

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY
DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section(s) Affected: Section 972, Title 16, Division 9 of the California Code of Regulations

Background and Statement of the Problem:

The Board of Barbering and Cosmetology (Board) licenses, regulates, and investigates complaints against twelve (12) different license categories in California, totaling approximately 656,000 licensees. These licensing categories include Barber, Barber Apprentice, Cosmetology, Cosmetology Apprentice, Electrologist, Electrologist Apprentice, Esthetician, Manicurist, Hairstylist, Establishments, Mobile Units, and Personal Service Permit. Protection of the public is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions as specified in Business and Professions Code (BPC) section 7303.1. It is the Board's duty to enforce and administer the Barbering and Cosmetology Act (Chapter 10 (commencing with § 7300) of Division 3 of the BPC) (Act). The Board is authorized to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction. (BPC § 7312.)

The document entitled "Disciplinary Guidelines" for the Board was last updated in October 2010. Since that time there have been changes to the Board's laws and regulations, and changes in the administration of various penalties for violations requiring the Disciplinary Guidelines to be updated. The Disciplinary Guidelines are used to provide guidance to the Board, Administrative Law Judges (ALJs) and other interested parties in determining the terms and conditions of discipline for licensees found to have committed actions warranting administrative discipline. Existing regulations require (at Title 16, California Code of Regulations (CCR), section 972) the Board to consider these guidelines "In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.)" The Disciplinary Guidelines are incorporated by reference as a regulation, and therefore any update to the Disciplinary Guidelines will require an update in regulations at CCR section 972, as required by law in the Administrative Procedure Act (APA).

The current Disciplinary Guidelines contain many outdated terms and conditions of probation and in many instances, do not reflect recent updates to statutory law, Board regulations, and other changes that have occurred in the probationary environment since

the last update in 2010. As a result, the Board proposes to update its Disciplinary Guidelines document. The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, and strengthen consumer protection.

The specific changes to Section 972 and the Disciplinary Guidelines and the reasons thereof are provided in detail below. Generally, the Board proposes to make non-substantive changes for word choice, consistency of language, formatting, adding proposed new revision dates to reflect the date the Board adopted new changes to the Disciplinary Guidelines in the title of the Disciplinary Guidelines document (to be added by OAL on the date the Board's changes are formally approved), correcting grammar and punctuation, and changing gendered pronouns to the gender-neutral word "Respondent" in line with the State's policy objectives set forth in Assembly Concurrent Resolution No. 260 of 2018 (intended to encourage state bodies to engage in a coordinated effort to revise existing laws and regulations with inclusive language by using gender-neutral pronouns or reusing nouns to avoid the use of gendered pronouns). In addition, the page numbers are to be updated throughout the Disciplinary Guidelines (Guidelines) document after OAL approval including pages listed in the Table of Contents, Standard Conditions of Probation and Optional Conditions of Probation sections.

The proposed revisions to the Guidelines also include the following:

- Specifies what "cost recovery" means as authorized by Business and Profession Code (BPC) section 7403.
- Repeals references to "Full" and "Partial" cost recovery and, instead, further specifies the Board's policy that all disciplinary matters, including those resolved by stipulation, include recovery of all the Board's costs.
- Reflects changes to California laws and regulations since the last version of the Guidelines were approved by the Board, including the adoption of Rehabilitation Criteria the specifies the factors the Board will consider when considering whether revocation, suspension, probation, or denial of a license is imposed in a given case as outlined in CCR section 971.
- Relocates sections entitled "Conditions of Probation" and "Probationary Conditions" that specify the purpose of imposing conditions of probation, adds language regarding the fact that upon successful completion of probation, a respondent's license(s) will be fully restored; and, describes the differences between "standard" conditions of probation and "optional conditions" of probation categories as they relate to the Guidelines.
- Adds a new definition for the term "designee" as used throughout the Guidelines.
- Specifies that respondents are permitted to present rehabilitation evidence and that the Board will review the evidence submitted.
- Updates the "standard conditions of probation" section to amend and reorder existing conditions, deletes the terms "Residency Outside of the State," "Suspension of

License”, and “Posting of Suspension Sign” from this section, and adds a new condition entitled “Petition for Reduction of Penalty” that sets out the requirements for filing these petitions, and the basis for considering whether a reduction in penalty is warranted.

- Updates the “optional conditions of probation” section to amend and reorder existing conditions, including deleting as unnecessary the “Practical Licensing Examination” condition, and adding new conditions for “Suspension of License” and “Posting of Suspension Sign” as specified to this section.
- Revises the list of Barbering and Cosmetology Act Violations and Recommended Actions to update minimum and maximum recommended penalties as specified, and adding or repealing text consistent with changes to the law since the last Guidelines revisions, including:
 - (A) revising titles to more accurately describe the types of violations listed in the corresponding statutes,
 - (B) repealing outdated titles and references to BPC sections 480(a)(1), (a)(2), (a)(3) and (c), which were grounds for denial of an application prior to amendments enacted by Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018),
 - (C) adding new titles and references to BPC sections 480(a)(1), (a)(2) and (e) with new proposed minimum and maximum penalties as specified; and,
 - (D) adding new BPC section 499 violations section and corresponding minimum and maximum proposed penalties for violating Section 499 (which authorizes the Board to revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person’s application for a license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the Board regarding the application).
- Revises the “Recommended Language for Applicants and Reinstatements” section to add a new proposed model order for reinstating a license when the Board grants a petition for reinstatement and places the licensee on probation after completion of conditions precedent (conditions that must be met first before the license is restored, e.g., take and successfully complete licensing examination or remedial education courses relevant to the violations).

Anticipated benefits from this regulatory action:

The Board has determined that the regulatory proposal will make the Disciplinary Guidelines consistent with current law and the current probationary environment. As a result of the proposed amendments, they will clarify how the Board will administer the Disciplinary Guidelines and will be a more useful tool for the Board, applicants and licensees, ALJs, legal counsel, and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. These judges will benefit from greater understanding of the various nuances of the Board’s enforcement provisions and will help improve the consistency of penalties for violations of the Barbering and Cosmetology Act and its regulations.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

The Board proposes to:

Amend Section 972. Disciplinary Guidelines

Purpose: The purpose is to amend the title and the effective date of the Disciplinary Guidelines document from October 2010 to the effective date approved for adoption by OAL.

Rationale: The incorporated document was last updated in October 2010. Since that time there have been changes to the Board's laws and regulations, and changes in the administration of various penalties for violations requiring the Disciplinary Guidelines to be updated. The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarifying the terms and conditions of probation to reduce the likelihood of misinterpretation, and strengthen consumer protection. The proposed amendments to the date of the Disciplinary Guidelines document are necessary so that licensees and other stakeholders are aware of the date when the Board's policy was last revised.

Amend Section 972, existing Authority Cited Note.

Purpose: The purpose is to amend the existing Authority Cited Note for this regulation to include the addition of Government Code (GC) section 11425.50(e).

Rationale: This proposal is necessary as this language requires that a "penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340)." This statute confers upon the Board implied authority to adopt regulations to implement these guidelines and is therefore being added to the existing Authority Note.

Amend Section 972, existing Reference Note.

Purpose: The purpose is to amend the existing Reference Note for this regulation to include the addition of GC sections 11400.20, 11425.50(e), 11500, and 11519.

Rationale: These proposals are necessary to specify those provisions of the Administrative Procedure Act (APA) being implemented, interpreted or made more specific by this regulation. Specifically, GC section 11400.20 is being added to the existing Reference Note since it permits an agency, including this Board, to adopt regulations to govern adjudicative proceedings (i.e., disciplinary actions). GC section 11425.50(e) is being referenced which, as noted above, requires that a penalty imposed by way of a "Guideline" must be an adopted regulation to be enforceable by the Board.

GC section 11500 was amended by Statutes 2013, Ch. 90, Sec 2. (SB 546) effective January 1, 2014, which defines the roles of “Agency”, “Respondent” and, “Administrative law judge” under the Administrative Procedure Act (APA) as it relates to the Board’s adjudicative proceedings. This section is being added to the Reference Note as the Guidelines use these terms to describe the proposed penalties and the various parts the Board, respondents and ALJs play in that process, consistent with the APA’s use of these terms.

GC section 11519, subdivision (b) provides:

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

This section is therefore being added to the reference note to explain and further specify how “stayed” orders are issued, what “specified terms of probation” may contain and what terms the Board considers “reasonable” in light of the types of violations as further specified in the Guidelines.

Amend Disciplinary Guidelines document incorporated by reference in proposed text and incorporated document.

Purpose: The purpose is to amend the effective date on the Disciplinary Guidelines document from October 2010 to the effective date approved for adoption by OAL.

Rationale: The proposed amendments to the date of the Disciplinary Guidelines document are necessary so that licensees and other stakeholders are aware of the date when the Board’s policy was last revised.

AMEND TABLE OF CONTENTS

Purpose: The purpose is to amend the Disciplinary Guidelines table of contents to provide accurate information within the document itself. The table of contents will be updated to include: formatting changes, updating page numbers to be finalized after OAL approval, adopting, relocating, and repealing section titles with corresponding page numbers that have been added in this proposal including:

- a) Relocating Conditions of Probation;
- b) Adopting Probationary Conditions;
- c) Repealing Section 480(a)(3);
- d) Repealing Section 480(c);
- e) Adopting Section 480(e);
- f) Adopting Section 499.

Rationale: The proposal is necessary to update the table of contents and to make the Disciplinary Guidelines more user-friendly, provide greater transparency regarding the Board's disciplinary policy and more advance notice of the potential disciplinary outcomes for licensees and applicants. In addition, there have been statutory revisions since the last Disciplinary Guidelines was revised in 2010 that necessitate these updates. The updates are reflected in each applicable section listed below to explain every decision to adopt, amend or repeal provisions. Due to the many proposed amendments in the Disciplinary Guidelines document incorporated by reference, notice is provided that the page numbers will need to be updated in specified sections of the document after OAL approval.

AMEND INTRODUCTION

Amendments to second paragraph of introduction

Purpose: The purpose is to amend the term "Administrative Law Judge" to the abbreviation "ALJ" (previously identified as an abbreviation in the first paragraph) to save space and to avoid distracting the reader as Administrative Law Judge(s) is used three (3) times in the second paragraph of the Introduction. The purpose is also to amend pronoun changes from his/her to the gender-neutral pronoun "their".

Rationale: The proposal is necessary as ALJ was previously identified as an acronym for Administrative Law Judges, these proposals aim to employ the acronym without altering the introduction's context. The proposal is also necessary to amend his/her to the gender-neutral pronoun "their" to be consistent with using inclusive language as set forth in Assembly Concurrent Resolution No. 260 of 2018.

AMEND DESCRIPTION OF PENALTIES

REVOCATION

Purpose: The purpose is to amend the text from "the" to "a" before the word "Decision".

Rationale: This proposal is necessary to update this language to enhance clarity and communication to all interested parties.

FULL COST RECOVERY

Purpose: The purpose is to amend "Full Cost Recovery", by repealing the word full and noting it as "Cost Recovery". It further clarifies what services are included under cost recovery.

Rationale: The proposal is necessary to repeal references to "Full" cost recovery and, instead, further specifies the Board's policy that all disciplinary matters, including those resolved by stipulation, include recovery of all of the Board's costs. In the Board's view, those who have been found to have committed a violation should pay cost

reimbursement (recovery) where appropriate, which helps prevent an unfair and disproportionate impact upon the regulated community as a whole. In the Board's experience, such costs include those listed in the proposal, including recovery for investigating the case encompassing all charges from the Division of Investigation, expert consultants, Board employees or representatives, Office of Administrative Hearings, and Office of the Attorney General in accordance with BPC section 7403. Fair and cost-effective consumer protection is best served by the Board seeking to obtain cost recovery in all cases. The Board includes the justification to help licensees and other users understand why the Board believes pursuit of cost recovery is an important public policy objective. The Board anticipates this will ensure a more uniform application of cost recovery within proposed decisions and stipulated settlements.

PARTIAL COST RECOVERY

Purpose: The purpose is to repeal references to Partial Cost Recovery from the Disciplinary Guidelines.

Rationale: Since the Board's policy for cost recovery has changed from partial cost recovery in specified cases to recovery of all costs in accordance with BPC section 7403, this existing text regarding "partial cost recovery" needs to be repealed to avoid user confusion. The ongoing policy of the Board remains to include the recovery of all costs in disciplinary matters as explained more fully in the rationale above. Repealing this provision is necessary to ensure notice and guidance to ALJs and other affected users regarding this policy direction change.

AMEND FACTORS TO BE CONSIDERED

Repeal existing text listing the Board's factors to be considered in determining whether revocation, suspension, probation or denial should be imposed and add to the Guidelines the Board's Rehabilitation Criteria as specified in 16 CCR section 971, and required by Business and Profession Code (BPC) sections 480, 481 and 482, as amended by Chapter 995, Statutes of 2018 (AB 2138).

Purpose: The purpose of this proposal is to amend the Guidelines to replace the current criteria which has been superseded by the rehabilitation criteria the Board has recently adopted in regulations at CCR section 971. This change adds text to account for the Board's obligation to consider evidence of rehabilitation when making decisions on the denial of applications or the suspension or revocation of licenses. Existing text (Nos. 1-6 for consideration of revocation, suspension or probation, and Nos. 1-5 for consideration of denials) listed under existing title "Factors to be Considered" would be deleted in its entirety and replaced with criteria that reflect the Board's current regulations and criteria for rehabilitation at Title 16, California Code of Regulations section 971. These revisions are needed in light of amendments to the Board's statutory authority to consider such grounds for denial or violations as a basis for denial or discipline as explained below. The existing criteria and text at CCR 971 would be replicated in its entirety here for ease of reference. At the time of updating and approval of the proposed text by the Board, the

Disciplinary guidelines had an incorrect cross-reference in CCR Section 971 (a)(2) and (b)(2) to BPC section 7362(c) (which no longer exists and was renumbered in 2022 under the provisions of Senate Bill 803 (Chapter 648, Statutes of 2021) to Section 7362(b). Effective May 15, 2025, the Board updated CCR Section 971 (a)(2) and (b)(2), through a 1 CCR Section 100 filing with the Office of Administrative Law (OAL File No. 2025-0404-01N), which updated the cross-reference to Section 7362(b). Under her delegation to make non-substantive edits to the rulemaking file by the Board, the Executive Officer has corrected the cross-reference in the text reproduced in this section to 7362(b) to reflect this update and accurately reflect the content of CCR section 971. This non-substantive change does not alter the meaning, intent, or effect of the regulation. Its sole purpose is to ensure that the cross-reference correctly corresponds to the current statutory language relating to criminal convictions.

Rationale: The Disciplinary Guidelines need to reflect current laws and regulations, especially those related to the definitions of and punishments for violations of those laws and regulations. BPC sections 480, 481, and 482, as amended by Chapter 995, Statutes of 2018 (AB 2138) established criteria for determining what parts of an applicant or licensee's criminal history could be considered by the Board when deciding whether to deny an application or to suspend or revoke a license. These sections of the BPC also established criteria for determining when an applicant or licensee had demonstrated rehabilitation and that as a result the associated acts would not be considered by the Board when deciding whether to approve an application, or to suspend or revoke a license.

The Board's current Guidelines enumerate specific factors for the Board to use in determining whether revocation, suspension, or probation is to be imposed in a disciplinary case. However, in accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), operative on July 1, 2020, BPC section 482 requires the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction or discipline for professional misconduct, pursuant to BPC sections 480 or 490, to consider whether the applicant or licensee is rehabilitated based on either: (1) having completed their criminal sentence without violating parole or probation; or (2) the Board's standard criteria for evaluating rehabilitation. (BPC, § 482, as added by AB 2138, § 9.) To address the new criteria required to be evaluated by the Board, the Board amended CCR section 971 in a separate rulemaking.

To maintain consistency with the new rehabilitation criteria requirements imposed by AB 2138 that have been incorporated in CCR section 971, the proposal is necessary to revise the Guidelines to strike the outdated enumerated factors and replace them with these recently adopted criteria references. Further, the proposal is necessary to advise the Board, ALJs, DAGs, licensees, applicants and the public that the Board must consider specified criteria under CCR section 971 when determining whether an applicant or licensee is rehabilitated and when considering denial, suspension, probation, or revocation of a license.

AMEND CONDITIONS OF PROBATION

Purpose: The purpose is to relocate the sections entitled “Conditions of Probation” and “Probationary Conditions” from page 32 to page 11. The proposal would retain existing language in the “Conditions of Probation” section that provides the following:

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 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.

The Board is amending language in the third paragraph of the “Conditions of Probation” section to strike the words “any reference to the Board also means staff working for the Board of Barbering and Cosmetology” and replace those words with a new definition for the term “designee” used throughout the guidelines. The Board is adopting new language in the fourth paragraph of the “Conditions of Probation” section to notify licensees and applicants that upon successful completion of probation, respondent’s license(s) will be fully restored.

Rationale: The Board believes that its existing public policy statements accurately describe the conditions of probation and the Board’s public protection goals in accordance with BPC section 7303.1. However, the proposal is necessary to relocate the existing language within the sections entitled “Conditions of Probation” and “Probationary Conditions” as the Board believes these sections should follow the section entitled “Factors to be Considered”, which will give the licensee a better understanding of the conditions of probation. The proposed amendments will clarify the terms and conditions of probation to reduce the likelihood of misinterpretation and thereby strengthen consumer protection as it provides more effective notice for a more informed applicant or licensee.

This proposal is also necessary to add a new definition for the term “designee” used throughout the Guidelines to clearly identify the “designee” as the Executive Officer, Assistant Executive Officer, Enforcement Manager or probation monitor, not just Board staff as it was previously defined. This specification resolves any potential notice or ambiguity concerns raised by the regulated community regarding which staff are typically assigned to perform these duties.

This proposal is necessary to provide notice that the respondent’s license will be restored once probation has been successfully completed. Adding language to emphasize the outcome of compliance with probation helps respondents understand the purpose of probation and the importance of compliance for the rehabilitation of licensees and, by extension, for the protection of the public.

AMEND PROBATIONARY CONDITIONS

Purpose: The purpose is to relocate the section entitled “Probationary Conditions” from page 32 to page 11 as explained above. The purpose also includes amending language in the “Probationary Conditions” section to clarify the definition of “Optional Conditions” and “Standard Conditions.”

Rationale: Relocating the sections entitled “Conditions of Probation” and “Probationary Conditions” is necessary to give the licensee a better understanding and greater notice regarding the conditions of probation. As such, the Board proposes these sections would follow the section entitled “Factors to be Considered.” The proposed amendments will provide greater understanding of the categories for the terms and conditions of probation to reduce the likelihood of misinterpretation and strengthen consumer protection. As such, the Board would retain existing text definitions with the exception of a technical, grammatical clean-up to add the words “are those” before the word “that” to the “Optional conditions” definition for the “Probationary Conditions” section so it reads: “Optional conditions **are those** that are appropriate based on the nature and circumstances of the particular violation.” A similar edit would be made to the “Standard conditions” definition in this section pursuant to the Executive Officer’s delegated authority from the Board at its November 4, 2024 meeting to make non-substantive changes to the text.

AMEND MITIGATION EVIDENCE

Purpose: The purpose is to include new criteria to make it clear that the Respondent can submit rehabilitation evidence, in addition to the existing references to “mitigating circumstances” to the Board in its evaluation of whether denial or discipline of license should be imposed. The Board is also adding language specifying that the Board “will review the evidence submitted.” The Board would also remove gendered pronouns and include the non-gendered pronoun “their” in this section.

Rationale: This proposal is necessary as it reflects changes to California laws and regulations since the last version of the Guidelines were approved by the Board, including the adoption of Rehabilitation Criteria which specifies that respondents are permitted to present rehabilitation evidence and that the Board will review the evidence submitted set forth in Section 971 (Criteria for Rehabilitation). This reflects changes to California laws and regulations since the last version of the Guidelines were approved by the Board, including the adoption of Rehabilitation Criteria as outlined in CCR section 971, and required by (BPC) sections 480, 481 and 482, as amended by AB 2138 (Chapter 995, Statutes of 2018). The Board proposes to add the words “and the Board shall consider” to the introduction of this section to emphasize and provide notice to affected users that these are types of rehabilitation evidence that the Board will consider in every case. Finally, the proposal is also necessary to amend his/her to the gender-neutral pronoun “their” to be consistent with using inclusive language as set forth in Assembly Concurrent Resolution No. 260 of 2018.

AMEND LIST OF STANDARD CONDITIONS OF PROBATION

Purpose: The purpose is to amend and reorder the existing list of standard conditions and their titles within the “Standard Conditions of Probation” page. When items are moved or are relocated, the remaining items would be renumbered accordingly from existing text. The page numbers cross-referenced in this section are to be updated after OAL approval. This proposal would include the following amendments:

- a) Amending “Suspension of License” to be relocated from Standard Condition No. 1 to under section “Optional Conditions of Probation”, item 11.
- b) Amending “Posting of Suspension Sign” to be relocated from Standard Condition No. 2 to under “Optional Conditions of Probation”, item 12.
- c) Amending “Cost Recovery (Does not apply to Applicants)” to be relocated and renumbered from Standard Term No. 3 to Standard Term No. 2.
- d) Amending “Quarterly Reports of Compliance” to be relocated from Standard Term No. 4 to Standard Term No. 3.
- e) Amending “Obey all Laws” to be relocated from Standard Term No. 9 to Standard Term No. 1.
- f) Amending title of Re-Numbered Standard Term No. 4 from “Notification to Employer” to “Notification to Establishment Owner(s)”.
- g) Repealing “Report in Person” Standard Term No. 12.
- h) Repealing “Residency Outside of State” Standard Term No. 13.
- i) Amending title of Re-numbered Standard Term No. 10 from “Failure to Practice – California Resident Tolling” to “Failure to Practice – Tolling”.
- j) Adopting a new Standard Term No. 12 entitled “Petition for Reduction of Penalty”.
- k) Amending title of Re-numbered Standard Term No. 13 from “License Surrender” to “License Surrender While on Probation”.

Rationale: This proposal is necessary as it reflects changes to California laws and regulations and the Board’s determination that it’s standard terms of probation need to be revised to ensure more effective probation monitoring of respondents since the last version of the Guidelines were approved by the Board. These title changes on this page track changes made to the titles and substantive terms listed in the “RECOMMENDED LANGUAGE FOR STANDARD CONDITIONS OF PROBATION” section discussed more fully below. These changes are necessary to avoid confusion and ensure consistency in the use and application of the Standard Conditions for the Board’s probationary orders. Once this proposal is adopted and approved by OAL, the page numbers outlined in this section will need to be updated to reflect the correct corresponding page numbers with the “RECOMMENDED LANGUAGE FOR STANDARD CONDITIONS OF PROBATION”(hereinafter “Standard Terms of Probation” or “Standard Conditions of Probation”) section.

AMEND LIST OF OPTIONAL CONDITIONS OF PROBATION

Purpose: The purpose is to amend and reorder the existing list of conditions within the “Optional Conditions of Probation”. When items are moved or are relocated, the

remaining items would be renumbered accordingly from existing text. The page numbers cross-referenced in this section are to be updated after OAL approval. This proposal would include the following amendments:

- a) Repealing Optional Term No. 3 “Practical Licensing Examination”.
- b) Amending Renumbered Optional Term No. 3 (renumbered from No. 4) “Notice to Employee” to “Notice of Discipline”.
- c) Adding a new Optional Term No. 11 “Suspension of License” (which is relocated from the “Standard Conditions of Probation” section).
- d) Adding a new Optional Term No. 12 “Posting of Suspension Sign” (which is relocated from the “Standard Conditions of Probation” section).

Rationale: This proposal is necessary as it reflects changes to California laws and regulations and the Board’s determination that it’s optional terms of probation need to be revised to ensure more effective probation monitoring of respondents since the last version of the Guidelines were approved by the Board. These title changes on this page track changes made to the titles and substantive terms listed in the “RECOMMENDED LANGUAGE FOR OPTIONAL CONDITIONS OF PROBATION” section discussed more fully below. These changes are necessary to avoid confusion and ensure consistency in the use and application of the Optional Conditions for the Board’s probationary orders. Once this proposal is adopted and approved by OAL, the page numbers outlined in this section will need to be updated to reflect the correct corresponding page numbers with the “RECOMMENDED LANGUAGE FOR OPTIONAL CONDITIONS OF PROBATION” (hereinafter “Optional Terms of Probation” or “Optional Conditions of Probation”) section.

AMEND THE BARBERING AND COSMETOLOGY ACT VIOLATIONS AND RECOMMENDED ACTIONS SECTION

Purpose: This section was previously developed by the Board to enable users to easily identify the Board’s recommended maximum and minimum penalties for specified disciplinary violations under the jurisdiction of the Board. The penalty recommendations are listed in order of severity starting with the “Maximum” penalty and then the “Minimum” recommended penalty along with the form of order recommended (revocation, suspension, or probation) and cross-references to any applicable Standard or Optional Terms of Probation by number or title as listed and described in the Recommended Language for Standard or Optional Conditions of Probation sections of the Guidelines. The general purpose for the amendments to this section is to update the list of “Barbering and Cosmetology Act Violations and Recommended Actions” in accordance with changes to the Board’s laws and policy recommendations for setting penalties that may be used in drafting a disciplinary order for the Board. The Board inserts the term “recommended” before the words “Board-determined disciplinary action,” in the introduction to this section to make the language more consistent with the title of this section and the fact that this is a “guideline” which may be deviated from as specified in CCR section 972.

Rationale: Generally, this section is necessary to be a quick reference list of laws under

the Board's jurisdiction with corresponding penalty recommendations for ALJs, DAGs, licensees, applicants and the consumer. The lists of violations have been updated to include changes to laws and Board policy and to account for changes proposed for naming conventions and the numbering for the specific terms used in the Recommended Language for Standard or Optional Conditions of Probation (as those sections have been proposed to be updated in this proposal).

Universal changes made to the "Barbering and Cosmetology Act Violations and Recommended Actions" Section

(A): The Board proposes to amend the font to use capital letters for all violation category titles in this section, where applicable, for greater readability and ease of use throughout the "Barbering and Cosmetology Act Violations and Recommended Actions" section.

(B): The Board proposes to amend "Full" or "Partial Cost Recovery" and only use "Cost Recovery" throughout the Guidelines including in the minimum or maximum penalty portions of this section. The Board proposes to repeal the terms "Full" or "Partial" before "Cost Recovery", and only note "Cost Recovery" throughout the Guidelines. This proposal is necessary to repeal references to "Full" and "Partial" Cost Recovery and, avoid any ambiguity about the Board's policy that all disciplinary matters, including those resolved by stipulation, include "Cost Recovery" of all the Board's costs (see explanation regarding "cost recovery" policy in the rationale for the changes to the "Description of Penalties" section above).

Revisions to Specific Violation Categories

7320 If the violation is for the practice of medicine, then the recommend penalty is VIOLATON INVOLVING THE PRACTICE OF MEDICINE OR SURGERY:

a) The Board is proposing to amend the title of BPC section 7320 within "*Barbering and Cosmetology Act Violations and Recommended Actions*". The current title does not accurately reflect the prohibitions contained in BPC section 7320, which includes the practice of medicine or surgery. As a result, "or Surgery" is being added to the title. BPC section 7320 references that the Act confers no "authority to practice medicine or surgery", however, there is no authority for a BBC licensee to practice medicine or surgery anyway, which is confusing to the average licensee. The word "authority" could be misleading, which is why the Board is choosing to instead use "Violation Involving the Practice of Medicine or Surgery" as a more accurate title. The title is being amended as well to be capitalized to be consistent with the other titles in this section. In addition, the words "recommended penalty" are being struck from their current location and relocated to its own section just above the words "Maximum" and "Minimum," to ensure readability and consistency with the organization of the other violation categories listed in this section.

b) The Board is proposing to repeal the words "Suspension, 15 consecutive working

days” as a standard term for the Minimum Recommended penalty for this type of violation as it is proposed to be replaced as an optional term (see the Board’s New Optional Term No. 11 and titled “Suspension of License” within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The recommended days of this optional suspension will remain the same as before, at 15 days, “Suspension of License, 15 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.

- c) The Board is proposing to repeal “Partial Cost Recovery”, as noted above under *Universal Changes*.
- d) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments and renumbering in the “Standard Conditions of Probation”.
- e) The Board is proposing to renumber “Optional Terms of Probation Nos.” where applicable to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- f) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in Optional Condition No. 3 in the “Optional Conditions of Probation” list and section.
- g) The Board is proposing to adopt “(11) Suspension of License, 15 consecutive working days”, as noted above under b).
- h) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7320.1 If the violation is for the use of metal instruments then the recommended penalty is as follows VIOLATION INVOLVING UNAUTHORIZED USE OF METAL INSTRUMENTS IN PROVIDING MANICURE OR PEDICURE:

- a) To ensure a more accurate description of the violation, the Board is proposing to amend the title of BPC section 7320.1 within “*Barbering and Cosmetology Act Violations and Recommended Actions*”. The current title does not reflect the specific content of the prohibitions contained in BPC section 7320.1, which

includes the modifiers “unauthorized” before “use” and “in providing manicure or pedicure”. The title is being amended as well to be capitalized to be consistent with the other titles in this section. In addition, the words “recommended penalty” are being struck from their current location and relocated to its own section just above the words “Maximum” and “Minimum,” to ensure greater readability and consistency of organization of the other violation categories listed in this section.

- b) The Board is proposing to repeal “Suspension, 5 consecutive working days” as a standard term from the “Minimum” penalty section, as the concept is being changed to an optional condition of probation and added as such at it is proposed to be adopted by the Board as Optional Term No. 11, “Suspension of License” within “Optional Conditions of Probation”. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The recommended days of this suspension will remain the same as before, at 5 days, “Suspension of License, 5 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- c) The Board is proposing to repeal “Partial Cost Recovery”, as noted above under *Universal Changes*.
- d) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation” list and section of the Guidelines.
- e) The Board is proposing to renumber “Optional Terms of Probation Nos.” numbers, where applicable, to accurately reflect the amendments in renumbering the “Optional Conditions of Probation” list and section of the Guidelines.
- f) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the corresponding amendments made in renaming the title in “Optional Conditions of Probation”.
- g) The Board is proposing to adopt “(11) Suspension of License, 5 consecutive working days”, as noted above under b).
- h) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7320.2 If the violation is for the practicing illegal treatment methods then the recommend penalty is as follows VIOLATION INVOLVING ILLEGAL USE OF X-RAY APPLIANCE, APPARATUS, OR MACHINE:

- a) The Board is proposing to amend the title of BPC Section 7320.2 within *“Barbering and Cosmetology Act Violations and Recommended Actions”*. The current title does not reflect BPC section 7320.2, which includes “Illegal Use of X-Ray Appliance, Apparatus or Machine”. The title is being amended as well to be capitalized to be consistent with the other titles are organized in this section. The “recommended penalty” language is being relocated from the section title to its own title listed just above “Maximum” and “Minimum”, to be consistent with the organization of the other categories in this section.
- b) The Board is proposing to repeal “Suspension, 15 consecutive working days” from “Standard Conditions of Probation” as it is proposed to be adopted by the Board as “Suspension of License” within “Optional Conditions of Probation”. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 15 days, “Suspension of License, 15 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- c) The Board is proposing to repeal “Partial Cost Recovery”, as noted above under *Universal Changes*.
- d) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation” list and section.
- e) The Board is proposing to renumber “Optional Terms of Probation Nos.” listed in this section, as appropriate, to accurately reflect the amendments in renumbering the “Optional Conditions of Probation” list and section.
- f) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in “Optional Conditions of Probation” list and section.
- g) The Board is proposing to adopt “(11) Suspension of License, 15 consecutive working days”, as noted above under b).
- h) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an

optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(a) UNPROFESSIONAL CONDUCT:

- a) The Board is proposing to repeal “Suspension, 5 consecutive working days” from as a standard term for the minimum penalty as it is proposed to be adopted by the Board as part of the term entitled “Suspension of License” within “Optional Conditions of Probation”. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, “Suspension of License, 5 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber “Optional Terms of Probation Nos.” as applicable to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in “Optional Conditions of Probation”.
- f) The Board is proposing to adopt “(11) Suspension of License, 5 consecutive working days”, as noted above under a).
- g) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(a)(1) INCOMPETENCE OR GROSS NEGLIGENCE, INCLUDING FAILURE TO COMPLY WITH GENERALLY ACCEPTED STANDARDS FOR THE PRACTICE OF BARBERING, COSMETOLOGY, OR ELECTROLOGY OR DISREGARD FOR THE

HEALTH AND SAFETY OF PATRONS:

- a) The Board is proposing to repeal “Suspension, 10 consecutive working days” as a standard term for the minimum penalty as it is proposed to be adopted by the Board as “Suspension of License” within “Optional Conditions of Probation”. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 10 days, “Suspension of License, 10 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber “Optional Terms of Probation Nos.” numbers listed in this section, as applicable, to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in “Optional Conditions of Probation”.
- f) The Board is proposing to adopt “(11) Suspension of License, 10 consecutive working days”, as noted above under a).
- g) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(a)(2) REPEATED SIMILAR NEGLIGENT ACTS:

- a) The Board is proposing to repeal “Suspension, 10 consecutive working days” as a standard term for the recommended minimum penalty as it is proposed to be adopted by the Board under the “Suspension of License” within “Optional Conditions of Probation” (Optional Term No. 11). The proposal to relocate suspension to optional probation terms is due to license suspension not being

appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 10 days, “Suspension of License, 10 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.

- b) The Board is proposing to repeal “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber “Optional Terms of Probation Nos.” section references, as appropriate, to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to repeal the existing “Practical Licensing Exam” Optional Term No. 3. The practical examination is no longer a requirement for licensure per SB 803 (Chapter 648, Statutes of 2021), which included amendments made to BPC sections 7338 and 7362 that struck the requirement for administration of a practical examination and removal of the Board’s authority to determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum number of practical operations for each subject needed to prepare students for the exam. Therefore, all references to the practical licensing exam are being struck in this proposal.
- f) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in “Optional Conditions of Probation”.
- g) The Board is proposing to adopt “(11) Suspension of License, 10 consecutive working days”, as noted above under a).
- h) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(a)(3) CONVICTION OF ANY CRIME SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS, OR DUTIES OF THE LICENSEHOLDER, IN WHICH CASE, THE RECORDS OF CONVICTION OR A CERTIFIED COPY SHALL BE

CONCLUSIVE EVIDENCE THEREOF:

- a) The Board is proposing to adopt language reflecting the nature of the changes being made throughout 7404(a)(3) by directing individuals to *“(Refer to sections in this document relating to penalties for violating “Section 480” for recommended guidelines for denial of a license based upon a criminal conviction.)”*. The Board proposes to add this language to avoid confusion and ambiguity over under what circumstances this section would apply since both sections of the law deal with possible enforcement actions based on a conviction. Since BPC section 7404(a)(3) applies to licensees and BPC section 480 expressly applies to applicant denials “notwithstanding” any other provision of the Business and Professions Code, it is important to direct the users to the appropriate violation sections for determining penalties. These revisions were made pursuant to the statutory amendments implemented by AB 2138 (Chapter 995, Statutes of 2018). Beginning July 1, 2020, boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged (see more detailed discussion in rationale for BPC section 480(a)(1) below).
- b) The Board proposes to repeal in its entirety the following language as superseded by its regulation at CCR 970: “Conviction of a felony involving a crime of violence (including, but not limited to: murder, attempted murder, assault with a deadly weapon) or prostitution (soliciting) within the past three years or is currently on parole or probation for such a conviction.” BPC section 7404 does not in any way limit the Board’s authority to discipline to only these types of convictions, but rather to convictions that are “substantially related” to the qualifications, functions or duties of the license holder. CCR section 970 specifies how this substantial relationship is determined (i.e., if to a substantial degree it evidences present or potential unfitness of the applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare) and provides a list of criteria for the Board to consider in making that determination. This language is therefore repealed as inconsistent with the Board’s current policy on substantial relationship criteria and evaluation of criminal convictions.
- c) The Board is proposing to repeal references to “Denial of license” in this category due to the statutory changes made by AB 2138 (Chapter 995, Statutes of 2018), as noted above; these types of penalty determinations are now more appropriately addressed in the BPC section 480 category of this section.
- d) The Board is proposing to repeal “License issued with Terms and Conditions appropriate to crime” due to the statutory changes made by AB 2138 (Chapter 995, Statutes of 2018) and redirection to the BPC section 480 category, as noted above.

- e) The Board is proposing to repeal “Partial” Cost Recovery, and only note “Cost Recovery” throughout the guidelines, as noted above under *Universal Changes*.
- f) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- g) The Board is proposing to renumber “Optional Terms of Probation Nos.” number for conditions listed here, as appropriate, to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- h) The Board is proposing to repeal the entirety of the subsection “Conviction of three or more felonies involving crimes of violence (including, but not limited to: murder, attempted murder, assault with a deadly weapon) or prostitution (soliciting) within the past five years (or six in a ten year period).” This provision is being repealed as superseded by the adoption of CCR section 970 as discussed above in paragraph b).
- i) The Board also proposes repealing the accompanying Recommended Penalty: Maximum and Minimum categories and standards relating to these types of felonies since the Board believes that the minimum and maximum penalty recommendations at the beginning of this section should provide sufficient standards to accommodate all types of convictions substantially related to practice of the professions regulated by this Board. Retaining separate standards by type of conviction would continue to overcomplicate the issue and not allow as much flexibility to ALJs, DAGs and the Board to craft disciplinary orders based on the facts and circumstances of the particular case. The Board proposes to retain a simpler penalty structure that provides a general “floor” and “ceiling” for all recommended penalties based upon a conviction.. In the Board’s experience, the existing proposed penalty for all convictions is sufficient to monitor many probationers (please note: the Board uses the word “probationer” and “respondent” interchangeably throughout this document) for criminal conviction violations, while proposing a maximum penalty of revocation for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon criminal convictions serious, as these violations show a history of violating the law, failure to exercise good judgment and, in some cases, demonstrates risk of direct physical client harm. However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the criminal offense that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes to retain the existing penalties at the beginning of this section while striking other “graduated” penalties tied to specific types of convictions. The existing minimum penalty of 3 years of probation with standard and optional terms should be sufficient in the Board’s experience to convey the seriousness of the offense to licensees and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the

Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation (maximum penalty).

- j) The Board is proposing to repeal the entirety of the subsection “Conviction of a crime of a sexual nature (other than those involving a minor) within the past three years or is currently on parole or probation (including, but not limited to: rape, sexual assault, and molestation).” and also repeal the Recommended Penalty: Maximum and Minimum categories for the reasons set forth above in paragraph i).
- k) The Board is proposing to repeal the entirety of the subsection “Conviction of any crime committed by a licensee in an establishment subject to regulation by the Board,” and repeal the Recommended Penalty: Maximum and Minimum categories for the reasons set forth in paragraph i).

7404(a)(4) ADVERTISING BY MEANS OF KNOWINGLY FALSE OR DECEPTIVE STATEMENTS:

- a) The Board is proposing to repeal “Suspension, 5 consecutive working days” as a standard term for the minimum proposed penalty for this type of violation as it is proposed to be adopted by the Board as an Optional Term No. 11 “Suspension of License” within “Optional Conditions of Probation”. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, “Suspension of License, 5 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to add new optional probation terms to this section and has therefore added an “s” to “No.” and re-numbered existing “Proof of Advertising Correction” to No. 5 to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to adopt “(11) Suspension of License, 5 consecutive working days”, as noted above under a).

- f) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(b) FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER:

- a) The Board is proposing to repeal “Suspension, 5 consecutive working days” as a standard term recommended as part of the minimum penalty for this type of violation as this term will be recast as an optional term No. 11 “Suspension of License” within “Optional Conditions of Probation”. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, “Suspension of License, 5 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal the words “Full” and “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber “Optional Terms of Probation Nos.” for existing optional terms listed in this section to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title for this Optional Term No.3 in “Optional Conditions of Probation”.
- f) The Board is proposing to adopt “(11) Suspension of License, 5 consecutive working days”, as noted above under a).
- g) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(c) FAILURE TO COMPLY WITH THE RULES GOVERNING HEALTH AND

**SAFETY ADOPTED BY THE BOARD AND APPROVED BY THE STATE
DEPARTMENT OF HEALTH SERVICES, FOR THE REGULATION OF
ESTABLISHMENTS, OR ANY PRACTICE LICENSED AND REGULATED UNDER
THIS CHAPTER:**

- a) The Board is proposing to amend the font of the colon “:” after “Minimum:” to bold font, to be consistent with formatting in similar sections of the Guidelines.
- b) The Board is proposing to repeal “Suspension, 5 consecutive working days” as a standard condition of probation from the Minimum proposed penalty for this section, as it is proposed to be adopted by the Board as Optional Term No. 11 “Suspension of License” within “Optional Conditions of Probation”. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, “Suspension of License, 5 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- c) The Board is proposing to repeal the words “Full” and “Partial Cost Recovery”, as noted above under *Universal Changes*.
- d) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- e) The Board is proposing to renumber existing “Optional Terms of Probation Nos.” number range to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- f) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in Optional Term No. 3 in “Optional Conditions of Probation”.
- g) The Board is proposing to adopt “(11) Suspension of License, 5 consecutive working days”, as noted above under b).
- h) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(d) FAILURE TO COMPLY WITH THE RULES ADOPTED BY THE BOARD FOR THE REGULATION OF ESTABLISHMENTS OR ANY PRACTICE LICENSED AND REGULATED UNDER THIS CHAPTER:

- a) The Board is proposing to repeal “Suspension, 5 consecutive working days” as a standard term for the Minimum Recommended penalty for this type of violation as it is proposed to be replaced as an optional term (see the Board’s New Optional Term No. 11 and titled “Suspension of License” within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, “Suspension of License, 5 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal the words “Full “ and “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber optional terms listed in this section to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title for Optional Term No. 3 in “Optional Conditions of Probation”.
- f) The Board is proposing to adopt “(11) Suspension of License, 5 consecutive working days”, as noted above under a).
- g) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(e) CONTINUED PRACTICE BY A PERSON KNOWINGLY HAVE AN INFECTIOUS OR CONTAGIOUS DISEASE:

- a) The Board is proposing to change from he/she references in this section to the

gender-neutral pronoun “they”, add the verb “are” and “that” so it reads “that they are” where these instances occur in this section.

- b) The Board is adding within the maximum recommended penalty section “and license is placed on 3 years probation”. This is being added to ensure that the Board has adequate time to monitor respondent’s compliance and a mechanism for continuing oversight over their conduct for 3 years in cases where more monitoring is needed for the protection of the public based on the facts and circumstances of the case. In the Board’s experience, 3 years, in combination with a 30-day mandatory suspension term, is sufficient in many cases to impress upon the respondent licensee the seriousness of the offense, and for self-reflection, education and monitoring and assessment of the licensee’s on-going compliance with the terms and conditions of probation.
- c) The Board is proposing to repeal “Full Cost Recovery” as duplicative, as the cost recovery term is already included as a standard term and condition of probation at Standard Term No. 2 (within the “Standard Terms of Probation Nos. 1-13” reference).
- d) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16.” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation” and deleting an unnecessary period for grammatical reasons.
- e) The Board is proposing to repeal “Partial Cost Recovery”, as noted above under *Universal Changes*.
- f) The Board is proposing to amend the number range of “Standard Terms of Probation Nos. 1-16.” by updating the number range to “Standard Terms of Probation Nos. 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation” and deleting an unnecessary period.

7404(f) HABITUAL DRUNKENNESS, HABITUAL USE OF OR ADDICTION TO THE USE OF ANY CONTROLLED SUBSTANCE:

- a) The Board is proposing to adopt “Maximum:” penalty header as it was previously left off due to an oversight error. It is being added to be consistent in formatting throughout the conditions of probation and specify the Board’s recommended minimum and maximum penalty recommendations for this type of violation.
- b) The Board is proposing to adopt “Revocation” as the offense at its worst would prevent the licensee from performing their duties safely and competently. Drunkenness or addiction impairs judgment, which creates risk of harm to the public. In the Board’s experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum

penalty of revocation for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon addiction or habitual drunkenness to be serious, in that the prohibition exists to ensure safe practice on the public in an area where risk of harm is high if an impaired person provides services and an adverse event happens during or after the provision of client services (e.g., permanent disfigurement, infection or death due to failure to follow minimum standards of the profession or health and safety rules). However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes to retain the existing penalty as a recommended “minimum” that includes completion of a rehabilitation program, 3 years’ probation with standard terms (Nos. 1- 13) and specified Optional Terms No. 4 “Criminal Probation”.

- c) The Board is proposing to adopt “Cost Recovery” within the Maximum Recommended Penalty “Cost Recovery” is the appropriate “Maximum” penalty and as noted above under *Universal Changes* and is being added here as a reminder to the users of the Guidelines that cost recovery should be ordered for the maximum penalty since no probation terms would be imposed that would usually include a cost recovery term (see Standard Term No. 2) in an outright revocation case.
- d) The Board is proposing to adopt “Minimum:” penalty header as it was previously left off due to an oversight error. It is being added to be consistent in formatting throughout the conditions of probation. The existing penalty would be retained as the minimum recommended penalty for the reasons set forth above.
- e) The Board is proposing to repeal “Full Cost Recovery” within the Minimum penalty recommendation section, as noted above under *Universal Changes*.
- f) The Board is proposing to amend the number range of “Standard Terms of Probation Nos, 1-16” by updating the number range to “Standard Terms of Probation Nos, 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- g) The Board is proposing to renumber existing optional conditions listed in the re-titled “Minimum” penalty section to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”, for Optional Term “Criminal Probation” from the number 5 to the number 4.

7404(g) OBTAINING OR ATTEMPTING TO OBTAIN PRACTICE IN ANY OCCUPATION LICENSED AND REGULATED UNDER THIS CHAPTER, FOR MONEY, OR COMPENSATION IN ANY FORM, BY FRAUDULENT MISREPRESENTATION:

- a) The Board is proposing to repeal “Suspension, 10 consecutive working days” as a standard term for the Minimum Recommended penalty for this type of violation as

it is proposed to be replaced as an optional term (see the Board's New Optional Term No. 11 and titled "Suspension of License" within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 10 days, "Suspension of License, 10 consecutive working days" as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.

- b) The Board is proposing to repeal the terms "Full" and "Partial Cost Recovery", as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of "Standard Terms of Probation Nos, 1-16" by updating the number range to "Standard Terms of Probation Nos, 1-13", to accurately reflect the amendments in renumbering the "Standard Conditions of Probation".
- d) The Board is proposing to update and renumber Optional Term "Criminal Probation" currently listed in this section to accurately reflect the amendments in renumbering the "Optional Conditions of Probation" and to add the plural "s" after the acronym "No." as there will be more than one optional condition of probation being proposed.
- e) The Board is proposing to adopt "(11) Suspension of License, 10 consecutive working days", as noted above under a).
- f) The Board is proposing to adopt "(12) Posting of a Suspension Sign" as an optional condition for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(h) FAILURE TO DISPLAY THE LICENSE OR HEALTH AND SAFETY RULES AND REGULATIONS IN A CONSPICUOUS PLACE:

- a) The Board is proposing to repeal the terms "Full" and "Partial Cost Recovery", as noted above under *Universal Changes*.
- b) The Board is proposing to amend the number range of "Standard Terms of Probation Nos, 1-16" by updating the number range to "Standard Terms of Probation Nos, 1-13", to accurately reflect the amendments in renumbering the "Standard Conditions of Probation".
- c) The Board is proposing to amend the number and title "(4) Notice to Employee" to

“(3) Notice of Discipline” to accurately reflect the amendments made in renaming the title within “Optional Conditions of Probation”.

7404(i) ENGAGING, OUTSIDE OF A LICENSED ESTABLISHMENT AND FOR COMPENSATION IN ANY FORM WHATEVER, IN ANY PRACTICE FOR WHICH A LICENSE IS REQUIRED UNDER THIS CHAPTER, EXCEPT THAT WHEN THE SERVICE IS PROVIDED BECAUSE OF ILLNESS OR OTHER PHYSICAL OR MENTAL INCAPACITATION OF THE RECIPIENT OF THE SERVICE AND WHEN PERFORMED BY A LICENSEE OBTAINED FOR THE PURPOSE FROM A LICENSED ESTABLISHMENT:

- a) The Board is proposing to repeal “Suspension, 5 consecutive working days” as a standard term for the Minimum Recommended penalty for this type of violation as it is proposed to be replaced as an optional term (see the Board’s New Optional Term No. 11 and titled “Suspension of License” within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, “Suspension of License, 5 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal the terms “Full” and “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos, 1-16” by updating the number range to “Standard Terms of Probation Nos, 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber Optional Term Notice of Discipline” from (4) to (3) to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in “Optional Conditions of Probation”.
- f) The Board is proposing to adopt “(11) Suspension of License, 5 consecutive working days”, as noted above under a).
- g) The Board is proposing to adopt “(12) Posting of a Suspension Sign” as an optional condition for the minimum penalty recommended that should be included

when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(j) PERMITTING A LICENSE TO BE USED WHERE THE HOLDER IS NOT PERSONALLY, ACTIVELY, AND CONTINUOUSLY ENGAGED IN BUSINESS:

- a) The Board is proposing to repeal “Suspension, 15 consecutive working days” as a standard term for the Minimum Recommended penalty for this type of violation as it is proposed to be replaced as an optional term (see the Board’s New Optional Term No. 11 and titled “Suspension of License” within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 15 days, “Suspension of License, 15 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal the terms “Full” and “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos, 1-16” by updating the number range to “Standard Terms of Probation Nos, 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber Optional Term “Notice of Discipline” from (4) to (3) to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in “Optional Conditions of Probation”.
- f) The Board is proposing to adopt “(11) Suspension of License, 15 consecutive working days”, as noted above under a).
- g) The Board is proposing to adopt “(12) Posting of a Suspension Sign” for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(k) THE MAKING OF ANY FALSE STATEMENT AS TO A MATERIAL MATTER IN ANY OATH OR AFFIDAVIT, WHICH IS REQUIRED BY THE PROVISIONS OF THIS

CHAPTER:

- a) The Board is proposing to repeal “Suspension, 5 consecutive working days” as a standard term for the Minimum Recommended penalty for this type of violation as it is proposed to be replaced as an optional term (see the Board’s New Optional Term No. 11 and titled “Suspension of License” within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, “Suspension of License, 5 consecutive working days” as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal the terms “Full” and “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos, 1-16” by updating the number range to “Standard Terms of Probation Nos, 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to add a new “Optional Terms of Probation Nos” to avoid ambiguity since new Optional Conditions of Probation are proposed to be added to this section for the reasons stated below.
- e) The Board is proposing to adopt Optional Term No. “(11) Suspension of License, 5 consecutive working days”, as noted above under a).
- f) The Board is proposing to adopt Optional Term No. “(12) Posting of a Suspension Sign” for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(I) REFUSAL TO PERMIT OR INTERFERENCE WITH AN INSPECTION AUTHORIZED UNDER THIS CHAPTER:

- a) The Board is proposing to repeal “Suspension, 5 consecutive working days” as a standard term for the Minimum Recommended penalty for this type of violation as it is proposed to be replaced as an optional term (see the Board’s New Optional Term No. 11 and titled “Suspension of License” within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to

be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, "Suspension of License, 5 consecutive working days" as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.

- b) The Board is proposing to repeal the terms "Full" and "Partial Cost Recovery", as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of "Standard Terms of Probation Nos, 1-16" by updating the number range to "Standard Terms of Probation Nos, 1-13", to accurately reflect the amendments in renumbering the "Standard Conditions of Probation".
- d) The Board is proposing to renumber existing Optional Terms No." (4) to (3) to accurately reflect the amendments in renumbering the "Optional Conditions of Probation".
- e) The Board is proposing to amend the title "Notice to Employee" to "Notice of Discipline" to accurately reflect the amendments made in renaming the title in "Optional Conditions of Probation".
- f) The Board is proposing to adopt Optional Term No. "(11) Suspension of License, 5 consecutive working days", as noted above under a).
- g) The Board is proposing to adopt Optional Term No. "(12) Posting of a Suspension Sign" for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(m) ANY ACTION OR CONDUCT WHICH WOULD HAVE WARRANTED THE DENIAL OF A LICENSE:

- a) The Board is proposing to repeal "Suspension, 5 consecutive working days" as a standard term for the Minimum Recommended penalty for this type of violation as it is proposed to be replaced as an optional term (see the Board's New Optional Term No. 11 and titled "Suspension of License" within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 5 days, "Suspension of License, 5 consecutive working days" as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.

- b) The Board is proposing to repeal the terms “Full” and “Partial Cost Recovery”, as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos, 1-16” by updating the number range to “Standard Terms of Probation Nos, 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber existing Optional Terms No. “Notice of Discipline” from (4) to (3) and “Criminal Probation” from (5) to (4) to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”.
- e) The Board is proposing to amend the title “Notice to Employee” to “Notice of Discipline” to accurately reflect the amendments made in renaming the title in “Optional Conditions of Probation”.
- f) The Board is proposing to adopt Optional Term “(11) Suspension of License, 5 consecutive working days”, as noted above under a).
- g) The Board is proposing to adopt Optional Term “(12) Posting of a Suspension Sign” for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

7404(n) FAILURE TO SURRENDER A LICENSE THAT WAS ISSUED IN ERROR OR BY MISTAKE:

Purpose and Rationale:

- a) The Board is proposing to repeal the terms “Full” and “Partial Cost Recovery”, as noted above under *Universal Changes*.
- b) The Board is proposing to amend the number range of “Standard Terms of Probation Nos, 1-16” by updating the number range to “Standard Terms of Probation Nos, 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.

~~**480(a)(1) BEEN CONVICTED OF A CRIME. A CONVICTION WITHIN THE MEANING OF THIS SECTION MEANS A PLEA OR VERDICT OF GUILTY OR A CONVICTION FOLLOWING A PLEA OF NOLO CONTENDERE. ANY ACTION WHICH A BOARD IS PERMITTED TO TAKE FOLLOWING THE ESTABLISHMENT OF A CONVICTION MAY BE TAKEN WHEN THE TIME FOR APPEAL HAS ELAPSED, OR THE JUDGEMENT OF CONVICTION HAS BEEN AFFIRMED ON APPEAL, OR WHEN AN ORDER GRANTING PROBATION IS MADE SUSPENDING THE IMPOSITION OF SENTENCE, IRRESPECTIVE OF A SUBSEQUENT ORDER UNDER THE**~~

PROVISIONS OF SECTION 1203.4 OF THE PENAL CODE DENIAL OF AN APPLICATION BASED UPON CONVICTION OF A CRIME AS SPECIFIED IN BUSINESS AND PROFESSIONS CODE SECTION 480:

- a) Existing text for the title of this section needs to be repealed to conform to statutory amendments that have been enacted at BPC section 480 since the Board last amended its Guidelines. The Board is proposing to amend the title as noted above to “480(a)(1) DENIAL OF AN APPLICATION BASED UPON CONVICTION OF A CRIME AS SPECIFIED IN BUSINESS AND PROFESSIONS CODE SECTION 480” reflecting the revisions made pursuant to statutory amendments implemented by AB 2138 (Chapter 995, Statutes of 2018) and to fully capture the detailed criteria in BPC section 480(a) for the grounds for denial based on a criminal conviction (as further described below). Previously, the Board was not restricted as to the timeframe or the types of crimes that may be considered for denial and the title reflected the only limitation as to the conviction being final as currently defined (i.e., time for appeal has elapsed, affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence). However, Beginning July 1, 2020, this broader grant of authority was repealed, and boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. Absent these circumstances, BPC section 480(a), as amended by AB 2138, permits the Board to deny a license when an applicant has been convicted of a crime, only if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession, and one of the following conditions exist:

(1) the conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (i) a serious felony under Penal Code section 1192.7; (ii) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (iii) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of a specified business or profession regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau;

(2) the applicant is presently incarcerated for the crime; or,

(3) the applicant was released from incarceration for the crime within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of specified businesses or professions regulated by the

Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau.

The amendment to the title is therefore necessary to more accurately convey the breadth of the new detailed restrictions contained in BPC section 480(a)(1).

- b) Repealing Probation terms for classifications based on type of conviction, as the distinctions between “misdemeanor”, “less than 3 felonies” and “more than 3 felonies” are no longer necessary as discussed in greater detail in the rationale above for BPC section 7404(a)(3). The Board believes that the existing general minimum and maximum penalty recommendations of this section should provide sufficient standards to accommodate all types of convictions substantially related to practice of the professions regulated by this Board. Retaining separate standards by type of conviction would continue to overcomplicate the issue and not allow as much flexibility to ALJs, DAGs and the Board to craft disciplinary orders based on the facts and circumstances of the particular case.
- c) The Board is proposing to amend the number range of “Standard Terms of Probation Nos, 1-16” by updating the number range to “Standard Terms of Probation Nos, 1-13”, to accurately reflect the amendments in renumbering the “Standard Conditions of Probation”.
- d) The Board is proposing to renumber Optional Term “Criminal Probation” to accurately reflect the amendments in renumbering the “Optional Conditions of Probation”, from (5) Criminal Probation to (4) Criminal Probation.

480(a)(2) THE APPLICANT HAS BEEN SUBJECTED TO FORMAL DISCIPLINE BY A LICENSING BOARD IN OR OUTSIDE CALIFORNIA WITHIN THE PRECEDING SEVEN YEARS FROM THE DATE OF APPLICATION BASED ON PROFESSIONAL MISCONDUCT AS SPECIFIED IN BUSINESS AND PROFESSION CODE SECTION 480(a)(2) DONE ANY ACT INVOLVING DISHONESTY, FRAUD, OR DECEIT WITH THE INTENT TO SUBSTANTIALLY BENEFIT HIMSELF OR ANOTHER, OR SUBSTANTIALLY INJURE ANOTHER:

- a) Existing text for the title of this section needs to be repealed as noted above to conform to statutory amendments that have been enacted at BPC section 480 since the Board last amended its Guidelines. The Board is proposing to amend the title to “480(a)(2) THE APPLICANT HAS BEEN SUBJECTED TO FORMAL DISCIPLINE BY A LICENSING BOARD IN OR OUTSIDE CALIFORNIA WITHIN THE PRECEDING SEVEN YEARS FROM THE DATE OF APPLICATION BASED ON PROFESSIONAL MISCONDUCT AS SPECIFIED IN BUSINESS AND PROFESSIONS CODE SECTION 480(a)(2)”: These revisions were made pursuant to the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018) to conform the title to the amendments to subdivision (a)(2) of BPC section 480 and more accurately convey the detailed

criteria for denial under that subdivision. Beginning July 1, 2020, Boards may deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California under the following conditions:

- (1) the discipline occurred within the seven years preceding the date of application;
- (2) the discipline was based on professional misconduct that would have been cause for discipline before the board for which the present application is made;
- (3) the professional misconduct is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made; and,
- (4) the basis for the discipline was not a conviction that was dismissed under Penal Code section 1203.4, 1203.4a, 1203.41, 1203.42, or a comparable dismissal or expungement.

b) The Board proposes to retain existing recommended penalty ranges for the minimum and maximum penalties with minor amendments as discussed below. In the Board's experience, the existing proposed penalty for formal discipline by another licensing board is sufficient to monitor many probationers, while proposing a maximum penalty of denial for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon discipline in another state serious, as these violations show a history of violating the law applicable to practice, failure to exercise good judgment and, in some cases, demonstrates risk of direct physical client harm. However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the violations found by the other licensing board that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes to retain the existing penalties for this section. The existing minimum penalty of 2 years of probation with standard and optional term of "Criminal Probation" (as these cases very often involve a conviction in another state) should be sufficient in the Board's experience to convey the seriousness of the offense to applicants and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than denial of application for licensure (maximum penalty).

- c) The Board is proposing to amend the number range of "Standard Terms of Probation Nos, 1-16" by updating the number range to "Standard Terms of Probation Nos, 1-13", to accurately reflect the amendments in renumbering the "Standard Conditions of Probation".
- d) The Board is proposing to renumber Optional Term "Criminal Probation" to accurately reflect the amendments in renumbering the "Optional Conditions of

Probation”, from (5) Criminal Probation to (4) Criminal Probation.

~~**480(a)(3) DONE ANY ACT WHICH IF DONE BY A LICENTATE OF THE BUSINESS OR PROFESSION IN QUESTION, WOULD BE GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE. THE BOARD MAY DENY A LICENSE PURSUANT TO THIS SUBDIVISION ONLY IF THE CRIME OR ACT IS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF THE BUSINESS OR PROFESSION FOR WHICH APPLICATION IS MADE.**~~

Purpose and Rationale: The Board is proposing to repeal the title as noted above and the entirety of the minimum and maximum penalty sections for 480(a)(3) as unauthorized since BPC 480(a)(3) was repealed pursuant to amendments enacted by AB 2138. This section is therefore no longer necessary.

~~**480(c) A BOARD MAY DENY A LICENSE REGULATED BY THIS CODE ON THE GROUND THAT THE APPLICANT KNOWINGLY MADE A FALSE STATEMENT OF FACT REQUIRED TO BE REVEALED IN THE APPLICATION FOR SUCH LICENSE:**~~

Purpose and Rationale: The Board is proposing to repeal title and the entirety of the minimum and maximum penalty sections for 480(c) as unauthorized. These revisions are proposed to be made pursuant to the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018) that repealed prior BPC section 480(c). This section has been repealed and similar language pertaining to this subject matter is now found within BPC section 480(e) (discussed below). This section is therefore no longer necessary.

480(e) THE APPLICANT KNOWINGLY MADE A FALSE STATEMENT OF FACT REQUIRED TO BE REVEALED IN THE APPLICATION FOR SUCH LICENSE AS PROVIDED IN BUSINESS AND PROFESSION CODE SECTION 480(e):

Purpose and Rationale: The Board is proposing to adopt a new title and new maximum and minimum penalty section for enactment of BPC section 480(e) which sets the maximum recommended penalty at “Denial of Application for Licensure” and the minimum recommended penalty at “revocation stayed, 2 years’ probation with standard terms and the optional term of “(4) Criminal Probation”. These revisions were made pursuant to the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018). A similar authority section was formerly under BPC section 480(c) but has been amended and now found within BPC section 480(e). This new title and section are therefore necessary to implement the Board’s revised and more limited authority to deny based upon the standards set for in BPC section 480(e), which now includes prohibitions on denial based on “an applicant’s failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.”

In the Board’s experience, the existing proposed penalty for the prior subdivision (now revised to apply to relevant false statements) is sufficient to monitor many

probationers, while proposing a maximum penalty of denial for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon false statements to be serious, as these violations show a tendency to be untruthful, and failure to exercise good judgment, which are important qualifications for licensure for the protection of the public. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes a minimum of 2 years of probation with standard and optional term of "Criminal Probation" (as these cases very often involve false statements about a conviction) should be sufficient in the Board's experience to convey the seriousness of the offense to applicants and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than denial of application for licensure (maximum penalty).

496 A BOARD MAY DENY, SUSPEND, REVOKE, OR OTHERWISE RESTRICT A LICENSE ON THE GROUND THAT AN APPLICANT OR LICENSEE HAS VIOLATED SECTION 123 PERTAINING TO SUBVERSION OF LICENSING EXAMINATIONS:

- a) The Board is proposing to repeal "Suspension, 10 consecutive working days" from "Standard Conditions of Probation" as a standard term for the Minimum Recommended penalty for this type of violation as it is proposed to be replaced as an optional term (see the Board's New Optional Term No. 11 and titled "Suspension of License" within the Optional Conditions of Probation lists and section). The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The days of this suspension will remain the same as before, at 10 days, "Suspension of License, 10 consecutive working days" as the Board, in its experience, believes this is the minimum timeframe necessary to help deter future violations and encourage rehabilitative efforts for this type of violation.
- b) The Board is proposing to repeal the terms "Full" and "Partial Cost Recovery (only if respondent holds another license)", as noted above under *Universal Changes*.
- c) The Board is proposing to amend the number range of "Standard Terms of Probation Nos, 1-16" by updating the number range to "Standard Terms of Probation Nos, 1-13", to accurately reflect the amendments in renumbering the "Standard Conditions of Probation".
- d) The Board is proposing to renumber Optional Terms "Criminal Probation" from (5) to (4) to accurately reflect the amendments in renumbering the "Optional Conditions of Probation".

- e) The Board is proposing add “Nos” to accurately reflect that there is more than one possible Optional Condition for this type of violation.
- f) The Board is proposing to adopt Optional Term “(11) Suspension of License, 10 consecutive working days”, as noted above under a).
- g) The Board is proposing to adopt Optional Term “(12) Posting of a Suspension Sign” for the minimum penalty recommended that should be included when suspension is ordered. This ensures adequate notice to the public regarding the suspension status of any licensee regulated by the Board.

499 A BOARD MAY REVOKE, SUSPEND, OR OTHERWISE RESTRICT A LICENSE ON THE GROUND THAT THE LICENSEE, IN SUPPORT OF ANOTHER PERSON’S APPLICATION FOR LICENSE, KNOWINGLY MADE A FALSE STATEMENT OF MATERIAL FACT OR KNOWINGLY OMITTED TO STATE A MATERIAL FACT TO THE BOARD REGARDING THE APPLICATION:

- a) The Board is proposing to adopt a heading and establish maximum and minimum penalties for a licensee who violates BPC section 499, which includes the ability to revoke, suspend, or otherwise restrict a license on the ground that a licensee, in support of another person’s application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the Board regarding the application. Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 499.
- b) This proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for this type of violation. In the Board’s experience, the proposed penalty is sufficient to monitor many probationers for this type of violation. The proposed penalty should be sufficient in the Board’s experience to convey the seriousness of the offense to a licensee and to monitor respondents for possible recurrence and/or rehabilitative efforts. The Board considers these types of violations serious, as these violations show a deliberate attempt to undermine the very intent and purpose of licensure and regulation of the profession and exhibits a serious ethical lapse that poses a risk to consumers since it shows a tendency towards deception. However, the Board recognizes that there may be mitigating or extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years’ probation with standard terms (Nos. 1-13) and “Optional Conditions” of probation, as discussed below.
- c) The proposal would specify a maximum penalty of revocation and cost recovery. This is proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted. Cost recovery is appropriate as noted under *Universal changes*.

- d) The proposal would specify a minimum penalty of 5 years of probation, standard terms of probation numbers 1-13, optional terms of probation: 10 consecutive working days of suspension of license (Optional Term No. 11) and posting of suspension sign (Optional Term No. 12).

AMENDING CONDITIONS OF PROBATION

Purpose: The purpose is to relocate the section entitled “Conditions of Probation” from its current location on page 32 to closer to the beginning of the Guidelines at page 11, as discussed above.

Rationale: This proposal is necessary to relocate the section entitled “Conditions of Probation” as the Board believes this section should follow the section entitled “Factors to be Considered”, which will give the licensee a better understanding of the conditions of probation.

AMENDING PROBATIONARY CONDITIONS

Purpose: The purpose is to relocate the section entitled “Probation Conditions” from its current location on page 32 to page 11, as discussed above.

Rationale: This proposal is necessary to relocate the section entitled “Probation Conditions” as the Board believes this section should follow the section entitled “Factors to be Considered”, which will give the licensee a better understanding of probationary conditions before reviewing the rest of the Guidelines.

AMENDING INTRODUCTORY LANGUAGE FOR DISCIPLINARY ORDERS

Purpose: The purpose is to update the numbering for the Cost Recovery standard term from condition “3” to “2” and add a comma after the words “revocation is stayed” for grammatical reasons.

Rationale: The proposal is necessary to update the numbering of Standard Terms of Probation to be reflected for consistency and avoid confusion for the users of the Guidelines.

AMENDING RECOMMENDED LANGUAGE FOR STANDARD CONDITIONS OF PROBATION:

The Board is proposing to amend the subsections within the section “Recommended Language for Standard Conditions of Probation (“Standard Conditions of Probation”). The Board believes these changes are necessary to make the Disciplinary Guidelines more user-friendly, provide transparency on the Boards disciplinary policy and give advanced notice of the potential disciplinary outcomes for licensees and applicants. In addition, there have been statutory revisions since the last Disciplinary Guidelines was revised in 2010 that necessitate these updates. The updates are reflected in each

applicable section below to explain every decision individually necessitating the adoption, amendment or repeal by the Board.

(1) SUSPENSION OF LICENSE:

Purpose: The purpose is to amend and relocate this title “(1) Suspension of License” and the accompanying terms of that condition from the “Standard Conditions of Probation” section to the Optional Conditions of Probation section.

Rationale: This amendment is necessary to move this section “(1) Suspension of License” from “Standard Conditions of Probation”. Instead, Suspension of License is proposed to be adopted by the Board as “(11) Suspension of License” within “Optional Conditions of Probation”. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis.

(2) POSTING OF SUSPENSION SIGN:

Purpose: The purpose is to amend and relocate this title “(2) Posting of Suspension Sign” and the accompanying terms of that condition from the “Standard Conditions of Probation” section to the “Optional Conditions of Probation” section.

Rationale: This proposal is necessary to move this section “(2) Posting of Suspension Sign” from the Standard Conditions of Probation section. Instead, “Posting of Suspension Sign” is proposed to be adopted by the Board as “(12) Posting of Suspension Sign” within “Optional Conditions of Probation”. The proposal to relocate the posting of suspension sign requirement to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. When suspension of a license is applied then, posting of suspension sign is required. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, posting of suspension can be applied more appropriately to violations on a case-by-case basis.

(1) OBEY ALL LAWS:

Purpose: Existing Guidelines at Section 9 state that “Obey All Laws” is a standard term of probation and contains the following accompanying terms:

(9) OBEY ALL LAWS-Respondent shall obey all federal, state, local laws, and all rules and regulations governing any practice for which the Respondent is licensed. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence.

The purpose is to amend the current provision listed by moving it and its accompanying

existing terms to Standard Term No. 9 and adopting it as section “(1) Obey all Laws”. In addition, the Board is adding the following specifications, bolded below:

Respondent shall obey all federal, state, local laws, **criminal orders of probation or parole if applicable**, and all rules and regulations governing any practice for which the respondent is licensed **by the Board**. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing **to their assigned probation monitor** within seventy-two (72) hours of occurrence.

Rationale: This proposal is necessary to relocate the section “(1) Obey all Laws” from “(9) Obey all Laws” on page 39 to the beginning of this section as the Board would like “Obey all Laws” to be the first item to be listed within the Standard Conditions of Probation. The Board anticipates this adjustment will allow ALJs, DAGs licensees, applicants and the consumer to be able to understand this is the first requirement for probation and for better organizational structure within the standards of probation. These reporting requirements are needed to ensure that the Board receives documentation of, and can fully investigate unlawful activity related to, any practice regulated by this Board occurring while the respondent is still on active probation with the Board. (including any “substantially related” crime or act related to the practices of any profession regulated by this Board). The Board proposes to retain the seventy-two (72) hours reporting requirement as the Board, in its experience with implementing this current standard, believes it is sufficient time for a probationer to provide a full and detailed account of any violations committed in writing to the Board. Retaining these requirements will allow the Board’s Probation Monitors to continue to monitor the licensees with up-to-date information and allow the Board to determine whether further action is necessary for the protection of the public.

The Board is adopting and adding “criminal orders of probation or parole if applicable,” to this standard term, as these orders are a necessary component of probation and determining rehabilitation efforts. This change also provides additional notice to individuals who have been placed on criminal probation, possibly before the Board’s probation term began, regarding this additional reporting requirement as part of their probation with the Board. The intent is to make it clear that a violation of this criminal probation is also a violation of the Board’s probation.

The Board is also adopting clarifying language regarding licensed “by the Board” as a respondent may have multiple types of licenses, but the Board only has jurisdiction to oversee its licensees. Finally, the Board adds new text to require reporting to the “assigned probation monitor” to allow more effective reporting of this information directly to persons responsible for monitoring the respondents’ probation, and to ensure adequate notice to respondents of their reporting obligations for this term.

(32) COST RECOVERY:

Purpose: The purpose is to renumber the section “(3) Cost Recovery” to “(2) Cost Recovery” for organization purposes and add new authority sections in the BPC at Section 7403. In addition, the Board is proposing to amend the language within the section to add new cost recovery approval requirements for respondents seeking to pay cost recovery under a payment plan. These requirements would include the following:

- That the request be written to their assigned probation monitor and require approval by the Board or its designee,
- Require a respondent to make payments pursuant to a payment plan specified by the Board or its designee taking into consideration all of the following: (1) Respondent’s ability to pay, (2) the total amount of cost recovery owed, and (3) the length of the probationary period,
- Specify that modifications to an authorized payment plan, including an extension of time to complete payments or a revised payment schedule, may be requested by the Respondent in writing to their assigned probation monitor and granted upon a showing of “good cause” by the Respondent,
- Specify that the request for modification shall contain an explanation for why the requested modification to an authorized payment plan should be granted and is subject to approval by the Board or its designee; and,
- Define “good cause” to mean:

(A) Death of an immediate family member (spouse, child, or parent). Documentation, such as a copy of the death certificate, must be submitted.

(B) Catastrophic illness, contagious disease, or major traumatic injury to the applicant or immediate family member (spouse, child, or parent). Documentation, such as an original letter on letterhead from the physician, which includes the date(s), nature of the illness, and the physician's signature, must be submitted.

- (C) Natural disaster (earthquake, flood, fire, etc.).
- (D) Other cause based on extenuating circumstances and decided on a case-by-case basis by the Board or its designee

The Board would also repeal reference to filing of bankruptcy not relieving respondent of responsibility to reimburse the Board for these costs.

Rationale: This proposal is necessary to update Cost Recovery to “(2) Cost Recovery” for organizational purposes and to provide notice to the regulated community of the Board’s additional authority to collect cost recover in accordance with BPC section 7403. Existing Guidelines do not specify the manner of requesting authority pay cost recovery via a payment plan and the standards the Board uses to exercise its discretion to grant or deny, or modify such requests. This proposal would specify those standards.

Adding a “written” request to their “assigned probation monitor” requirement resolves any ambiguity about the method acceptable for requesting a payment plan approval directly from the Board. This creates a paper trail that can be used to follow up with respondent should questions arise about the payment plan and ensures greater transparency and accountability for the Board and respondent. If a respondent fails to make the agreed upon payments, the Board will be able to refer to the payment plan that was requested and agreed to by the respondent and noncompliance would be considered a violation of probation.

The new criteria for considering approval of a payment plan are also necessary because payment plans are not standardized, and how the costs are paid over time vary by probationer based on the criteria outlined in this section. Adding this language to the probation conditions provides consistency in the way the payment plans are developed and allows Board staff to make the determinations in a consistent manner and provide it to the probationer separately. It also makes it less likely that the payment plan will need to be modified later (for example, because a payment plan was determined in a manner that is inconsistent from the norm).

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

The Board is repealing references to filing of bankruptcy not relieving respondent of responsibility to reimburse the Board its costs as it is inconsistent with current U.S. Bankruptcy law.

The Board is adopting clarifying language to include authority to request modifications to an authorized payment plan in writing for “good cause” by the respondent. Specifying how modifications can be requested and made “for good cause” is necessary because the Board understands that circumstances may occur outside of the respondent’s control and there no current guidelines on how a modification may be requested, under what circumstances and how it would be granted. This proposal would resolve those concerns by specifying under what circumstances the Board would generally grant such modification requests.

Any modifications to the payment schedule will require an explanation for the requested modification(s) and would be subject to approval by the Board or its designee. The Board has outlined that “good cause” must include one of the following for the following reasons:

- (A) Death of an immediate family member (spouse, child, or parent) and submit documentation, such as a death certificate to authenticate the claim as these circumstances can understandably interfere with a licensee’s ability to work and comply with the repayment requirements.

- (B) Catastrophic illness to the respondent or to an immediate family member since these types of illnesses and ongoing treatments may impact a licensee's ability to work and should be taken into consideration on the respondent's ability to pay cost recovery and maintaining the agreed upon payment schedule. To authenticate this and allow the Board to properly investigate the requested modification, an original letter on letterhead from the physician must be accompanied with the request and include information regarding the date(s) and nature of the illness and dated by the physician.
- (C) Documentation that a natural disaster (earthquake, fire, storm, etc.), which can cause an impediment on the capacity of the respondent to maintain their ability to make the agreed upon payments.
- (D) "Other cause" based upon extenuating circumstances (circumstances beyond the control of the respondent) and decided on a case-by-case basis to allow for unknown circumstances that could cause an impediment on the capacity of the respondent to maintain their ability to make the agreed upon payments.

The Board anticipates the clarifications regarding cost recovery payment requirements, payment plans or payment modifications will result in greater compliance with this term and condition of probation.

(43) QUARTERLY REPORTS OF COMPLIANCE:

Purpose: The purpose is to amend the section "(4) Quarterly Reports of Compliance" to "(3) Quarterly Reports of Compliance" for organization purposes and revise the term "completed" to "complete" (in the current second sentence of this condition) to specify that the existing "Quarterly Report of Compliance" must be "complete" for greater comprehension of the requirements specified in this section. This section would also be amended to specify what "a complete 'Quarterly Report of Compliance'" contains as well as specify that failure to submit the information required by this section by the due date(s) specified in this section" shall constitute a violation of probation.

Rationale: This proposal is necessary to clarify the importance of submitting a complete quarterly report and specifies the contents of the written quarterly reports required to be filed by the respondent. In the Board's experience, quarterly reporting information is relevant and necessary to adequately investigate and monitor license compliance with the Board's probationary orders. This proposal describes the process more accurately for complying with this condition of probation to be filed by the respondent shall contain:

- (A) Respondent's personal identifying information including the respondent's full legal name (first, last, middle, suffix (if any)), case number, license number and expiration date, telephone number, email address (if any), address of record with the Board (mailing address) and residence physical address as well if different than mailing address. This information is necessary for the Board to easily identify

the probationer, ensure compliance with probation requirements and contact the probationer if noncompliance occurs.

- (B) For Respondents who own an establishment (Barber shop or Salon), the following identifying information: the establishment's name, license number, license expiration date, and address of record with the Board. This is necessary so the Board can accurately identify the respondent, and more effectively communicate with the probationer if the Board is unsuccessful in reaching the probationer through personal contact information.
- (C) Respondent's employment information, including the establishment's name, license number, physical address, and telephone number. In addition, the Board requests disclosure of the respondent's work schedule for a standard week (Monday – Sunday), including respondent's scheduled work hours for each day of a standard week (e.g., state work week hours: "Mondays (8 hours), Tuesdays (4 hours), etc."), and for days the respondent does not work, Respondent shall indicate "N/A" next to each day of the standard week where they are not scheduled to work when reporting their total work schedule. This requirement is needed to ensure that the Board is aware of and can fully investigate the respondent's employment location(s) as needed for compliance.
- (D) Respondent to provide written disclosure regarding whether they have complied with each condition of probation contained in this Decision since their last quarterly report or as of this report (if this is their first quarterly report). This information is needed to ensure that the Board is aware of and can investigate all aspects of the respondent's probation being monitored under their current terms and conditions of probation. Further, this information would assist the Board in investigation of compliance with probation and to help ensure the Board receives the most current and accurate reporting by probationers in compliance with this condition of probation.
- (E) If applicable, if Respondent discloses they are not in compliance with any condition of probation, a written statement explaining why Respondent is not in compliance with any particular condition(s) of probation . This requirement is needed to ensure that the Board is aware of and can fully investigate activity related to the respondent's licensure. Further this information would assist the Board in investigation of compliance with probation and to help ensure compliance with the "Obey All Laws" term of probation (including any "substantially related" crime or act related to the practices licensed by the Board per BPC section 480).

The proposal is also necessary to allow clear and transparent information on what specific information the Probation Monitors will be requesting. The Board anticipates this change will allow the Probation Monitors to monitor the licensees and applicants more effectively, and to help ensure consumer safety.

Existing law and regulation do not specify the content of a complete quarterly report. This

proposal is necessary to set forth those requirements to facilitate compliance and avoid inadvertent mistakes in compliance by the probationers. This would be achieved through specific direction to submit “complete reports” (as defined above) quarterly in accordance with the existing prescribed schedule. Setting clear expectations for reporting allow the Board sufficient time to evaluate and investigate any issues that may be uncovered in these reports.

To help ensure that probationers understand the effect of submitting an incomplete or “late” report (specified here as failure to submit the required information by the due dates specified in this section) the Board adds to its existing advisement “[F]ailure to submit the information required by this section by the due date(s) specified in this section” shall constitute a violation of probation.

(54) NOTIFICATION TO EMPLOYER/ESTABLISHMENT OWNER(S):

Purpose: The purpose is to amend the section “(5) Notification to Employers” to “(4) Notification to Establishment Owners” to more accurately describe who the respondent is to notify upon a restriction being placed on their license. The Board is also amending language to gender neutral terms “his/her” and replacing them with gender neutral “their” when describing their employer in this section.

The Board is proposing to specify the contents of the written notice to the employer and the documents that must be provided as part of that notice, including the Accusation or Statement of Issues, as applicable.. In addition, the Board is proposing to adopt language that specifies employer notification must be provided within 30 days of the effective date of the decision or within 30 days after change of employer, as applicable. The Board would repeal as not effective (since a “request” is not a requirement this existing standard proved difficult to enforce) an existing requirement that employers “are requested” to notify the Board of receipt of the notice from a respondent, and repeal references to “independent contractors” or “booth renters” as the revised definition of “employer” would cover all forms of employment and the accompanying notice requirements for this section.

This proposal would require the reporting of the written notice being provided to the employer by the respondent to the respondent’s assigned probation monitor within 30 days of the effective date of the decision or change of employer. This proposal would also require the respondent to provide their probation monitor with specified information for all establishments where the respondent is providing services during the period of probation.

Rationale: This proposal is necessary to specify who, in addition to a traditional employer, should be notified when a respondent does not have a direct employer, but does work in an establishment. Reporting of the disciplinary action by the Board would be required also to the holder of the establishment license where that respondent works (a short form reference to broadly covering the concept of “employer” would be added for ease of use and application of the remaining terms in this section). To avoid confusion

and encourage greater comprehension as explained above, the following sentences would be struck: “The employer will be requested to inform the Board of Barbering and Cosmetology, in writing, that he/she is aware of the discipline. This applies to independent contractors (booth renters) as well as employees.”

This proposal is also necessary to allow the Board to specify and provide advance notice that the respondent must provide written notification to the “employer” within 30 days of the effective date of the Decision in compliance with this section and would add a new requirement that in addition to the Board’s disciplinary decision, the employer shall be provided the Accusation or Statement of Issues, as applicable. This ensures the Board receives accurate and timely information in regarding the respondent’s compliance with this probation condition and has fully informed their employer (as defined in this section) and allows this reporting to be done with sufficient time (in the Board’s experience) for the respondent to advise their respective employer(s). For the reasons specified below, the Board would require the following information to be submitted to the employer:

- (A) Name of the Respondent -- to give notice of and accurately identify the individual to the employer.
- (B) Name of the employer. A Board licensee may work in more than one establishment and each location will need to be notified and identified in the notice(s) that are given. A requirement of probation under “Quarterly Reports of Compliance” is notifying the Board of each location the respondent works in including work schedules and hours. This will ensure all employers are included in the notice(s). This will allow the Board’s probation monitor to cross-reference compliance within the various provisions of probation. In addition, this proposal will provide the Board with accurate information regarding all the probationers places of employment, how to contact the employers of these locations, and where to send an inspector, if necessary.
- (C) Duration of the probation or license suspension. This is necessary as it is important that the probationer understands the decision that was made in regard to their license and can demonstrate that they can accurately report these limitations to their employer. This disclosure also ensures that the employer is informed regarding these limitations on practice.
- (D) A copy of the decision. This enables the employer to be provided the opportunity to review the circumstances of the Decision involving their employee and become informed about the limitations their employee must meet to retain their license.

Currently, the probationer is only required to provide the Decision and Order, which does not provide either the Accusation or Statement of Issues (“charging documents”). In addition to the written notice provided above, the Board proposes to add a requirement that the employer receive a copy of the applicable charging documents. The provision of these charging documents gives the employer a broader understanding of the Decision and the facts and circumstances surrounding the violations and how they relate to the

restrictions placed upon the probationer's license (which are typically enumerated in the Accusation for a licensee or a Statement of Issues for an applicant). Providing notice to the employer ensures that the employer understands the limitations under which their employee or the individual (renter, etc.) in their place of business can work and still retain an active license with the Board. The Board's licensees work in diverse settings and may face a variety of enforcement actions for violations of the Act or Board regulations. Uniformly specifying notification to all employers will greatly benefit the Board's probation program by ensuring all licensees working in a setting have notice of and understand the violations charged. This tends to encourage compliance and greater rehabilitative efforts in the various employment settings where the Board's licensees provide services to the public.

To help verify the respondent has fulfilled the employer notice requirements, a copy of the written notice provided to the employer shall be submitted to the Board within 30 days of the effective date of the decision or change of employer. In the Board's experience, this is sufficient time for a probationer to submit a copy of the notice to their assigned probation monitor and ensures that each affected employer is so notified (current or prospective). Currently, the Board's request for the employer to notify the Board that he/she is aware of the discipline has not been effective and delays beyond the respondent's control could cause the respondent to be in violation of probation if the employer does not timely report, or report at all, to the Board. To ensure a more effective and balanced approach to monitoring a respondent's compliance, the Board would add the following reporting requirements for all establishments where the Respondent is providing services during the period of probation, which would include the respondent's duty to report the following information to the Board:

- A. Name(s) of their employer(s),
- B. Physical address(es),
- C. Mailing address(es), and,
- D. Telephone number(s).

It is essential that the Board have this information on record to know where the respondent is working, who to contact and how they can contact the employer. A requirement of probation under "Quarterly Reports of Compliance" is notifying the Board of each location the respondent works in, including work schedules and hours. This will ensure all employers are included in the notices. This will allow the Board's probation monitor to cross reference compliance with the provisions of probation.

(65) CHANGE OF EMPLOYMENT:

Purpose: The purpose is to amend the section "(6) Change of Employment" to "(5) Employment" for organization purposes, due to the "Standard Conditions of Probation" being amended. Existing requirements specify that a respondent shall notify the Board in writing of any and all changes in employment status, employment location, and address within 30 days of such change. This proposal would further specify the content of the prescribed notice.

Rationale: Existing regulations do not prescribe the content of the written notice currently required to follow when a change of employment status, location or address takes place. The probationer's notification to the Board shall include the name, address, and telephone number of the holder of the establishment license where Respondent practices, and the date the respondent changed work locations. This language has been added to allow the Board's probation monitors to know exactly who the probationer is working for and how to reach his or her employer, if necessary. This ensures that the Board has current information about the practice locations where a probationer works and enables the Board to inspect and investigate any issues at the work location(s) for the protection of the public.

(76) PARTICIPATION IN APPRENTICESHIP OR EXTERNSHIP PROGRAM:

Purpose: The purpose is to amend the section "(7) Participation in Apprenticeship or Externship" to "(6) Participation in Apprenticeship or Externship" for organization purposes, due to the "Standard Conditions of Probation" being amended. The Board proposes to remove the reference to "supervisor" within apprenticeship or externship programs in the first sentence of the existing text, as the Board does not recognize "supervisors" only "trainers" in accordance with Board regulations (see e.g., CCR section 918 "Apprentice Trainers"). The Board is also proposes to add the following prohibition to this term: "If Respondent is the holder of an establishment license, Respondent's establishment shall not participate in an apprenticeship or externship program during the course of this probation."

Rationale: This proposal is necessary to remove "or supervisor", which creates ambiguity as the Board does not recognize "supervisors", only "trainers" in Board regulations as noted above. Language has also been added to prohibit an establishment license holder from participating in externships or apprenticeships during the course of their probation. This change is being made pursuant to Business and Professions Code (BPC) Section 7395.1(c)(3) and CCR Section 962, which together require a licensee to have a license in "good standing" (defined in CCR section 962(a) as having "no current discipline" against the license) with the Board in order to offer externships; and CCR Section 913.1, which authorizes the Board to withdraw or limit approval of apprenticeship sponsors that are not in compliance with the Act or Board regulations. Since the Board's probation orders are a form of discipline that restrict the license, this condition of probation is necessary to specifically prohibit participation in apprenticeship or externship programs in accordance with the Act and Board regulations. Unrestricted license requirements for apprenticeship or externship providers also ensures that the trainers meet minimum standards of competency in training future licensees for entry level into the professions regulated by this Board.

(87) PUBLICATION OF A DISCIPLINARY ACTION:

Purpose: The purpose is to amend the section "(8) Publication of a Disciplinary Action" to "(7) Publication of a Disciplinary Action" for organization purposes, due to the "Standard

Conditions of Probation” being amended to relocate various terms within this section.

Rationale: This proposal is necessary to renumber the subsections within “Standard Conditions of Probation” due to the addition of new terms and relocation of some existing terms within this section.

~~(9) OBEY ALL LAWS:~~

Purpose: The purpose is to strike section “(9) Obey all Laws” as it is being relocated to the (1) and amended as discussed above.

Rationale: This proposal is necessary to relocate the section to “(1) Obey all Laws” as the Board would like “Obey all Laws”, to be the first item to be listed within the Standard Conditions of Probation.

~~(10) COMPLY WITH THE BOARD’S PROBATION PROGRAM:~~

Purpose: The purpose is to amend the section “(10) Comply with the Board’s Probation Program” to “(8) Comply with the Board’s Probation Program” for organization purposes, due to “Standard Conditions of Probation” being amended. The Board is proposing to adopt clarifying language that it is the respondent’s responsibility to keep the Board informed of their business address and address of record (physical and mailing). The Board is striking the notice of address change requirement of 15 days and instead clarifying reporting requirements are within thirty (30) days of any address changes. In, addition the Board is adopting language that the respondent must appear for any scheduled meetings as directed by the Board or its designee. For grammatical reasons, the Board is adding a period after the new text included after the word “timely,” and beginning a new sentence for the remaining existing text with “Respondent shall” and striking “and.” This would provide a break in an otherwise overly lengthy sentence.

Rationale: This proposal is necessary to renumber the subsections within “Standard Conditions of Probation” as this section is being updated for better organizational structure within the standard conditions of probation. For the Board’s probation program to function effectively, the Board needs to be able to reach the probationer. Because of this, language has been added to require the probationer keep the Board informed of his or her business and personal address of record so the Board’s probation monitor can contact the probationer for any need. Existing language further specifies that how to inform the Board in writing of these address changes but fails to specify which address changes require notice to the Board (physical and mailing). To further greater opportunities for compliance, the Board is striking the existing 15 day reporting requirement and giving probationers an extra 15 days to claim correspondence and notify the Board of an address change, which is consistent with all other reporting requirements under probation -- thirty (30) days. The language requiring personal appearances at scheduled meetings is being added to authorize the Board to personally interview respondents when necessary to determine compliance with any term and condition of probation. This provides an effective method for investigating compliance by

the Board or its staff assigned to conduct investigations of probation violations without resort to legal process (e.g., administrative subpoena). In addition, the Executive Officer pursuant to her delegation of authority to make non-substantive changes to the text, has corrected two typographical errors in the text for this section. The change was made from “Respondent’s business and addresses of record” to “Respondent’s business address and address of record” consistent with Board policy to collect physical and mailing addresses for licensees on probation.

(11) VIOLATION OF PROBATION:

Purpose: The purpose is to amend the section “(11) Violation of Probation” to “(9) Violation of Probation” for organization purposes. The Board is also proposing to amend language to strike the word “the” and replace it with “any” and remove and replace gendered pronouns “his/her”.

Rationale: This proposal is necessary to renumber the subsections within “Standard Conditions of Probation” as this is being updated for better organizational structure within the standard conditions of probation. The Board is proposing to replace the word “the” with “any”, clarifying and giving notice that any violation of conditions of probation may result in the revocation or suspension of the respondent’s license. The Board is proposing to amend gender nouns to comply with the State’s policy objectives set forth in Assembly Concurrent Resolution No. 260 of 2018 (intended to encourage state bodies to engage in a coordinated effort to revise existing laws and regulations with inclusive language by using gender-neutral pronouns or reusing nouns to avoid the use of gendered pronouns).

~~(12) REPORT IN PERSON:~~

Purpose: The purpose is to repeal the section “(12) Report in Person”.

Rationale: This proposal is necessary due to adding language requiring probationers’ appearance at scheduled meetings as directed by the Board or its designee under “Comply with the Board’s Probation Program”. Retaining this section would make the Report in Person term redundant.

~~(13) RESIDENCEY OUTSIDE OF THE STATE:~~

Purpose: The purpose is to repeal the section “(13) Residency Outside of the State”.

Rationale: This proposal is necessary due to this term being consolidated with the section “(14) Failure to Practice ~~California Resident~~/Tolling” under “Standard Conditions of Probation.” Since this subject matter will essentially be covered under one condition that addresses non-practice no matter where the probationer resides, this condition is no longer necessary.

~~(1410) FAILURE TO PRACTICE CALIFORNIA RESIDENT /TOLLING:~~

Purpose: The purpose is to amend the title “(14) Failure to Practice California Resident” to “(10) Failure to Practice /Tolling” for organizational purposes and to reflect the revisions more accurately being proposed to this section. The Board proposes to repeal reference to residing in California and instead the Board is adopting tolling to this section whenever a respondent “ceases” practicing in California for any reason. The Board is proposing to simplify terms and to avoid ambiguity regarding what happens when a respondent ceases practicing for any reason (e.g., moves out of state, stops working, etc.). This proposal would further amend the reporting requirement to remove requirements for reporting “30 calendar days” to instead notify the Board or designee within “ten (10) calendar days” prior to non-practice or return to practice.

This proposal adds clarifying language regarding what happens when a respondent ceases practicing in California (tolling) and defines what non-practice means for the purposes of this section. The Board would strike the qualifier “within California” and add “or temporary or permanent residency or practice outside of California” and a short form identifier for this concept of “non-practice” as used in this section. The sentence as amended would read: “Any period of non-practice or temporary or permanent residency or practice outside of California will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation (“non-practice”).

The proposal also adds sections explaining that non-practice is tolled for as long as Respondent is in a period of non-practice and that the period of probation shall be extended for the period of time respondent’s probation is tolled. This proposal also specifies that it shall be a violation of probation for respondent to remain in a period of non-practice for a total of two years.

Rationale: This proposal is necessary due to this term being consolidated with the subsection “(13) Residency Outside of the State” under “Standard Conditions of Probation”. The Board is also amending “California Resident” from the title as it no longer matters where the probationer resides, if they not practicing with their license, their probation term is tolled according to this revised condition.

Tolling is a difficult legal concept for many probationers to understand, so the Board is amending the language to help probationers understand that their probation is tolled when there is any period of non-practice or temporary or permanent residency or practice outside of California. This will provide better guidance on the actual “trigger” when probation is tolled. This information will also assist the Board in accurately tolling probation for periods of what it considers to be non-practice. This would also consolidate and simplify different types of non-practice concepts and the legal effects and timing of each, as the Board does not see a need to differentiate between residency and other types of non-practice issues. A licensee is required to practice while on probation as part of their probation terms to ensure that the Board can effectively evaluate a respondent’s progress and ability to meet minimum standards of practice while actively engaged in the practice for the protection of the public. This progress and active review is undermined

when the probationers are allowed to “sit out” their probation. As a result, the Board requires tolling of the probation (pausing or delaying of the running of the period of probation) while the probationer is not practicing and requires extension of the probation for the period of time Respondent’s probation is tolled.

To avoid confusion regarding reporting of nonpractice, beginning or ending periods, the Board is amending the notice requirement from 30 to “ten (10)” calendar days. This will help ensure that the Board can accurately monitor a probationer’s status and return to practice in California without compromising public protection. In the Board’s experience, ten days is sufficient time for a respondent to report their nonpractice start and end dates.

Existing regulation does not explain the consequences of allowing tolling to continue with the possible implication that a licensee could remain tolled indefinitely. This proposal would eliminate that uncertainty and confusion by stating that it is a violation of probation to allow probation to remain tolled for a total of two years. This would allow the Board to effectively monitor the probationer by limiting the amount of time probation may be tolled to no longer than a total of two years. In the Board’s experience, two years is a sufficient and reasonable amount of time for a licensee to determine whether to retire, resume practice in California, petition for termination of probation or request voluntary surrender of the license (all possible method for resolving status without the Board resorting to disciplinary action to enforce its order). Further, this change would make it clear that the Board considers it a violation of probation to not resume practice within 2 years and would help the regulated community understand how such nonpractice violation would be managed. As a result, this change is necessary to implement how the Board would possibly respond to a licensee who fails to resume practice in California for a total of two years (i.e. any action to revoke probation for this violation would be noticed in a petition to revoke probation or accusation an served on the probationer in compliance with the Administrative Procedure Act (“APA” -- Gov. Code, § 11500 et seq.) and would include a right to a hearing).

(4511) MAINTAIN VALID LICENSE:

Purpose: The purpose is to amend the title “(15) Maintain Valid License” to “(11) Maintain Valid License” for organizational purposes. The Board proposes to specify that a respondent shall maintain a current, active and valid license for the length of the probation period, “including any period during which probation is tolled.”

Rationale: The purpose is to amend the title to “(11) Maintain Valid License” for organizational purposes as the Standard Conditions of Probation have been updated and reorganized; this amendment reflects those changes. The Board has added clarifying language as tolling periods can extend several years. This term exists to address those who attempt to avoid complying with probation by simply moving to another state and allowing their licenses to lapse or expire. If a licensee allows their license to expire and this is not considered a violation of probation, the Board would thwarted in its efforts to actively monitor a probationer and thereby allowing them to “run out” their probation

without any disciplinary consequence. This amendment would make it clear that those who are tolling must continue to maintain a current, active, and valid license. The goal of tolling is to allow the probationer to someday return to practice and serve the rest of their probation. However, if the probationer attempts to subvert the Board's probation jurisdiction by letting their license lapse, this amendment will make it a violation of probation (when read together with the Standard "Violation of Probation" term).

(12) PETITION FOR REDUCTION OF PENALTY:

Purpose: The purpose is to adopt the title "(12) Petition for Reduction of Penalty" and new standard condition for this section. This proposed language applies the mandate described in Government Code (GC) section 11522 in the APA to the Board's probationary orders and describes the requirements as they specifically relate to the Board and its processing of such petitions including:

(A) Respondents may petition for a reduction of penalty after a period of not less than one (1) year has elapsed from the effective date of their Decision or from the date of the denial of a similar petition filed by Respondent, whichever is applicable.

(B) The Board shall give notice to the Attorney General of the filing of any petition by Respondent and the Attorney General and the Respondent shall be afforded an opportunity to present either oral or written argument before the Board if a petition is filed in accordance with GC Section 11522.

(C) The Board shall determine if a reduction in penalty is warranted based on a Respondent's compliance with the terms and conditions of probation, and demonstration of their ability to practice safely as evidenced by inspections of the workplace since the effective date of the Decision.

Rationale: Following formal discipline, the APA authorizes licensees to petition the Board for reduction of penalty after a period of not less than one year after the effective date of the Board's decision to revoke or suspend the license. (Gov. Code, § 11522.) The purpose is to adopt the title "(12) Petition for Reduction of Penalty" as a subsection under Standard Conditions of Probation to further specify the Board's specific processes and procedures that a respondent must follow for the filing and consideration of any petition for reduction of a penalty. Although existing guidelines contain a section reciting GC section 11522, that section does not contain a standard condition of probation that explains how that petition process would work, what needs to be filed or how it would be processed or considered by the Board. The Board often receives questions about this petition process and placing it within the Board's probationary order would resolve those questions and place conditions on how and when a petition would be considered if the respondent chooses to file this type of petition with the Board.

This is necessary to provide clear instructions and notice that the respondent is not eligible to apply for a reduction of penalty for one year from the effective date of the

Decision or from the date of the denial of a similar petition filed by the respondent, whichever is applicable. Instructions would also include that if the petition is filed in accordance with the requirements of GC section 11522, the Board shall give notice to the Attorney General of the filing of any petition filed by respondent, and, both the petitioner and the Attorney General will be given the opportunity to present either oral or written arguments before the Board. This is necessary to provide notice to the licensee of the eligibility requirements and the process for filing a petition pursuant to GC section 11522.

This condition further describes what criteria the Board would use to consider whether a reduction in penalty is warranted including consideration of the following: Respondent's compliance with the terms and conditions of probation, and demonstration of their ability to practice safely as evidenced by inspections of the workplace since the effective date of the Decision. These criteria, in the Board's experience, assist with determining a respondent's level of compliance with the terms and conditions of probation and help decide whether the respondent would be safe to practice with or without restrictions. Providing these criteria directly in the Board's orders would help to more easily and effectively communicate the standards required for petitions and what the Board will consider in determining whether to grant these petitions.

(4613) LICENSE SURRENDER WHILE ON PROBATION:

Purpose: The purpose is to amend the title "(16) License Surrender" to "(13) License Surrender While on Probation" and reformat this condition to break it into three smaller paragraphs for better organization. The proposal would amend the existing standard term and condition of probation "License Surrender" by deleting references to surrender "due to retirement or health reasons" (as outdated since the Board does not currently limit requests to only these criteria), requiring a request for license surrender to be submitted in writing to the Board, changing gendered pronouns from "his/her" to "their," and specifying the content of the written request to surrender to include the following: Respondent's name, license number, case number, address of record, and an explanation of the reason(s) why the respondent seeks to surrender their license.

The Board proposes to also add a requirement that if respondent owes any outstanding costs associated with the investigation and enforcement of this disciplinary action the outstanding amount shall be paid in full at the time the request is submitted to the Board. Finally, the Board would strike "a" and replace it with "that" for grammatical reasons and delete a reference to the "tendered license" and replace it with "surrender" to describe the process when the Board would act to accept the surrender and relieve respondent of the terms and conditions of probation more accurately.

Rationale: It is necessary to amend the title to "(13) License Surrender While on Probation" for organizational purposes as the Standard Conditions of Probation have been updated and reorganized. The purpose is to also amend the title to state License Surrender "While on Probation" to provide a more accurate description of the circumstances under which the surrender would occur (a corresponding change would

be made for consistent use of titles within this document to the list of “Standard Conditions of Probation” where this condition’s title is listed).

The existing language allows the Board to use its discretion in whether to accept a surrender of license as a means of satisfying probation. The Board is proposing to adopt precise written requirements the petitioner must file to request the surrender of their license. The “in writing” requirement is necessary to document the request, ensure receipt by the Board, and provide a record in the Board’s files.

The Board maintains the discretion to accept the probationer’s surrendered license under the authority of BPC section 118. BPC section 118(b) authorizes the Board to continue disciplinary actions where a licensee’s surrender is done without the written consent of the Board. These requirements are therefore necessary to provide clear instruction and notice to the licensee who agrees to surrender their license in lieu of revocation of the Board’s conditions and requirements for acceptance of a surrender.

Further, there is currently no requirement specifying what is exactly needed for the Board to process a request for surrender for their license, making it unclear to the public and the regulated community regarding what standards must be met to implement a voluntary surrender. This proposal would set criteria for what the Board would need to process a surrender and consider approval or “consent” to it in accordance with BPC section 118. These requirements are their name, license number, case number, their address of record and an explanation of the reason(s) why the respondent seeks to surrender their license. In the Board’s experience, these items are necessary to provide sufficient information for the Board to identify the respondent and evaluate their request.

To ensure notice to respondents that surrender of the license does not absolve them of their obligation to pay outstanding costs and is a contingency that must be met prior to consideration by the Board, the Board proposes to add the requirement that if respondent owes any outstanding costs associated with the investigation and enforcement of this disciplinary action the outstanding amount shall be paid in full at the time the request is submitted to the Board. This is consistent with the Board’s policy objective of requiring those who have been found to have committed a violation to pay cost reimbursement (recovery) where appropriate, which helps prevent an unfair and disproportionate impact upon the regulated community as a whole (as Board costs not recovered from violators would otherwise need to be repaid in the form of general fee increases).

The change in terminology from “tendered licensed” to “surrender” gives notice that the Board does not lose jurisdiction to act on the license and that a probationer is not relieved from complying with probation until the Board formally acts to accept their surrender.

RECOMMENDED LANGUAGE FOR OPTIONAL CONDITIONS OF PROBATION:

The Board is proposing to amend the subsections within this section (referred to as “Optional Conditions of Probation”). The Board believes these changes are necessary to make the Disciplinary Guidelines more user-friendly and provide transparency and clarity on the Board’s disciplinary policy and give advanced notice of the potential disciplinary outcomes for licensees and applicants. In addition, there have been statutory revisions since the last Disciplinary Guidelines was revised in 2010 that necessitate these updates. The updates are reflected in each applicable section to explain every decision adopting, amending or repealing language proposed by the Board.

(1) REMEDIAL EDUCATION COURSES:

Purpose: The purpose is to amend this section (1) Remedial Education Courses within “Optional Conditions of Probation”. These proposed changes would delete the existing requirement for providing proof of “attendance” of these courses, leaving only the existing requirement for providing proof of satisfactory completion of the course.

Rationale: The terms “attendance and” are proposed to be deleted as unnecessary since satisfactory completion necessarily includes attending and completing any other requirements by the course provider. Further, traditional attendance sheets are not always available since many remedial education courses can now be taken online and don’t always have this information segregable from the other data collected. Online courses were not a common option when the Disciplinary Guidelines were written in 2010 but is now widely available and currently are a method of instructional delivery accepted by the Board. Consequently, proof of course completion is all that is necessary to demonstrate satisfactory compliance with this condition.

(2) WRITTEN LICENSING EXAMINATION:

Purpose: The purpose is to amend this section (2) Written Licensing Examination within “Optional Conditions of Probation”. These proposed changes are non-substantive changes to add the word “the” before “examination” and replace gendered pronouns “he/she” with “Respondent”.

Rationale: These proposals are non-substantive changes within this section, “the” is being inserted before “examination” for grammatical reasons. The Board is repealing he/she and replacing it with non-gender “Respondent” in accordance with state policy as discussed throughout this document.

~~(3) PRACTICAL LICENSING EXAMINATION~~

Purpose: The purpose is to repeal this title and section “(3) Practical Licensing Examination” within “Optional Conditions of Probation” in its entirety.

Rationale: This proposal is necessary as the practical examination is no longer a requirement for licensure per SB 803 (Chapter 648, Statutes of 2021), which included amendments made to BPC sections 7338 and 7362 that struck the requirement for

administration of a practical examination and removal of the Board's authority to determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum number of practical operations for each subject needed to prepare students for the exam. Therefore, all references to the practical licensing exam or implementation of the obsolete licensing exam requirements are being struck in this proposal.

(43) NOTICE OF DISCIPLINE EMPLOYEES:

Purpose: The purpose is to amend this title and section "(4) "Notice Employees" to "Notice of Discipline" within "Optional Conditions of Probation" to describe the notice process, as revised, more accurately. This section is also being amended and updated to strike as ambiguous "an establishment owner" and replace it with "a holder of an establishment license", add new provisions to require that a respondent post or circulate a copy of the "a copy of the Accusation or Statement of Issues, as applicable, and this Decision and Order to each employee or independent contractor practicing at Respondent's establishment." The proposal would strike existing requirements to posting or circulating a "notice to all employees working in the establishment which accurately recites the terms and conditions of this Decision," the respondent's responsibility for said notice being immediately available to employees, and the existing definition for employees in this section.

Rationale: This proposal is necessary to amend the title to "(3) Notice of Discipline" for organizational purposes as the Optional Conditions of Probation have been updated and reorganized due to the deletion of the term "Practical Licensing Examination," and to provide a more accurate description of this condition for the users. Since the term "an establishment owner" could refer to unlicensed individuals, the Board will be replacing that term with the more accurate term for its license holders "a holder of an establishment license."

Existing text regarding the provision of an unspecified "notice" that "accurately cites the terms and conditions of this Decision" to employees working in the establishment is proposed to be replaced with a requirement that the respondent post or circulate a copy of the: (1) Accusation or Statement of Issues, as applicable (depending on whether the probation arose out of a disciplinary action (Accusation) or application denial (Statement of Issues)); and, (2) the Decision to each employee or independent contractor practicing at the Respondent's establishment. This avoids any confusion regarding the facts and circumstances surrounding the violations or what limitations are being placed on the respondent's license; it also makes it simpler for a respondent to comply with this posting or distribution requirement. This notice requirement is also very similar to language and requirements adopted under "Standard Conditions of Probation" (4) Notification to Establishment Owners, on page 37.

The phrase "Respondent shall be responsible for said notice being "immediately" available to employees" would be deleted to avoid confusion or potential conflict with the existing requirement for posting or circulating the notice to employees "upon or before

the effective date of this Decision.”

The definition for employees is being repealed, as it currently defines employees as “full-time, part-time, temporary, and independent contractors employed or hired at any time during probation.” This is being repealed for consistency with California law since it does not correctly describe or cover both employees and independent contractors. These are the two categories of worker recognized in California (see, Lab. Code, § 2775, subd. (b)(1) and for background on the independent contractor v. employee classifications and related legislation, see *Castellanos v. State of California* (2024) 16 Cal.5th 588, 597). The Board also considers it unnecessary since the two categories of worker in California that would be practicing at the establishment would be covered by the new language requiring notice to “each employee or independent contractor.”

(54) CRIMINAL PROBATION:

Purpose: The purpose is to update the number of this section from (5) to (4) within “Optional Conditions of Probation”. This section is being amended and updated to add the terms “if available” or “available” in relation to reports from the respondent’s criminal court probation officer and make a grammatical change to lower case the “R” in reports to add the new term “Available”.

Rationale: This proposal is necessary to renumber this section to read “(4) Criminal Probation” for organizational purposes as the Optional Conditions of Probation have been updated and reorganized, the numbers accurately reflect those changes. The proposed changes are to clarify that a respondent who is on criminal probation shall submit reports from the criminal court probation officer, if available, and that such “available” reports shall be filed quarterly and in accordance with the existing requirements of this section. This change of adding “available” and “if available” to this existing requirement is being proposed to address those situations where the criminal court probation officer has not generated a report, or it cannot otherwise be obtained by the respondent since any report generated by a probation officer is available to any criminal probationer who is the subject of the report by law “at any time” (Pen. Code, § 1203.05). This would make it a violation of probation only if the report was available to the respondent by law and not provided in accordance with this section to ensure a thoughtful and reasonable approach to compliance enforcement.

(65) PROOF OF ADVERTISING CORRECTION:

Purpose: The purpose is to update the number of this section within “Optional Conditions of Probation” from (6) to (5).

Rationale: This proposal is necessary to amend the number of this section to “(5) Proof of Advertising Correction” for organizational purposes as the Optional Conditions of Probation have been updated and reorganized.

(76) RESTITUTION:

Purpose: The purpose is to update the number of this section within “Optional Conditions of Probation” from (7) to (6). The Board is proposing typographical corrections to remove the possessive “s” from the Board of Barbering and Cosmetology reference and adding “or its” before designee and adding a new note to this section regarding the limitations on restitution orders as prescribed by BPC section 143.5.

Rationale: This proposal is necessary to amend the number of this section to “(6) Restitution” for organizational purposes as the Optional Conditions of Probation have been updated and reorganized, the numbers accurately reflect those changes. The Board is proposing typographical corrections noting that respondents shall submit payments to the Board or its designee to ensure notice that designated staff may handle implementation and compliance with this condition.

The note section pertaining to BPC section 143.5 is being added to indicate the Board’s limitations in requiring restitution as an optional condition of probation. BPC section 143.5 prohibits the Board from imposing restitution as a condition of probation when the Board’s case is based upon on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties in the civil action. To avoid possible legal errors in its decisions, the Board provides this notice of Section 143.5’s limitations to the users of the Guidelines, including ALJs who prepare decisions and orders for the Board.

(87) REIMBURSEMENT OF PROBATION PROGRAM:

Purpose: The purpose is to update the number of this section from (8) to (7) within “Optional Conditions of Probation”.

Rationale: This proposal is necessary to amend the number of this section to “(7) Reimbursement of Probation Program” for organizational purposes as the Optional Conditions of Probation have been updated and reorganized.

(98) MANAGER OR LICENSEE IN CHARGE:

Purpose: The purpose is to re-number of this section from (9) to (8) within “Optional Conditions of Probation”.

Rationale: This proposal is necessary to amend the number of this section to “(8) Manage or Licensee in Charge” for organizational purposes as the Optional Conditions of Probation have been updated and reorganized.

(409) ABSTAIN FROM CONTROLLED SUBSTANCES /SUBMIT TO BIOLOGICAL FLUID TESTING:

Purpose: The purpose is to update the number of this section from (10) to (9) within “Optional Conditions of Probation”.

Rationale: This proposal is necessary to amend the number of this section to “(9) Abstain From Controlled Substances /Submit to Biological Fluid Testing” for organizational purposes as the Optional Conditions of Probation have been updated and reorganized.

(11) ABSTAIN FROM USE OF ALCOHOL /SUBMIT TO BIOLOGICAL FLUID TESTING:

Purpose: The purpose is to update the number of this section from (11) to (10) within “Optional Conditions of Probation”.

Rationale: This proposal is necessary to amend the number of this section to “(10) Abstain from Use of Alcohol /Submit to Biological Fluid Testing” for organizational purposes as the Optional Conditions of Probation have been updated and reorganized.

(11) SUSPENSION OF LICENSE

Purpose: The purpose is to adopt “(11) Suspension of License” within “Optional Conditions of Probation”. The purpose of this proposal is to assign a heading and establish suspension of license as an Optional Condition of Probation using existing text with some amendments. The Board proposes to add the phrase “beginning of on the effective date of this Decision” to the end of the existing first sentence relocated to the Optional Conditions section, so that it would read: “

In addition, the Board would strike the following existing requirement: “The period of suspension shall be determined by the Board’s designee and Respondent shall be notified in writing.”

Rationale: The Board is authorized to suspend any Board license (BPC section 7403), and the Guidelines is one way to specify how and when that suspension may occur. The Board currently would propose to retain existing requirements that, in its experience, work well to provide notice to respondents of the conditions they will be operating under during the suspension period, including: (a) Respondent is suspended from the practice of (type of practice) for (number of days) consecutive working days; (b) Respondent shall cease operating during the suspension period; (c) during the suspension period, all conditions of probation are in full force and effect; and, (d) probation shall not terminate until the suspension period is served.

This proposal is necessary to adopt this section within Optional Conditions of Probation as the Board is proposing to relocate this section from “Standard Conditions of Probation, (1) Suspension of License” with some substantive amendments as described below. The proposal to relocate suspension to optional probation terms is due to license suspension not being appropriate for all cases and should therefore be optional, not standard. The standard terms are meant to be applied to all probation cases, regardless of the cause for discipline. As an optional term, the suspension can be applied more appropriately to violations on a case-by-case basis. The Board is proposing to adopt this

section so the Board and ALJ's can evaluate whether suspension should be imposed on a case-by-case basis.

The Board proposes to add "beginning on the effective date of this Decision" to the end of the first sentence to provide better comprehension and notice to the respondent as to when the suspension period begins, so the sentence would read: "Respondent is suspended from the practice of (type of practice) for (number of days) consecutive working days beginning on the effective date of this Decision." The Board proposes to strike as ambiguous the existing sentence from this probation condition (currently in Standard Conditions) that states: "The period of suspension shall be determined by the Board's designee and Respondent shall be notified in writing." That provision would be superseded by the introductory sentence that clearly states when the probation period would begin and end; and, therefore, would provide greater notice to the affected respondent of the duration of the suspension period.

(12) POSTING OF SUSPENSION SIGN

Purpose: The purpose is to adopt this section "(12) Posting of Suspension" within "Optional Conditions of Probation". The Board is proposing to relocate the existing condition from the Standard Conditions of Probation to the Optional Conditions of Probation and renumber accordingly with some substantive amendments. These substantive amendments would include modifications to the last sentence to specify that the notice provided by the Board would be an "8-inch by 11-inch notice" provided in the form of a "sign" that would be posted in accordance with the existing requirements of this condition.

Rationale: Since this condition usually is applied together with the "Suspension of License Condition", this revision is necessary to relocate this section from "Standard Conditions of Probation, (2)" to "(12) Posting of Suspension Sign" within Optional Conditions of Probation (see discussion above for "(11) Suspension of License"). The Board currently would propose to retain existing requirements that, in its experience, work well to provide notice to respondents of the conditions they will be operating under when required to post a sign, including:

- (A) During the period of suspension, Respondent shall post a notice which describes the nature of the violation for which the license is being disciplined; and,
- (B) If only an individual's license is disciplined, the notice shall be conspicuously posted in the establishment where the Respondent performs barbering and cosmetology services. If an establishment license is disciplined, the notice shall be conspicuously posted, unobstructed and visible to the public from the outside of the main entrance.

The Board proposes to revise the existing last sentence of this condition to include the following amendments (in **bold** below):

The **8-inch by 11-inch sign-notice** to be posted will be provided by the Board of Barbering and Cosmetology designee **in the form of a sign** to be posted by Respondent prior to the commencement of the suspension and will include the Respondent's name and license number(s).

The Board has found that this sentence accurately conveys the existing process for posting a sign when suspension is ordered as part of probation, and that preparing a sign for the respondent's use is the most effective method for ensuring compliance that puts the regulated community and the public on notice as to the Board's action. However, the existing last sentence created an ambiguity by using the term "sign" at the beginning without definition or reference when the introductory phrase of this condition discusses a "notice." The above-noted amendments are necessary to resolve that ambiguity and to ensure that the affected respondent understands exactly how compliance may be obtained under this condition.

RECOMMENDED LANGUAGE FOR APPLICANTS AND REINSTATEMENTS

The Board is amending subsections within this section to update and clarify language and requirements consistent with current practice.

Repealing 5th paragraph towards the bottom of the page:

Purpose: The purpose is to relocate this paragraph regarding licensure examination requirements prior to reinstatement to a new section related to this issue (as discussed below). This is shown by striking out this paragraph and moving substantive content to the new section on the next page of the Guidelines.

Rationale: This proposal is necessary to ensure greater comprehension of related material and better organization of the Guidelines document. The Board is proposing to repeal this section as the Board is proposing to move the content to a new section to be adopted entitled "Grant Petition and Place Licenses on Probation After Completion of Conditions Precedent", below.

Repealing 6th paragraph towards the bottom of the page:

Purpose: The purpose is to relocate this paragraph regarding remedial education courses recommended prior to reinstatement for the purpose of moving its substantive content to a new section related to this issue (as discussed below).

Rationale: This proposal is necessary to ensure greater comprehension of related material and better organization of the Guidelines document. The Board is proposing to repeal this section as the Board is proposing to move the content to a new section to be adopted entitled "Grant Petition and Place Licenses on Probation After Completion of Conditions Precedent", below.

Adopting Grant Petition and Place Licenses on Probation After Completion of

Conditions Precedent:

Purpose: The purpose is to adopt this section, assign a heading and establish requirements needed to properly implement this type of order. This model order would specify that once the Board granted the petition for reinstatement of the license, the license shall be reinstated after petitioner's completion of specified conditions in which common examples from the Board's own experience at remediating violations are provided so ALJs and DAGs have a clearer understanding of what can be required as a condition precedent to be satisfied before a license is reinstated. The order would allow an ALJ or the Board to require that an applicant meet certain conditions prior to issuance of a license to help ensure public protection and that minimum standards for licensure are met. Examples include the following: take and successfully complete the Board's [insert license type] licensing examination and/or remedial education courses relevant to the violation(s). All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in rehabilitating the licensee and ensuring competency in the professions regulated by this Board. Lastly, the Board would move the existing directions for retaking the relevant licensing exam and completing remedial education courses to the end of this new section for more effective implementation of the Board's policy and guidance in this area.

Rationale: This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make penalty determinations more effective and related to the violations alleged. The Board has had issues with different ALJ interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the Disciplinary Guidelines when outright denial of a reinstated license is not warranted.

The model order also includes a different provision that upon completion of the conditions precedent and satisfaction of all statutory and regulatory requirements for issuance of a license or registration, petitioner's license shall be reinstated and immediately revoked; however, the revocation shall be stayed, and petitioner shall be placed on probation with terms and conditions for a period of ____ years (to be inserted by the ALJ or Board). This provision would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the license through probation before restoring the license to an unrestricted status. This means that once the petitioner completes the conditions precedent specified in the order their license would be placed on probation subject to terms and conditions (i.e., on probation). This order helps guide users as to how that order should be drafted for the reasons set forth above for the need to standardize petition orders.

The Board would like to retain the following policy and existing language (relocated to this section as discussed above) with minor edits discussed below:

It is important to note that, in many cases, petitioners for reinstatement have not practiced for at least one (1) year. It is recommended that petitioner retake and successfully complete the licensing examination prior to reinstatement of the license if the case involved consumer harm.

As noted above, this existing language is proposed to be moved from the prior page to this section as it more properly relates to the model order and petitioner requirements covered by this section. The Board would make a non-substantive change to the existing text to delete references to “Respondent” and replace it with the more accurate term “petitioner.” The Board proposes to retain this language as current Board policy is to recommend that the petitioner take and pass the licensure examination if the case involved consumer harm since these violations, the Board’s experience, demonstrate an obvious need to confirm entry level competence for the professions regulated by the Board. The Board anticipates that keeping this direction will help ensure that all licensees and applicants understand the requirement for taking and passing the exam prior to practicing when competency is an issue in any enforcement action taken by the Board.

The Board would like to include lastly another section regarding remedial education recommendation in this section. The Board would like to retain the following policy and existing language (relocated to this section as discussed above) with minor edits discussed below:

In addition to the licensing examination requirement, it is recommended that petitioner take and successfully complete remedial education courses relevant to the violation(s) prior to reinstatement of the license.

As noted above, this existing language is proposed to be moved from the prior page to this section as it more properly relates to the model order and petitioner requirements covered by this section. The Board would make a non-substantive change to the existing text to delete references to “Respondent” and replace it with the more accurate term “petitioner.” It is recommended that the petitioner take and pass the remedial education course(s) relevant to the violation(s) prior to reinstatement of the license since in many cases the petitioner has been out of practice for some time. Remedial education helps ensure that the petitioner is more knowledgeable about current standards prior to practicing again and providing services to the public. The Board anticipates that keeping this direction will help ensure that all licensees and applicants understand the requirement for taking and passing remedial education course(s) prior to practicing when competency is an issue in any enforcement action taken by the Board.

RECOMMENDED LANGUAGE FOR COST RECOVERY FOR SURRENDERS

Purpose: The purpose is to remove gendered pronouns “he or she” and include the non-gendered pronoun “they” in this section.

Rationale: The proposal is necessary to amend “he or she” to the gender-neutral

pronoun “they” to be consistent with using inclusive language pursuant to state policy as set forth in Assembly Concurrent Resolution No. 260 of 2018.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

1. Board Meeting Agenda, Relevant Meeting Materials and Minutes of May 6, 2024 Board Meeting.
2. Board Meeting Agenda, Relevant Meeting Materials and Minutes of November 14, 2024 Board Meeting.
3. ACR No. 260 (Chapter 190, Statutes of 2018) and Senate Floor Analysis.
4. AB 2138 (Chapter 995, Statutes of 2018) and Assembly Floor Analysis.
5. SB 803 (Chapter 648, Statutes of 2021) and Senate Floor Analysis.
6. AB 2196 (Chapter 527, Statutes of 2022) and Senate Floor Analysis.

Business Impact:

The Board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts:

The proposed regulatory action only impacts the Board of Barbering and Cosmetology licensees and applicants who are disciplined by the Board for violations of the laws and regulations within its jurisdiction.

The Board of Barbering and Cosmetology licenses, regulates, and investigates complaints against twelve (12) different license categories in California, totaling approximately 656,000 licensees. These licensing categories include Barber, Barber Apprentice, Cosmetology, Cosmetology Apprentice, Electrologist, Electrologist Apprentice, Esthetician, Manicurist, Hairstylist, Establishments, Mobile Units, and Personal Service Permit. The proposed regulatory action would only affect a licensee or applicant, who subjected themselves to disciplinary action for violations of the laws and regulations within the Board’s jurisdiction. Any potential “adverse economic impact” may be avoided by simply complying with the laws and regulations governing Barber, Barber Apprentice, Cosmetology, Cosmetology Apprentice, Electrologist, Electrologist Apprentice, Esthetician, Manicurist, Hairstylist, Establishments, Mobile Units, and Personal Service Permit licensees or applicants.

Economic Impact Assessment:

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

- It will not create or eliminate jobs within the State of California because the proposal only provides updated guidelines for imposing penalties on licensees and applicants who, through their own conduct, are subject to disciplinary action due to violations of the laws and regulations governing the practice of Barber, Barber Apprentice, Cosmetology, Cosmetology Apprentice, Electrologist, Electrologist Apprentice, Esthetician, Manicurist, Hairstylist, Establishments, Mobile Units, and Personal Service Permit licensees. Therefore, the overall economic impact on jobs is insignificant.
- It will not create new business or eliminate existing businesses within the State of California because the proposal only affects Barber, Barber Apprentice, Cosmetology, Cosmetology Apprentice, Electrologist, Electrologist Apprentice, Esthetician, Manicurist, Hairstylist, Establishments, Mobile Units, and Personal Service Permit licensees and applicants who are disciplined by the Board for violations of the laws and regulations governing the practice of the Board's licensees.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only affects Barber, Barber Apprentice, Cosmetology, Cosmetology Apprentice, Electrologist, Electrologist Apprentice, Esthetician, Manicurist, Hairstylist, Establishments, Mobile Units, and Personal Service Permit licensees and applicants who are disciplined for violations of the laws or regulations within the Board's jurisdiction.
- This regulatory proposal benefits the health, safety and welfare of California residents because it would provide protection to California residents by enhancing the Board's ability to take appropriate action against the Barber, Barber Apprentice, Cosmetology, Cosmetology Apprentice, Electrologist, Electrologist Apprentice, Esthetician, Manicurist, Hairstylist, Establishments, Mobile Units, and Personal Service Permit licensees and applicants who, through their own conduct, expose themselves to administrative disciplinary action for violations of the laws and regulations within the Board's jurisdiction.
- This regulatory proposal does not affect worker safety because it does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it does not involve the environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

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

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

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

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