dental hygiene. If Respondent fails this examination, Respondent must wait one month between examinations.

B. OPTIONAL CONDITIONS FOR PROBATION

- Documentation of CE related to violations:

Respondent shall submit acceptable documentation for the next renewal period, _____ hours of continuing education approved in advance by the Board Secretary, in courses determined by the Board.

- Monitoring dentist to review patient charts:

Within thirty (30) days of reinstatement, the Respondent shall submit for the Board Secretary's approval the name of a monitoring dentist who shall review Respondent's charts and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. It shall be the Respondent's responsibility to ensure the monitoring dentist's quarterly reports are submitted to the

Board on a timely basis. In the event that the approved monitoring dentist becomes unable or unwilling to serve, Respondent shall immediately notify the Board in writing and shall make arrangements for another monitoring dentist as soon as possible.

- Third party presence during exam/treatment:

The respondent shall have a third party present while examining and treating patients.

APPENDIX F

CATEGORY 4 (LEWD AND IMMORAL CONDUCT) VIOLATIONS OPTIONAL CONDITIONS FOR REINSTATEMENT AND PROBATION

A. OPTIONAL CONDITIONS FOR REINSTATEMENT

- Ethics Course:

The Respondent shall submit acceptable documentation of successful completion of a course in professional ethics approved in advance by the Board Secretary.

- Psychiatric evaluation/reports evidencing fitness to practice:

The Respondent shall submit to a psychiatric evaluation from a provider approved in advance by the Board Secretary, at Respondent's expense. The Respondent shall submit a written report by the approved provider to the Board indicating that Respondent's ability to practice has been assessed and that Respondent has been found capable of practicing dentistry/dental hygiene in accordance with the accepted standards of the profession. The report shall state with particularity the bases for this determination and shall set forth any recommended limitation upon Respondent's practice.

B. OPTIONAL CONDITIONS FOR PROBATION

- Third party presence during exam/treatment:

The respondent shall have a third party present while examining and treating patients.

APPENDIX G

CATEGORY 7 (IMPAIRMENT) VIOLATIONS OPTIONAL CONDITIONS FOR REINSTATEMENT AND PROBATION

A. OPTIONAL CONDITIONS FOR REINSTATEMENT

- Physical/mental treatment:

Within thirty (30) days of the effective date of this Order, or as otherwise approved by the Board, Respondent shall commence appropriate treatment, as determined by an informed assessment of Respondent's needs. Such assessment and treatment shall be by a provider(s) approved in advance by the Board Secretary. Prior to initial assessment, Respondent shall provide the approved provider with copies of the Board's Order in this matter (including any documents attached and incorporated by reference) and the Board may provide any other documentation it deems necessary and/or helpful to the provider. Within ten (10) days after completion of the initial assessment, or as otherwise determined by the Board, Respondent shall cause a written report to be submitted to the Board from the approved provider, which shall include:

1. A detailed plan of recommended treatment based on the provider's informed assessment of the Respondent's current needs, and;
2. Any reports which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

- Drug/alcohol treatment:

Within thirty (30) days of the effective date of this Order, or as otherwise approved by the Board, Respondent shall submit to appropriate treatment, as determined by an informed assessment of Respondent's needs. Such assessment and treatment shall be by an approved treatment provider(s) for drug and alcohol dependency. Prior to initial assessment, Respondent shall provide the approved provider with copies of the Board's Order in this matter (including any documents attached and incorporated by reference) and the Board may provide any other documentation it deems necessary and/or helpful to the provider.

Within ten (10) days after completion of the initial assessment, or as

otherwise determined by the Board, Respondent shall cause a written report to be submitted to the Board from the approved provider, which shall include:

1. A detailed plan of recommended treatment based on the treatment provider's informed assessment of the Respondent's current needs;
2. A statement indicating that Respondent entered into or commenced the recommended treatment program within 48 hours of its determination;
3. A copy of a treatment contract signed by the Respondent, establishing the terms of treatment and aftercare, including any required supervision or restrictions of practice during treatment or aftercare, and;
4. A statement indicating that the treatment provider will immediately report to the Board any failure by Respondent to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare.

- Evidence of compliance with recommended treatment:

The Respondent shall provide the Board with acceptable documentation evidencing compliance with the plan of recommended treatment required under paragraph _____ above.

- Release of Information

The Respondent shall sign a written release which authorizes the Board to have access to all treatment information and documentation.

- Psychiatric evaluation/reports evidencing ability to practice:

The Respondent shall submit to a psychiatric evaluation from a provider approved in advance by the Board Secretary. The Respondent shall ensure that the approved evaluator submits a written report directly to the Board indicating that Respondent's ability to practice has been assessed and that Respondent has been found capable of practicing dentistry/dental hygiene in accordance with the accepted standards of the profession. The report shall state with particularity the bases for this determination and shall set forth any recommended limitation upon Respondent's practice.

- Physician evaluation/report evidencing ability to practice:

The Respondent shall submit to an evaluation from a physician approved in advance by the Board Secretary. The Respondent shall ensure that the approved physician submits a written report directly to the Board indicating that Respondent's ability to practice has been assessed and that Respondent has been found capable of practicing dentistry/dental hygiene in accordance with the accepted standards of the profession. The report shall state with particularity the bases for this determination and shall set forth any recommended limitation upon Respondent's practice.

- Physician evaluation/report evidencing drug-free status and fitness to practice:

The Respondent shall submit to an evaluation from a physician approved in advance by the Board Secretary. The Respondent shall ensure that the approved physician submits a written report directly to the Board stating that Respondent is no longer drug or alcohol dependent and is able to practicing dentistry/dental hygiene in accordance with the accepted standards of the profession. The report shall state with particularity the bases for this determination and shall set forth any recommended limitation upon Respondent's practice.

- Evidence of completion of treatment and compliance with aftercare:

Respondent shall ensure that the approved treatment provider provides directly to the Board certification that Respondent has successfully completed any required inpatient treatment and is continuing full compliance with regard to any outpatient treatment and/or aftercare.

- Evidence of participation in drug/alcohol rehabilitation program:

Respondent shall provide satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than _____ times per week, or as otherwise directed by the Board.

- Evidence of psychiatric counseling:

Respondent shall provide documentation verified by the approved treatment provider and acceptable to the Board demonstrating continuing psychiatric counseling at intervals deemed appropriate by the approved treating provider.

B. OPTIONAL CONDITIONS FOR PROBATION

- Psychiatric treatment:

Respondent shall continue psychiatric treatment with a provider approved by the Board, at such intervals as deemed appropriate by the treating provider but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved provider. The Respondent shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

- Abstention from drugs:

The Respondent shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered for the Respondent's use by another so authorized by law who has full knowledge of respondent's history of chemical dependency.

- Abstention from alcohol:

Respondent shall abstain completely from the use of alcohol.

- Monitoring physician/dentist:

The Respondent shall have a monitoring physician/dentist approved by the Board Secretary, who shall monitor him and shall provide the Board with reports on Respondent's progress and status. Respondent shall ensure that said reports are forwarded to the Board on a quarterly basis, or as otherwise deemed appropriate by the Board. In the event that said monitor becomes unable or unwilling to serve, Respondent shall immediately notify the Board in writing, and make arrangements acceptable to the Board for another physician/dentist to monitor his progress and status as soon as possible.

- Random urine screens:

The Respondent shall submit to random urine screenings at intervals deemed appropriate by the Board. Respondent shall ensure that all screening reports are forwarded directly to the Board on a _____ (weekly, monthly, quarterly, etc) basis.

- Submission of blood or urine specimens on request:

The Respondent shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

- Evidence of participation in drug/alcohol rehabilitation program:

Respondent shall maintain participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than _____ times per week, or as otherwise directed by the Board. Respondent shall provide acceptable documentation of continuing participation in such program as requested by the Board.

- Notice to employers:

The Respondent shall provide a copy of the Board Order to all employers and/or the Chief of Staff at each hospital where he has or applies for privileges.

APPENDIX H

CATEGORY 8 (INFECTION CONTROL) VIOLATIONS OPTIONAL CONDITIONS FOR REINSTATEMENT AND PROBATION

A. OPTIONAL PROVISIONS FOR REINSTATEMENT

- Documentation of Compliance

The Respondent shall provide documentation acceptable to the Board indicating compliance with all the law and rules regarding infection control.

B. OPTIONAL CONDITIONS FOR PROBATION

- Obey all laws

The Respondent shall obey all federal state and local laws and all rules governing the profession of dentistry/dental hygiene in the state of Ohio.

- Full cooperation with future office inspections

The Respondent shall fully cooperate with the Board investigators in future inspections and evaluations.

- Documentation from an independent testing agency

The Respondent shall provide documentation from an independent testing agency indicating that the sterilizing equipment used in the office is being tested for proper function on a weekly basis by means of a biological monitoring system that indicates microorganism kill and that immediate remedial action was taken in cases where the biological spore test was positive.

- Continuing Education in infection control

The Respondent shall provide documentation acceptable to the Board indicating that he has completed at least seven (7) hours of continuing education in infection control approved in advance by the Board Secretary within three (3) months of the effective date of the order/consent agreement. The seven (7) hours will be in addition to the 40 hours of continuing education credit necessary for renewal.

- Jurisprudence exam

The Respondent shall take and pass the examination administered by the Board regarding the laws and rules governing the profession of dentistry/dental hygiene.

APPENDIX I

**CATEGORY 9
STANDARD CE ORDERS**

**A. STANDARD ORDER FOR FAILURE TO RESPOND TIMELY TO CE AUDIT,
BUT REQUISITE CE COMPLETED**

It is hereby ORDERED that:

1. Respondent shall be and is hereby REPRIMANDED for failure to timely submit documentation of compliance with Continuing Education requirements for the _____ biennium.
2. Respondent's certificate to practice dentistry/dental hygiene shall be placed on probationary status for the next two biennial periods _____ (specify), during which time Respondent shall submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Education. This documentation shall be due in the Board office within thirty (30) days of each renewal.
3. Upon successful completion of the conditions of probation, Respondent's license shall be fully restored.

This Order shall become effective immediately upon the mailing of the Order.

**B. STANDARD ORDER FOR FAILURE TO COMPLETE CE AS CERTIFIED ON
RENEWAL CARD**

It is hereby ORDERED that:

1. The license of Respondent to practice dentistry/dental hygiene in the state of Ohio shall be automatically SUSPENDED for an indefinite period of time.
2. The Board shall not consider reinstatement of Respondent's license to practice unless and until all of the following requirements are met:

- A. (If some hours have been properly documented)
On or before _____ (date), Respondent shall provide documentation acceptable to the Board of satisfactory completion of _____ hours of Continuing Education in addition to the to hours for which satisfactory documentation has already been provided.
- (If no hours have been documented)
On or before _____ (date), Respondent shall provide documentation acceptable to the Board of satisfactory completion of _____ hours of Continuing Education.
- B. Respondent shall provide documentation acceptable to the Board of satisfactory completion of 50 hours of approved Continuing Education for each biennium, if any, during which Respondent's license remains suspended after the _____ biennium.
- C. In the event that Respondent has not been engaged in the active practice of dentistry/dental hygiene for a period of more than three (3) years prior to reinstatement, Respondent shall take and pass any examinations which the Board deems appropriate to assess Respondent's clinical competency.
3. Subsequent to reinstatement, Respondent's license shall be subject to PROBATION for the next two biennial registration periods. During this probationary period, Respondent shall submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Education necessary for renewal. This documentation shall be due in the Board office within thirty (30) days of each renewal.
4. Upon successful completion of probation, Respondent's license shall be fully restored.

This Order shall become effective (immediately upon) (thirty (30) days from) the mailing of this Order.

APPENDIX J

ALL CATEGORIES

OPTIONAL PROVISIONS FOR VIOLATION OF PROBATION AND COMPLETION OF PROBATION

A. OPTIONAL PROVISIONS FOR VIOLATION OF PROBATION

- Stay set aside, revocation/suspension imposed

If the Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation/suspension of Respondent's license.

- Discretionary sanction imposed

If the Respondent violates probation in any respect, the Board, after giving notice and an opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including revocation of Respondent's license to practice.

B. OPTIONAL PROVISIONS FOR COMPLETION OF PROBATION

- Full restoration

Upon successful completion, the Respondent's license will be fully restored.

- Restoration with permanent limitations

Upon successful completion of probation, the Respondent's license shall be restored, but shall be permanently limited and restricted as specified in paragraph _____ above/as follows: _____.

APPENDIX K

DEFINITIONS OF PENALTIES

A. REVOCAATION

Permanent loss of license to practice in Ohio with no ability to apply for licensure in the future.

B. SUSPENSION

Loss of license to practice for a specific period of time (definite suspension) or until specific conditions are met (indefinite suspension). In the case of indefinite suspension, the Board may specify a minimum period of time during which the licensee may not practice, in addition to other conditions for reinstatement of license.

C. LIMITATION

License to practice is restricted in some way (eg., licensee is prohibited from practicing a certain specialty or procedure or prescribing, etc.) or is subject to terms and conditions specified by the Board. The limitation can be permanent or temporary.

D. PROBATION

A specific type of limitation wherein the license to practice remains dependent upon compliance with terms and conditions specified by the Board (eg., periodic appearances, drug logs, reports by treating practitioners, etc.). The probation period can be for a definite or indefinite period of time. In the case of indefinite probation, the Board may establish a minimum probationary period, with provisions for termination of probation at the Board's discretion thereafter.

E. REPRIMAND

The licensee is formally and publicly reprimanded in writing.

Sanctioning

Reference Points

Instruction Manual

Board of Dentistry

Guidance Document 60-2
Adopted October 2005
Revised September 2012
Revised December 2015

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July 22, 2005

Dear Interested Parties:

In the spring of 2001, the Virginia Department of Health Professions approved a workplan to study sanctioning in disciplinary cases for Virginia's 13 health regulatory boards. The purpose of the study was to "...provide an empirical, systematic analysis of board sanctions for offenses and, based on this analysis, to derive reference points for board members..." The purposes and goals of this study are consistent with state statutes which specify that the Board of Health Professions periodically review the investigatory and disciplinary processes to ensure the protection of the public and the fair and equitable treatment of health professionals.

Each health regulatory board hears different types of cases, and as a result, considers different factors when determining an appropriate sanction. After interviewing current and past Board of Dentistry members and staff, a committee of Board members, staff, and research consultants assembled a research agenda involving one of the most exhaustive statistical studies of sanctioned Dentists in the United States. The analysis included collecting over 130 factors on all Board of Dentistry sanctioned cases in Virginia over a 7 year period. These factors measured case seriousness, respondent characteristics, and prior disciplinary history. After identifying the factors that were consistently associated with sanctioning, it was decided that the results provided a solid foundation for the creation of sanction reference points. Using both the data and collective input from the Board of Dentistry and staff, analysts spent 10 months developing a usable set of sanction worksheets as a way to implement the reference system.

By design, future sanction recommendations will encompass, on average, about 75% of past historical sanctioning decisions; an estimated 25% of future sanctions will fall above or below the sanction point recommendations. This allows considerable flexibility when sanctioning cases that are particularly egregious or less serious in nature. Consequently, one of the most important features of this system is its voluntary nature; that is, the Board is encouraged to depart from the reference point recommendation when aggravating or mitigating circumstances exist.

Equally important to recommending a sanction, the system allows each respondent to be evaluated against a common set of factors—making sanctioning more predictable, providing an educational tool for new Board members, and neutralizing the possible influence of "inappropriate" factors (e.g., race, sex, attorney presence, identity of Board members). As a result, the following reference instruments should greatly benefit Board members, health professionals and the general public.

Sincerely yours,

Robert A. Nebiker
Director

Cordially,

Elizabeth A. Carter, Ph.D.
Executive Director
Virginia Board of Health Professions

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GENERAL INFORMATION

Overview

The Virginia Board of Health Professions has spent the last three years studying sanctioning in disciplinary cases. The study is examining all 13 health regulatory boards, with the greatest focus most recently on the Board of Dentistry. The Board of Dentistry is now in a position to implement the results of the research by using a set of voluntary Sanctioning Reference Points (SRPs). This manual contains some background on the project, the goals and purposes of the system, and the three offense-based sanction worksheets and grids that will be used to help Board members determine how a similarly situated respondent has been treated in the past. This sanctioning system is based on a specific sample of cases, and thus only applies to those persons sanctioned by the Virginia Board of Dentistry. Moreover, the worksheets and grids have not been tested or validated on any other groups of persons. Therefore, they should not be used at this point to sanction respondents coming before other health regulatory boards, other states, or other disciplinary bodies.

The Sanctioning Reference system is comprised of a series of worksheets which score a number of offense and prior record factors identified using statistical analysis. These factors have been isolated and tested in order to determine their influence on sanctioning outcomes. A sanctioning grid found on each of the offense worksheets uses an offense score and a prior record score to recommend a range of sanctions from which the Board may select in a particular case.

In addition to this instruction booklet, separate coversheets and worksheets are available to record the offense score, prior record score, recommended sanction, actual sanction and any reasons for departure (if applicable). The completed coversheets and worksheets will be evaluated as part of an on-going effort to monitor and refine the SRPs. These instructions and the use of the SRP system fall within current Department of Health Professions and Board of Dentistry policies and procedures. Furthermore, all sanctioning recommendations are those currently available to and used by the Board and are specified within existing Virginia statutes.

Background

In April of 2001, the Virginia Board of Health Professions (BHP) approved a work plan to conduct an analysis of health regulatory board sanctioning and to consider the appropriateness of developing historically-based sanctioning reference points for health regulatory boards, including the Board of Dentistry (BOD). The Board of Health Professions and project staff recognize the complexity and difficulty in sanction decision-making and have indicated that for any sanction reference system to be successful, it must be *“developed with complete Board oversight, be value-neutral, be grounded in sound data analysis, and be totally voluntary”*—that is, the system is viewed strictly as a Board decision tool.

Goals

The Board of Health Professions and the Board of Dentistry cite the following purposes and goals for establishing SRPs:

- Making sanctioning decisions more predictable
- Providing an education tool for new Board members
- Adding an empirical element to a process/system that is inherently subjective
- Providing a resource for BOD and those involved in proceedings
- “Neutralizing” sanctioning inconsistencies
- Validating Board member or staff recall of past cases
- Constraining the influence of undesirable factors—e.g., overall Board makeup, race or ethnic origin, etc.
- Helping predict future caseloads and need for compliance monitoring

Methodology

The fundamental question when developing a sanctioning reference system is deciding whether the supporting analysis should be grounded in historical data (a descriptive approach) or whether it should be developed normatively (a prescriptive approach). A prescriptive approach reflects what policymakers feel sanction recommendations should be, as opposed to what they have been. SRPs can also be developed using historical data analysis with normative adjustments to

follow. This approach combines information from past practice with policy adjustments, in order to achieve some desired outcome. The Board of Dentistry chose a descriptive approach with a limited number of normative adjustments.

Qualitative Analysis

Researchers conducted 11 in-depth personal interviews of past and current BOD members, Board staff, and representatives from the Attorney General's office. The interview results were used to build consensus regarding the purpose and utility of SRPs and to further frame the analysis. Additionally, interviews helped ensure the factors that Board members consider when sanctioning were included during the quantitative phase of the study. A literature review of sanctioning practice across the United States was also conducted.

Quantitative Analysis

Researchers collected detailed information on all BOD disciplinary cases ending in a violation between 1996 and 2004; approximately 198 sanctioning "events" covering 222 cases. Over 130 different factors were collected on each case in order to describe the case attributes Board members identified as potentially impacting sanction decisions. Researchers used data available through the DHP case management system combined with primary data collected from hard copy files. The hard copy files contained investigative reports, Board notices, Board orders, and all other documentation that is made available to Board members when deciding a case sanction.

A comprehensive database was created to analyze the offense and respondent factors which were identified as potentially influencing sanctioning decisions. Using statistical analysis to construct a "historical portrait" of past sanctioning decisions, the significant factors along with their relative weights were derived. These factors and weights were formulated into sanctioning worksheets and grids, which are the basis of the SRPs.

Offense factors such as patient harm, patient vulnerability and number of teeth involved were analyzed as well as respondent factors such as substance abuse, impairment at the time of offense, initiation of self-corrective action, and prior disciplinary history of the respondent. Some factors were deemed inappropriate for use in a structured sanctioning

reference system. For example, the presence of the respondent's attorney, the respondent's age or sex, and case processing time, are considered "extra-legal" factors, and were explicitly excluded from the sanction reference points. Although many factors, both "legal" and "extra-legal" can help explain sanction variation, only those "legal" factors the Board felt should consistently play a role in a sanction decision were included in the final product.

By using this method, the hope is to achieve more neutrality in sanctioning, by making sure the Board considers the same set of "legal" factors in every case.

Wide Sanctioning Ranges

The SRPs consider and weigh the circumstances of an offense and the relevant characteristics of the respondent, providing the Board with a sanction range that encompasses roughly 77% of historical practice. This means that 23% of past cases had received sanctions either higher or lower than what the reference points indicate, acknowledging that aggravating and mitigating factors play a role in sanctioning. The wide sanctioning ranges recognize that the Board will sometimes reasonably disagree on a particular sanction outcome, but that a broad selection of sanctions fall within the recommended range.

Any sanction recommendation the Board derives from the SRP worksheets must fall within Virginia law and regulations. If a Sanctioning Reference Point worksheet recommendation is more or less severe than a Virginia statute or DHP regulation, the existing laws or policies supersede any worksheet recommendation.

Two Dimensional Sanctioning Grid Scores Both Offense and Prior Record Factors

The Board indicated early in the study that sanctioning is not only influenced by circumstances associated with the instant offense, but also by the respondent's past history. The empirical analysis supported the notion that both offense and prior record factors impacted sanction outcomes. To this end, the Sanction Reference Points make use of a two-dimensional scoring grid; one dimension assesses factors related to the instant offense, while the other dimension assesses factors related to prior record.

The first dimension assigns points for circumstances related to the violation offense that the Board is currently considering. For example, the respondent may receive points if they were unable to safely practice due to impairment at the time of the offense, or if there were multiple patients involved in the incident(s). The other dimension assigns points for factors that relate to the respondent's prior record. So a respondent before the Board for an unlicensed activity case may also receive points for having had a history of disciplinary violations. This respondent can receive additional points if the prior violation is similar.

Voluntary Nature

The SRP system is a tool to be utilized by the Board of Dentistry. Compliance with the SRPs is voluntary. The Board will use the system as a reference tool and may choose to sanction outside the recommendation. The Board maintains complete discretion in determining the sanction handed down. However, a structured sanctioning system is of little value if the Board is not provided with the appropriate coversheet and worksheet in every case eligible for scoring. A coversheet and worksheet should be completed in cases resolved by Informal Conferences. The coversheet and worksheets will be referenced by Board members during Closed Session.

Worksheets Not Used in Certain Cases

The SRPs will not be applied in any of the following circumstances:

- Formal Hearings — Sanction Reference Points will not be used in cases that reach a Formal Hearing level.
- Mandatory suspensions – Virginia law requires that under certain circumstances (conviction of a felony, declaration of legal incompetence or incapacitation, license revocation in another jurisdiction) the license of a practitioner must be suspended. The sanction is defined by law and is therefore excluded from the Sanctioning Reference Point system.
- Compliance/reinstatements – The SRPs should not be applied to compliance or reinstatement cases
- Action by another Board – When a case which has already been adjudicated by a Board from another state appears before the Virginia Board of Dentistry, the Board often attempts to mirror the sanction handed down by the other Board. The Virginia Board of Dentistry usually requires that all conditions set by the other Board are completed or complied with in Virginia. The SRPs do not apply as the case has already been heard and adjudicated by another Board.

The SRPs are organized into three offense groups. This organization is based on a historical analysis showing that offense and prior record factors and their relative importance vary by type of offense. The reference point factors found within a particular offense group are those which proved important in determining historical sanctions for that offense category.

When multiple cases have been combined into one “event” (one notice) for disposition by the Board, only one offense group coversheet and worksheet should be completed and it should encompass the entire event. If a case has more than one offense type, one coversheet and worksheet is selected according to the offense group which appears highest on the following table. For example, a dentist found in violation of both advertising and a treatment-related offense would have their case scored on a Standards of Care worksheet, since Standards of Care is above Advertising/Business Practice Issues on the table. The table also assigns the various case categories brought before the Board to one of the three offense groups. If an offense type is not listed, find the most analogous offense type and use the appropriate scoring worksheet.

Table 1: Offense Groups Covered by the Sanctioning Reference Points

<p>Inability to Safely Practice</p>	<p>Inability to safely practice – Impairment or Incapacitation Inability to safely practice - Other Drug Related</p> <ul style="list-style-type: none"> • Prescribing without a relationship • Non-dental purposes • Excessive prescribing/dispensing • Personal Use • Security • Other • Obtaining drugs by fraud
<p>Standard of Care</p>	<p>Standard of Care – Diagnosis/Treatment Related</p> <ul style="list-style-type: none"> • Failure to diagnose or treat • Incorrect diagnosis or treatment • Failure to respond to needs • Delay in treatment • Unnecessary treatment • Improper performance of procedure • Failure to refer/obtain consult • Failure to offer patient education • Other <p>Standard of Care - Consent related Standard of Care - Equipment/Product related Standard of Care - Prescription related Sexual assault and mistreatment Abuse/Abandonment/Neglect Records release</p>
<p>Business Practice Issues/Advertising</p>	<p>Records/Inspections/Audits Business Practices Issues Fraud Criminal activity Unlicensed activity</p> <ul style="list-style-type: none"> • Aiding/Abetting unlicensed activity • DEA registration revoked/expired/invalid • Practicing on lapsed/expired license • Other <p>Advertising</p> <ul style="list-style-type: none"> • Claim of Superiority • Deceptive/Misleading • Improper use of trade name • Fail to disclose full fee when advertising discount • Other • Omission of required wording/advertising elements

Completing the Coversheet & Worksheet

Ultimately, it is the responsibility of the Board to complete the Sanction Reference Point coversheet and worksheet in all applicable cases.

The information relied upon to complete a coversheet and worksheet is derived from the case packet provided to the Board and respondent. It is also possible that information discovered at the time of the informal conference may impact worksheet scoring. The Sanction Reference Point coversheet and worksheet, once completed, are confidential under the Code of Virginia. However, complete copies of the Sanction Reference Point Manual, including blank coversheets and worksheets, can be found on the Department of Health Professions web site: www.dhp.state.va.us (paper copy also available on request).

Offense Group Worksheets

Instructions for scoring each of the 3 offenses are contained adjacent to each worksheet in subsequent sections of this manual. Instructions are provided for each line item of each worksheet and should be referenced to ensure accurate scoring for a specific factor. When scoring an offense group worksheet, the scoring weights assigned to a factor on the worksheet cannot be adjusted. The scoring weights can only be applied as 'yes or no' with all or none of the points applied. In instances where a scoring factor is difficult to interpret, the Board has final say in how a case is scored.

Coversheet

The coversheet is completed to ensure a uniform record of each case and to facilitate recordation of other pertinent information critical for system monitoring and evaluation.

If the Board feels the sanctioning grid does not recommend an appropriate sanction, the Board is encouraged to depart either higher or lower when handing down a sanction. If the Board

disagrees with the sanction grid recommendation and imposes a sanction greater or less than the recommended sanction, a short explanation can be recorded on the coversheet. The explanation could identify the factors and the reasons for departure. This process will ensure worksheets are revised appropriately to reflect current Board practice. If a particular reason is continually cited, the Board can examine the issue more closely to determine if the worksheets should be modified to better reflect Board practice.

Aggravating and mitigating circumstances that may influence Board decisions can include, but should not be limited to, such things as:

- Severity of the incident
- Monetary gain
- Dishonesty/Obstruction
- Motivation
- Remorse
- Patient vulnerability
- Restitution/Self-corrective action
- Multiple offenses/Isolated incident
- Age of prior record

A space is provided on the coversheet to record the reason(s) for departure. Due to the uniqueness of each case, the reason(s) for departure may be wide-ranging. Sample scenarios are provided below:

Departure Example #1

Sanction Grid Result: Recommend Formal.

Imposed Sanction: Probation with terms – practice restriction.

Reason(s) for Departure: Respondent was particularly remorseful and had already begun corrective action.

Departure Example #2

Sanction Grid Result: No

Sanction/Reprimand/Education.

Imposed Sanction: Treatment – practice monitoring.

Reason(s) for Departure: Respondent may be trending towards future violations, implement oversight now to avoid future problems.

Determining a Specific Sanction

The Sanction Grid has four separate sanctioning outcomes: Recommend formal or accept surrender, Treatment, Monetary Penalty, and No Sanction/Reprimand/Education. The table below lists the most frequently cited sanctions under the four sanctioning outcomes that are part of the sanction grid. After considering the sanction grid recommendation, the Board should fashion a more detailed sanction(s) based on the individual case circumstances.

Table 2: Sanctioning Reference Point Grid Outcomes

Recommend Formal or Accept Surrender	Recommend Formal Accept Surrender Suspension Revocation
Treatment/Monitoring	Stayed Suspension - Immediate Probation Terms <ul style="list-style-type: none"> • Audit/inspection of practice, clinical exam • Quarterly self-reports • Impairment – HPMP • Practice Restriction - oversight by a supervisor/monitor • Practice Restriction - specific • Practice Restriction - setting • Practice Restriction - chart/record review • Prescribing - restrictions • Quarterly job performance evaluations • Prescribing - log • Written notification to employer/employees/associates • Mental/physical evaluation
Monetary Penalty	Monetary Penalty
No Sanction/Reprimand/Education	No Sanction Reprimand Education Terms <ul style="list-style-type: none"> • Advertising - cease and desist • Cease and Desist • Continuing Education - general or specific • Continuing Education - record keeping • Continuing Education - prescribing • Virginia Dental Law Exam

**Sanctioning Reference Points
Coversheet, Worksheets
and Instructions**

Sanctioning Reference Points Coversheet

- Complete Offense Score section.
- Complete Prior Record Score section.
- Determine the Recommended Sanction using the scoring results and the Sanction Grid.
- Complete this coversheet.

Case Number(s):

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Respondent Name: _____
 (Last) (First) (Title)

License Number: _____

Worksheet Used:

- Inability to Safely Practice
- Standard of Care
- Advertising/Business Practice Issues

Sanction Grid Result:

- No Sanction/Reprimand/Education
- No Sanction/Reprimand/Education - Monetary Penalty
- Monetary Penalty – Treatment/Monitoring
- Treatment/Monitoring
- Treatment - Recommend Formal/Accept Surrender

Imposed Sanction(s):

- No Sanction
- Reprimand
- Monetary Penalty: \$_____ enter amount Probation: _____ duration in months
- Stayed Suspension: _____ duration in months
- Recommend Formal
- Accept Surrender
- Accept Revocation
- Stayed Suspension
- Other sanction: _____
- Terms: _____

Reasons for Departure from Sanction Grid Result (if applicable): _____

Worksheet Preparer's Name: _____ Date Worksheet Completed: _____

Confidential pursuant to § 54.1-2400.2 of the Code of Virginia.

Inability to Safely Practice Worksheet Instructions

Offense Score

Step 1: (score all that apply)

Enter “60” if the respondent was unable to safely practice at the time of the offense due to illness related to substance abuse impairment, or mental/physical incapacitation.

Enter “40” if physical injury occurred. Physical injury includes any injury requiring medical care ranging from first aid treatment to hospitalization. Patient death would also be included here.*

Enter “30” if the offense involves multiple patients.

Enter “20” if the offense involves one or more teeth.

Enter “20” if the patient required subsequent treatment from a licensed third party healthcare practitioner, not necessarily a dentist.

Enter “20” if the offense involves self-prescribing or prescribing beyond the scope.

Enter “20” if there was financial or material gain. Examples of cases involving financial or material gain include, but are not limited to, completing unnecessary treatment to increase fees, failure to comply with provider contracts with insurance companies and billing patient portion of fees, unbundling of services or aiding and abetting the unlicensed practice of dentistry or dental hygiene.

Enter “15” if the patient is especially vulnerable. Patients in this category must be one of the following: under age 18, over age 65, or mentally/physically handicapped.

Enter “10” if multiple respondents were involved.

Enter “10” if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Step 2: Combine all for Total Offense Score

Prior Record Score

Step 3: (score all that apply)

Enter “60” if the respondent’s license was previously lost due to Revocation, Suspension, or Summary Suspension.

Enter “20” if the respondent has a criminal activity conviction related to the current case.

Enter “20” if the respondent has had a previous finding of a violation.

Enter “20” if the respondent has had a previous violation with a sanction imposed.

Enter “10” if the respondent has had any “similar” violations prior to this case. Similar violations include any cases that are also classified as “Inability to Safely Practice” (see cases that are eligible for scoring listed under “Case Categories” in the table on Page 6).

Step 4: Combine all for Total Prior Record Score

Sanction Grid

Step 5:

Locate the Offense and Prior Record scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation. Example: If the Offense Score is 60 and the Prior Record Score is 10, the recommended sanction is shown in the center grid cell – “Treatment”.

Step 6: Coversheet

Complete the coversheet including the grid sanction, the imposed sanction and the reasons for departure if applicable.

* Original text revised in September 2012. Injury was previously defined as, “Physical injury includes any injury requiring medical care ranging from first aid treatment to hospitalization.”

Inability to Safely Practice Worksheet

Board of Dentistry
Revised Dec 2015

Offense Score	Points	Score
Inability to safely practice - Impaired/Incapacitated	60	_____
Patient injury	40	_____
More than one patient involved	30	_____
One or more teeth involved	20	_____
Patient required subsequent treatment	20	_____
Self-prescribing or prescribing beyond scope	20	_____
Financial or material gain	20	_____
Patient vulnerable	15	_____
Multiple respondents involved	10	_____
Act of commission	10	_____
Total Offense Score		<div style="border: 1px solid black; width: 50px; height: 30px; display: inline-block;"></div>

Respondent Score		
License previously lost	60	_____
Concurrent criminal activity conviction	20	_____
Previous finding of a violation	20	_____
Previous violation with a sanction imposed	20	_____
Previous violation similar to current	10	_____
Total Respondent Score		<div style="border: 1px solid black; width: 50px; height: 30px; display: inline-block;"></div>

		Offense Score		
		0-30	31-60	61 and over
Prior Record Score	0	No Sanction/Reprimand/ Education	Monetary Penalty	Treatment/Monitoring
	1-30	Treatment/Monitoring	Treatment/Monitoring	Treatment/Monitoring
	31 and over	Treatment/Monitoring	Treatment/ Monitoring	Treatment/ Monitoring

Confidential pursuant to § 54.1-2400.2 of the Code of Virginia.

Standard of Care Worksheet Instructions

Offense Score

Step 1: (score all that apply)

Enter “60” if the offense involves multiple patients.

Enter “30” if the patient is especially vulnerable. Patients in this category must be one of the following: under age 18, over age 65, or mentally/physically handicapped.

Enter “25” if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter “20” if there was financial or material gain. Examples of cases involving financial or material gain include, but are not limited to, completing unnecessary treatment to increase fees, failure to comply with provider contracts with insurance companies and billing patient portion of fees, unbundling of services or aiding and abetting the unlicensed practice of dentistry or dental hygiene.

Enter “10” if the offense involves one or more teeth.

Enter “10” if physical injury occurred. Physical injury includes any injury requiring medical care ranging from first-aid treatment to hospitalization. Patient death would also be included here. *

Enter “10” if the patient required subsequent treatment from a licensed third party healthcare practitioner, not necessarily a dentist.

Enter “10” if multiple respondents were involved.

Enter “10” if the offense involves self-prescribing or prescribing beyond the scope.

Step 2: Combine all for Total Offense Score

Prior Record Score

Step 3: (score all that apply)

Enter “60” if the respondent’s license was previously lost due to Revocation, Suspension, or Summary Suspension.

Enter “20” if the respondent has had a previous finding of a violation.

Enter “20” if the respondent has had a previous violation with a sanction imposed.

Enter “10” if the respondent has had any “similar” violations prior to this case. Similar violations include any cases that are also classified as “Standard of Care” (see cases that are eligible for scoring listed under “Case Categories” in the table on Page 6).

Enter “10” if the respondent has a criminal activity conviction related to the current case.

Step 4: Combine all for Total Prior Record Score

Sanction Grid

Step 5:

Locate the Offense and Prior Record scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation.

Example: If the Offense Score is 60 and the Prior Record Score is 10, the recommended sanction is shown in the center grid cell – “Monetary Penalty/Treatment”.

Step 6: Coversheet

Complete the coversheet including the grid sanction, the imposed sanction and the reasons for departure if applicable.

* Original text revised in September 2012. Injury was previously defined as, “Physical injury includes any injury requiring medical care ranging from first aid treatment to hospitalization.”

Standard of Care

Board of Dentistry
Revised Dec 2015

Offense Score	Points	Score
More than one patient involved	60	_____
Patient vulnerable	30	_____
Act of commission	25	_____
Financial or material gain	20	_____
One or more teeth involved	10	_____
Patient injury	10	_____
Patient required subsequent treatment	10	_____
Multiple respondents involved	10	_____
Self-prescribing or prescribing beyond scope	10	_____
Total Offense Score		<input style="width: 50px; height: 20px;" type="text"/>

Respondent Score		
License previously lost	60	_____
Previous finding of a violation	20	_____
Previous violation with a sanction imposed	20	_____
Previous violation similar to current	10	_____
Criminal activity conviction	10	_____
Total Respondent Score		<input style="width: 50px; height: 20px;" type="text"/>

		Offense Score		
		0-40	41-65	66 and over
Prior Record Score	0	No Sanction/ Reprimand/Education	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty Treatment/Monitoring
	1-20	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty Treatment/Monitoring	Treatment/Monitoring Recommend Formal/ Accept Surrender
	21 and over	Monetary Penalty Treatment/Monitoring	Monetary Penalty Treatment/Monitoring	Treatment/Monitoring Recommend Formal/ Accept Surrender

Advertising Worksheet Instructions

Offense Score

Step 1: (score all that apply)

Enter “60” if the offense involves multiple patients.

Enter “40” if the patient is especially vulnerable. Patients in this category must be one of the following: under age 18, over age 65, or mentally/physically handicapped.

Enter “30” if the offense involves one or more teeth.

Enter “20” if multiple respondents were involved.

Enter “20” if the offense involves self-prescribing or prescribing beyond the scope.

Enter “20” if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter “20” if there was financial or material gain. Examples of cases involving financial or material gain include, but are not limited to, completing unnecessary treatment to increase fees, failure to comply with provider contracts with insurance companies and billing patient portion of fees, unbundling of services or aiding and abetting the unlicensed practice of dentistry or dental hygiene.

Enter “10” if physical injury occurred. Physical injury includes any injury requiring medical care ranging from first aid treatment to hospitalization. Patient death would also be included here.*

Enter “10” if the patient required subsequent treatment from a licensed third party healthcare practitioner, not necessarily a dentist.

Step 2: Combine all for Total Offense Score

Prior Record Score

Step 3: (score all that apply)

Enter “60” if the respondent’s license was previously lost due to Revocation, Suspension, or Summary Suspension.

Enter “40” if the respondent has a criminal activity conviction related to the current case.

Enter “30” if the respondent has had a previous violation with a sanction imposed.

Enter “20” if the respondent has had a previous finding of a violation.

Enter “10” if the respondent has had any “similar” violations prior to this case. Similar violations include any cases that are also classified as “Advertising/Business Practice Issues” (see cases that are eligible for scoring listed under “Case Categories” in the table on Page 6).

Step 4: Combine all for Total Prior Record Score

Sanction Grid

Step 5:

Locate the Offense and Prior Record scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation.

Example: If the Offense Score is 30 and the Prior Record Score is 10, the recommended sanction is shown in the center grid cell – “Monetary Penalty”.

Step 6: Coversheet Complete the coversheet including the grid sanction, the imposed sanction and the reasons for departure if applicable.



Offense Score	Points	Score
More than one patient involved	60	_____
Patient vulnerable	40	_____
One or more teeth involved	30	_____
Multiple respondents involved	20	_____
Self prescribing or prescribing beyond scope	20	_____
Act of commission	20	_____
Financial or material gain	20	_____
Patient injury	10	_____
Patient required subsequent treatment	10	_____
Total Offense Score		<input style="width: 50px; height: 30px; border: 1px solid black;" type="text"/>

Respondent Score		
License previously lost	60	_____
Criminal activity conviction	40	_____
Previous violation with a sanction imposed	30	_____
Previous finding of a violation	20	_____
Previous violation similar to current	10	_____
Total Respondent Score		<input style="width: 50px; height: 30px; border: 1px solid black;" type="text"/>

		Offense Score		
		0-10	11-39	40 and over
Prior Record Score	0	No Sanction/Reprimand/ Education Monetary Penalty	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty Treatment/Monitoring
	1-40	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty	Treatment/Monitoring
	41 and over	Monetary Penalty Treatment/Monitoring	Treatment/Monitoring	Treatment/ Monitoring Recommend Formal/ Accept Surrender

WAC 246-16-800

Sanctions—General provisions.

(1) Applying these rules.

(a) The disciplining authorities listed in RCW **18.130.040**(2) will apply these rules to determine sanctions imposed for unprofessional conduct by a license holder in any active, inactive, or expired status. The rules do not apply to applicants.

(b) The disciplining authorities will apply the rules in:

(i) Orders under RCW **18.130.110** or **18.130.160**; and

(ii) Stipulations to informal disposition under RCW **18.130.172**.

(c) Sanctions will begin on the effective date of the order.

(2) Selecting sanctions.

(a) The disciplining authority will select sanctions to protect the public and, if possible, rehabilitate the license holder.

(b) The disciplining authority may impose the full range of sanctions listed in RCW **18.130.160** for orders and RCW **18.130.172** for stipulations to informal dispositions.

(i) Suspension or revocation will be imposed when the license holder cannot practice with reasonable skill or safety.

(ii) Permanent revocation may be imposed when the disciplining authority finds the license holder can never be rehabilitated or can never regain the ability to practice safely.

(iii) Surrender of a credential may be imposed when the license holder is at the end of his or her effective practice and surrender alone is enough to protect the public. The license holder must agree to retire and not resume practice.

(iv) Indefinite suspension may be imposed in default and waiver of hearing orders. If indefinite suspension is not imposed in a default or waiver of hearing order, the disciplining authority shall impose sanctions determined according to these rules.

(v) "Oversight" means a period of time during which respondent must engage in on-going affirmative conduct intended to encourage rehabilitation and ensure public safety. It also includes active compliance monitoring by the disciplining authority. The passage of time without additional complaints or violations, with or without payment of a fine or costs, is not, by itself, oversight.

(c) The disciplining authority may deviate from the sanction schedules in these rules if the schedule does not adequately address the facts in a case. The disciplining authority will acknowledge the deviation and state its reasons for deviating from the sanction schedules in the order or stipulation to informal disposition.

(d) If the unprofessional conduct is not described in a schedule, the disciplining authority will use its judgment to determine appropriate sanctions. The disciplining authority will state in the order or stipulation to informal disposition that no sanction schedule applies.

(3) Using sanction schedules.

(a) Step 1: The findings of fact in an order or the allegations in an informal disposition describe the unprofessional conduct. The disciplining authority uses the unprofessional conduct described to select the appropriate sanction schedule contained in WAC **246-16-810** through **246-16-860**.

(i) If the act of unprofessional conduct falls in more than one sanction schedule, the greater sanction is imposed.

(ii) If different acts of unprofessional conduct fall in the same sanction schedule, the highest sanction is imposed and the other acts of unprofessional conduct are considered aggravating factors.

(b) Step 2: The disciplining authority identifies the severity of the unprofessional conduct and

identifies a tier using the sanction schedule tier descriptions.

(c) Step 3: The disciplining authority identifies aggravating or mitigating factors using the list in WAC **246-16-890**. The disciplining authority describes the factors in the order or stipulation to informal disposition.

(d) Step 4: The disciplining authority selects sanctions within the identified tier. The starting point for duration of the sanctions is the middle of the tier range.

(i) Aggravating factors move the appropriate sanctions towards the maximum end of the tier range.

(ii) Mitigating factors move the appropriate sanctions towards the minimum end of the tier range.

(iii) Mitigating or aggravating factors may result in determination of a sanction outside the range in the tier. The disciplining authority will state its reasons for deviating from the tier range in the sanction schedule in the order or stipulation to informal disposition. The disciplining authority has complied with these rules if it acknowledges the deviation and states its reasons for deviating from the sanction schedules in the order or stipulation to informal disposition.

[Statutory Authority: RCW **18.130.390**. WSR 09-15-190, § 246-16-800, filed 7/22/09, effective 8/22/09.]

WAC 246-16-810

Sanction schedule—Practice below standard of care.

PRACTICE BELOW STANDARD OF CARE				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Caused no or minimal patient harm or a risk of minimal patient harm	Conditions that may include reprimand, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	B – Caused moderate patient harm or risk of moderate to severe patient harm	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	C – Caused severe harm or death to a human patient	Oversight for 3 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. In addition - demonstration of knowledge or competency.	Permanent conditions, restrictions or revocation.	3 years - permanent

[Statutory Authority: RCW **18.130.390**. WSR 09-15-190, § 246-16-810, filed 7/22/09, effective 8/22/09.]

WAC 246-16-820

Sanction schedule—Sexual misconduct or contact.

SEXUAL MISCONDUCT OR CONTACT (including convictions for sexual misconduct)				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A –Inappropriate conduct, contact, or statements of a sexual or romantic nature	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	B – Sexual contact, romantic relationship, or sexual statements that risk or result in patient harm	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	C – Sexual contact, including but not limited to contact involving force and/or intimidation, and convictions of sexual offenses in RCW 9.94A.030.	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions, or revocation.	6 years - permanent

[Statutory Authority: RCW **18.130.390**. WSR 09-15-190, § 246-16-820, filed 7/22/09, effective 8/22/09.]

WAC 246-16-830

Sanction schedule—Abuse—Physical and emotional.

ABUSE -- Physical and/or Emotional				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Verbal or nonverbal intimidation, forceful contact, or disruptive or demeaning behavior, including general behavior not necessarily directed at a specific patient or patients	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	B – Abusive unnecessary or forceful contact or disruptive or demeaning behavior causing or risking moderate mental or physical harm, including general behavior not directed at a specific patient or patients.	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	C – Severe physical, verbal, or forceful contact, or emotional disruptive behavior, that results in or risks significant harm or death	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions, or revocation.	6 years - permanent

[Statutory Authority: RCW 18.130.390. WSR 09-15-190, § 246-16-830, filed 7/22/09, effective 8/22/09.]

WAC 246-16-850

Sanction schedule—Substance abuse.

SUBSTANCE ABUSE				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Misuse of drugs or alcohol with no to minimal patient harm or risk of harm	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, treatment, etc.	Oversight for 5 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, treatment, etc.	0-5 years
	B – Misuse of drugs or alcohol with moderate patient harm or risk of harm	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, treatment, etc.	Oversight for 7 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, treatment, etc. OR revocation.	2 - 7 years unless revocation
	C – Misuse of drugs or alcohol with severe physical injury or death of a patient or a risk of significant physical injury or death	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions OR revocation.	6 years - permanent

[Statutory Authority: RCW 18.130.390. WSR 09-15-190, § 246-16-850, filed 7/22/09, effective 8/22/09.]

WAC 246-16-860

Sanction schedule—Criminal convictions.

CRIMINAL CONVICTIONS (excluding sexual misconduct)				
Severity	Tier / Conviction	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Conviction of a Gross Misdemeanor except sexual offenses in RCW 9.94A.030	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 5 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-5 years
	B – Conviction of a Class B, C, OR Unclassified Felony, except sexual offenses in RCW 9.94A.030	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	C – Conviction of a Class A Felony, except sexual offenses in RCW 9.94A.030	5 years suspension	Permanent revocation	5 years - permanent revocation

[Statutory Authority: RCW **18.130.390**. WSR 09-15-190, § 246-16-860, filed 7/22/09, effective 8/22/09.]

WAC 246-16-890

Sanctions—Aggravating and mitigating factors.

The following nonexclusive list identifies factors that may mitigate or aggravate the sanctions that should be imposed in an order or stipulation to informal disposition.

- (1) Factors related to the unprofessional conduct:
 - (a) Gravity of the unprofessional conduct;
 - (b) Age, capacity and/or vulnerability of the patient, client or victim;
 - (c) Number or frequency of the acts of unprofessional conduct;
 - (d) Injury caused by the unprofessional conduct;
 - (e) Potential for injury to be caused by the unprofessional conduct;
 - (f) Degree of responsibility for the outcome;
 - (g) Abuse of trust;
 - (h) Intentional or inadvertent act(s);
 - (i) Motivation is criminal, immoral, dishonest or for personal gain;
 - (j) Length of time since the unprofessional conduct occurred.
- (2) Factors related to the license holder:
 - (a) Experience in practice;
 - (b) Past disciplinary record;
 - (c) Previous character;
 - (d) Mental and/or physical health;
 - (e) Personal circumstances;
 - (f) Personal problems having a nexus with the unprofessional conduct.
- (3) Factors related to the disciplinary process:
 - (a) Admission of key facts;
 - (b) Full and free disclosure to the disciplining authority;
 - (c) Voluntary restitution or other remedial action;
 - (d) Bad faith obstruction of the investigation or discipline process or proceedings;
 - (e) False evidence, statements or deceptive practices during the investigation or discipline process or proceedings;
 - (f) Remorse or awareness that the conduct was wrong;
 - (g) Impact on the patient, client, or victim.
- (4) General factors:
 - (a) License holder's knowledge, intent, and degree of responsibility;
 - (b) Presence or pattern of other violations;
 - (c) Present moral fitness of the license holder;
 - (d) Potential for successful rehabilitation;
 - (e) Present competence to practice;
 - (f) Dishonest or selfish motives;
 - (g) Illegal conduct;
 - (h) Heinousness of the unprofessional conduct;
 - (i) Ill repute upon the profession;
 - (j) Isolated incident unlikely to reoccur.