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**To:** Dispensing Optician Committee Members      **Date:** August 18, 2017  
**From:** Jessica Sieferman      **Telephone:** (916) 575-7170  
Executive Officer  
**Subject:** **Agenda Item 9 – Discussion and Possible Action Regarding Draft Dispenser and Optician Disciplinary Guidelines; Potential Recommendation to Full Board**

### DOC Review and Discussion

The DOC is tasked with recommending RDO Program Disciplinary Guidelines to the Board. Disciplinary guidelines are designed for use by Administrative Law Judges, the Office of the Attorney General, Board staff, Respondents and others involved in the Board's disciplinary process. They are to be followed in all disciplinary actions involving the Board.

To assist the DOC, staff amended the current guidelines to incorporate the RDO Program (Attachment 1). In addition, Ms. Garcia, DOC Chair, provided American Board of Opticians (ABO) and National Contact Lens Examiners (NCLE) disciplinary guidelines (Attachment 2). During this discussion, please determine the following:

- When to apply the uniform standards by defining a substance abusing licensee;
- Standard terms and conditions to place on all registrants on probation;
- Optional conditions to place based on the violation(s); and,
- Recommended discipline based on violation.

Terms and conditions are not imposed to penalize individuals on probation. They are imposed to adequately protect the public while licensees/registrants are on probation.

### Uniform Standards for Substance-Abusing Licensees (BPC § 315)

In cases involving substance-abusing licensees, the Board is mandated to adhere to the uniform standards. Currently, if conduct found to be a violation involves drugs and/or alcohol, the licensee is presumed a substance-abusing licensee. If the licensee does not rebut that presumption, then the Uniform Standards for substance-abusing licensees shall apply (CCR § 1575).

The RDO Program currently does not incorporate the uniform standards in regulation. The DOC may consider mirroring CCR § 1575 or consider alternative language used by other DCA programs.

### Standard Terms and Conditions

Please determine appropriate standard term and conditions for registrants.

For optometrists, a probationary term is generally issued for a period between three (3) and five (5) years, dependent upon whether any aggravating or mitigating factors exist. The following standard conditions are imposed on every probationer regardless of cause for discipline:

1. Obey all laws
2. Submit Quarterly Reports
3. Cooperate With Probation Monitoring Program
4. Probation Monitoring Costs

5. Function as an Optometrist
6. Notice to Employer
7. Changes of Employment or Residence
8. Cost Recovery
9. Take and Pass California Laws and Regulations Examination
10. Community Service
11. Valid License Status
12. Tolling for Out-Of-State Residence or Practice
13. License Surrender
14. Violation of Probation
15. Completion of Probation
16. Sale or Closure of an Office and/or Practice

Staff recommends keeping many of the standard conditions, and amending those that may not apply. For example, registrants do not currently have a law exam (Condition 9), so the DOC may decide to remove this condition. If/when a law exam is created, the DOC may add this as a standard condition at that time.

### **Standard Alcohol/Drug Conditions**

The following standards are in addition to standards 1-16 and apply to every licensee who is on probation for substance abuse, pursuant to Business and Professions Code §315 Uniform Standards.

17. Abstinence From Use of Controlled Substances/Alcohol
18. Biological Fluid Testing

### **Optional Conditions**

Optional conditions are imposed based on the violation(s) committed. Currently, optometrists have the following optional conditions:

19. Participate in Group Support Meeting
20. Notice to Patients
21. Alcohol and Drug Treatment
22. Worksite Monitor
23. Direct Supervision
24. Remedial Education
25. Suspension
26. Employment Limitations
27. Psychotherapy or Counseling Program
28. Mental Health Evaluation
29. Medical Health Evaluation
30. Medical Treatment
31. Restitution
32. Audit Required
33. Lens Prescriptions – Maintain Records
34. Restricted Practice
35. Restrictions as to Branch Offices
36. Restrictions as to Advertisement
37. Take and Pass NBEO Exams
38. Continuing Education
39. Medical Record Keeping Course

Please consider what optional conditions, if any, apply to registrants and discuss any additional conditions to impose to adequately protect the public.

### **Recommended Discipline Based on Violation**

Using the amended guidelines as a sample, please consider some recommended discipline for specific violations.

### **Attachment**

1. Amended Draft Disciplinary Guidelines
2. ABO Disciplinary Guidelines



CALIFORNIA STATE BOARD OF  
**OPTOMETRY**

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE**

**&**

**DISCIPLINARY GUIDELINES**

**(DG 4, 05-2012)**

***“Protection of the Public Shall be the Highest Priority”  
Business and Professions Code, §3010.1***

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**TABLE OF CONTENTS**

**INTRODUCTION..... 4**

PUBLIC RECORD..... 4

COST RECOVERY ..... 4

PROBATION MONITORING PURPOSE..... 5

CITATIONS ..... 5

STIPULATED SETTLEMENTS..... 5

**DISCIPLINARY GUIDELINES ..... 6**

EVIDENCE IN AGGRAVATION/MITIGATION OF DISCIPLINE..... 6

DISCIPLINARY GUIDELINES SUMMARY FOR USE BY..... 7

ADMINISTRATIVE LAW JUDGES ..... 7

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE..... 8**

UNIFORM STANDARDS FOR SUBSTANCE-ABUSING LICENSEES ..... 8

1. CLINICAL DIAGNOSTIC EVALUATION ..... 8

2. REMOVAL FROM PRACTICE PENDING CLINICAL DIAGNOSTIC EVALUATION ..... 9

3. BOARD COMMUNICATION WITH PROBATIONER'S EMPLOYER..... 9

4. DRUG TESTING STANDARDS ..... 9

5. PARTICIPATION IN GROUP SUPPORT MEETINGS ..... 11

6. DETERMINING WHAT TREATMENT IS NECESSARY ..... 12

7. WORKSITE MONITOR REQUIREMENTS ..... 12

8. PROCEDURE FOR POSITIVE TESTING ..... 13

9-10. MAJOR/MINOR VIOLATIONS & CONSEQUENCES ..... 13

11. PETITION FOR RETURN TO PRACTICE..... 14

12. PETITION FOR REINSTATEMENT ..... 14

**PROBATIONARY TERMS AND CONDITIONS ..... 16**

MODEL DISCIPLINARY ORDERS ..... 16

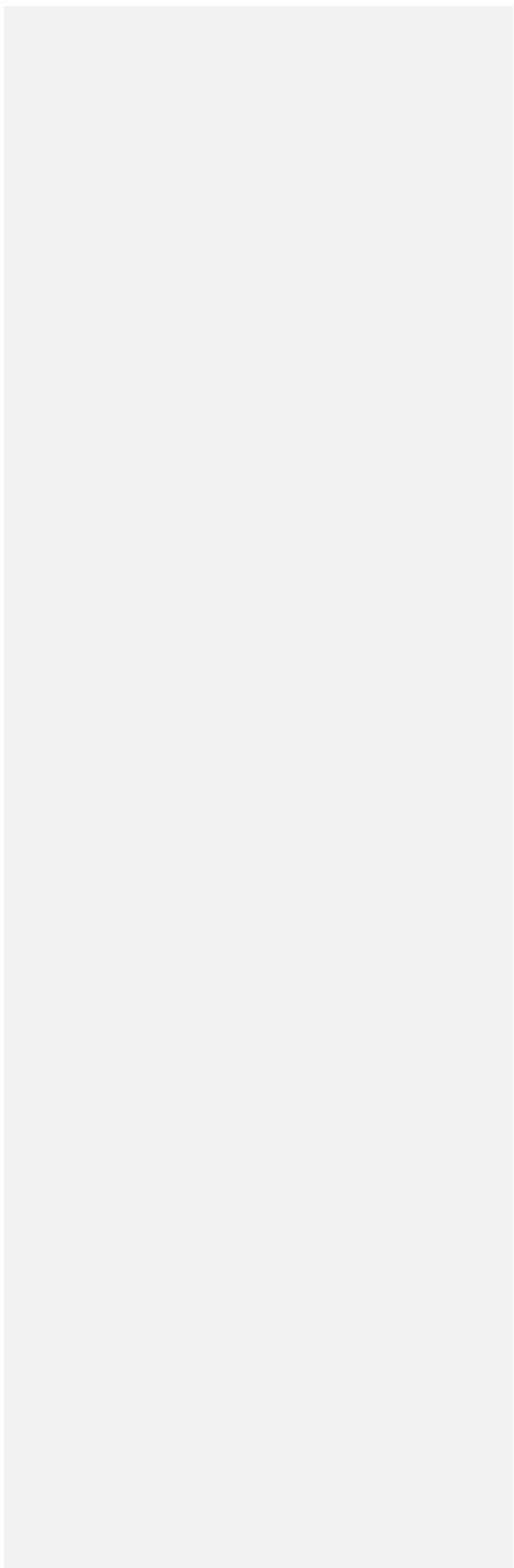
MODEL PROBATIONARY ORDERS..... 16

STANDARD TERMS AND CONDITION..... 17

STANDARD ALCOHOL/DRUG CONDITIONS ..... 23

OPTIONAL CONDITIONS ..... 25

**RECOMMENDED DISCIPLINE BASED ON VIOLATION ..... 37**



## INTRODUCTION

The California State Board of Optometry's (hereafter Board) mission is to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of Optometry and Opticianry, ~~serve the public and optometrists by promoting and enforcing laws and regulations, which protect the health and safety of California's consumers and to ensure high quality care.~~

In keeping with its mandate to protect the consumer of optometric/opticianry services from the unsafe, incompetent and/or negligent optometrists, the Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of ~~the Optometry Practice Act~~ the Business and Professions Code.

The Board's disciplinary guidelines were designed for use by Administrative Law Judges, attorneys from the Office of the Attorney General, licensees, Board staff and others involved in the Board's disciplinary process and are to be followed in all disciplinary actions involving the Board. The Board has the final authority over the disposition of its cases, and to complete its work, it utilizes the Office of the Attorney General and the Office of Administrative Hearings.

This manual includes factors to be considered in aggravation or mitigation, guidelines to be used by Administrative Law Judges for a violation(s) of specific statutes, and standard and specialty probationary terms and conditions.

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

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

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviation from these guidelines in particular cases.

## PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued and final decisions will be published as a matter of public record and shall be available on the Internet, pursuant to Business and Professions Code, section 27.

## COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including, but not limited to, expert consultant opinions and

services, pursuant to Business and Professions Code, section 125.3. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct required investigation and prosecution, not upon the profession as a whole.

## **PROBATION MONITORING PURPOSE**

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. The Board will work to:

- 1) Allow for the probationer's rehabilitation if that is his/her choice;
- 2) Allow the probationer an opportunity to practice in a professional manner with restrictions and guidance from a community support system and designated probation monitor to prevent future occurrences; and
- 3) Allow for education of the individual as to the responsibilities, requirements and professionalism mandated of an optometrist.

It is the policy of the Board that if a probationer is found to be in violation of any term of probation at any time during the probation period, the Board shall immediately be notified of the violation so that disciplinary action may be considered.

## **CITATIONS**

The Board has the authority to issue citations and fines for violations of several sections of the ~~Board of Optometry Practice Act and its regulations~~ Business and Professions Code and Board regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. (California Code of Regulations section 1399.380(h)). Any prior citation may be used in future actions as aggravating evidence.

## **STIPULATED SETTLEMENTS**

The Board will consider stipulated settlements to promote cost effectiveness and to expedite disciplinary decisions if such agreements are consistent with the Board's mandate.

**DISCIPLINARY GUIDELINES**  
**2012 EDITION**

**EVIDENCE IN AGGRAVATION/MITIGATION OF DISCIPLINE**

The following are examples of aggravating and mitigating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

**EVIDENCE IN AGGRAVATION OF DISCIPLINE**

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (e.g., theft, embezzlement, fraud).
3. History of prior discipline.
4. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
5. Perjury on official Board forms.
6. Violent nature of crime or act.
7. Violation of Board Probation.
8. Failure to provide a specimen for testing in violation of terms and conditions of probation.
9. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

**EVIDENCE IN MITIGATION OF DISCIPLINE**

1. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.
2. Respondent was forthcoming and reported violation or conviction to the Board.
3. A substantial amount of time since the violation or conviction occurred.
4. No prior criminal or disciplinary history.



**DISCIPLINARY GUIDELINES SUMMARY FOR USE BY  
ADMINISTRATIVE LAW JUDGES**

To establish consistency in discipline for similar offenses on a statewide basis, the Board of Optometry has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by administrative law judges, attorneys, optometrists and ultimately the Board, shall be revised from time to time following public hearing by the Board and will be disseminated to interested parties upon request.

Additional copies of this document may be obtained by contacting the Board of Optometry at its offices in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and dissemination of copies. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 125.3.

The Board recognizes that these penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances may necessitate deviations. If there are deviations or omissions from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include some statement of this in the proposed decision so that the circumstances can be better understood and evaluated by the Board upon review of the proposed decision and before its ultimate action is taken.

***These guidelines are incorporated by reference in §1575 of Division 15 of Title 16 of the California Code of Regulations.***

**§1575. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES**

**§1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall comply with the "Uniform Standards Related to Substance Abuse" (Uniform Standards) and consider the "Disciplinary Guidelines"(DG-4, 5-2012) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; Uniform Standards apply to a substance-abusing licensee.

- (a) Subject to subdivision (b), deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for substance-abusing licensees shall apply.

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, 3090, 3091 and 3110, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.

**UNIFORM STANDARDS FOR SUBSTANCE-ABUSING LICENSEES**

Pursuant to Business and Professions Code §315, the following standards shall be adhered to in all cases in which an optometrist's license is placed on probation because the optometrist is a substance-abusing licensee. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

**1. CLINICAL DIAGNOSTIC EVALUATION**

If a clinical diagnostic evaluation is ordered, the following applies:

The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:

- holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
- has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
- is approved by the Board.

The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The clinical diagnostic evaluation report shall:

- set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
- set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
- set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

**2. REMOVAL FROM PRACTICE PENDING CLINICAL DIAGNOSTIC EVALUATION**

The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by Board staff.

While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a probation manager shall determine, whether or not the licensee is safe to return to either part-time or full-time practice. However, no licensee shall return to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope, pattern of use, and history of drug/alcohol use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

**3. BOARD COMMUNICATION WITH PROBATIONER'S EMPLOYER**

The licensee shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

**4. DRUG TESTING STANDARDS**

The following standards shall govern all aspects of testing required to determine abstinence from alcohol and drugs for any person whose license is placed on probation due to substance use:

**Testing Frequency Schedule**

A Board may order a licensee to drug test at anytime. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

<b>Level</b>	<b>Segment of Probation/Diversion</b>	<b>Minimum Range of Number of Random Tests</b>
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

\*The minimum range of 36-104 tests identified in level II is for the second year of probation and each year thereafter.

Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or suspects that a licensee has committed a violation of the Board’s testing program or committed a Major Violation, as identified in Uniform Standard 10, the Board may reestablish the testing cycle by placing that licensee at the beginning of level I in addition to any other disciplinary action that may be pursued.

**Exception to Testing Frequency Schedule**

**I. PREVIOUS TESTING/SOBRIETY**

In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

**II. VIOLATION(S) OUTSIDE OF EMPLOYMENT**

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee’s way to work, where alcohol or drugs were a contributing factor, may bypass Level I and participate in Level II of the testing frequency schedule.

**III. NOT EMPLOYED IN HEALTH CARE FIELD**

The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, a licensee shall notify and secure the approval of the Board. Prior to returning to any healthcare employment, the licensee shall be subject to Level I testing frequency for at least 60 days. At such time the person returns to employment, if the licensee has not previously met the standard, the licensee shall be subject to completing a full year at Level I of the testing frequency schedule, otherwise Level II testing shall be in effect.

**IV. TOLLING**

A Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. A licensee shall notify the Board upon the licensee’s return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the standard, the licensee shall be subject to completing a full year at Level I of the testing frequency schedule, otherwise Level II testing shall be in effect.

**V. SUBSTANCE USE DISORDER NOT DIAGNOSED**

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the Board, but no less than 24 times per year.

**OTHER DRUG STANDARDS**

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. The Board should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licenses shall be required to make daily contact with the Board to determine if drug testing is required.

Licenses shall be drug tested on the date of notification as directed by the Board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation. Specimen collectors must adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

The Board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

**5. PARTICIPATION IN GROUP SUPPORT MEETINGS**

When determining the frequency of required group meeting attendance, the Board shall give consideration to the following:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

**6. DETERMINING WHAT TREATMENT IS NECESSARY**

If in determining whether inpatient, outpatient, or other type of treatment is necessary, the Board shall consider the following criteria:

- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, severity of substance abuse, and
- threat to self or the public.

**7. WORKSITE MONITOR REQUIREMENTS**

If the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the Board.

1. The worksite monitor shall not have any financial, personal, or a familial relationship with the licensee, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license shall include the scope of practice of the licensee that is being monitored or be another health care professional if no monitor with like practice is available.
3. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the Board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
  - a. Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, at least once per week.
  - b. Interview other staff in the office regarding the licensee's behavior, if applicable.
  - c. Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:
  - the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;
  - any change in behavior and/or personal habits;
  - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

**8. PROCEDURE FOR POSITIVE TESTING**

When a licensee tests positive for a banned substance:

1. The Board shall order the licensee to cease practice;
2. The Board shall contact the licensee and instruct the licensee to leave work; and
3. The Board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not practice.

Thereafter, the Board will determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the Board shall immediately lift the cease practice order. In determining whether the positive test is evidence of prohibited use, the Board will engage in the following, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator(s).

**9-10. MAJOR/MINOR VIOLATIONS & CONSEQUENCES**

**Major violations** include, but are not limited to the following:

1. Failure to complete a Board-ordered program or evaluation;
2. Committing two or more minor violations of probation;
3. Treating a patient while under the influence of drugs or alcohol;
4. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
5. Failure to appear or provide a sample in accordance with the "biological fluid testing" term and condition;
6. Testing positive for a banned substance;

7. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.
8. Failure to adhere to any suspension or restriction in practice.

**Consequences** of a major violations include, but are not limited to the following:

1. Licensee will be ordered to cease practice.
  - a) the licensee must undergo a new clinical diagnostic evaluation (if applicable);
  - b) the licensee must test *negative* for a least a month of continuous drug testing before being allowed to practice.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the Board.

**Minor violations** include, but are not limited to the following:

1. Failure to submit complete and required documentation in a timely manner;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required;
4. Failure to submit cost recovery or monthly probation monitoring costs timely.
5. Any other violation that does not present a threat to the licensee or public.

**Consequences** of minor violations include, but are not limited to the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the Board.

#### **11. PETITION FOR RETURN TO PRACTICE**

"Petition" as used in this standard is an informal request as opposed to a "Petition for Modification" under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Sustained compliance with current recovery program;
2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse; and
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#### **12. PETITION FOR REINSTATEMENT**

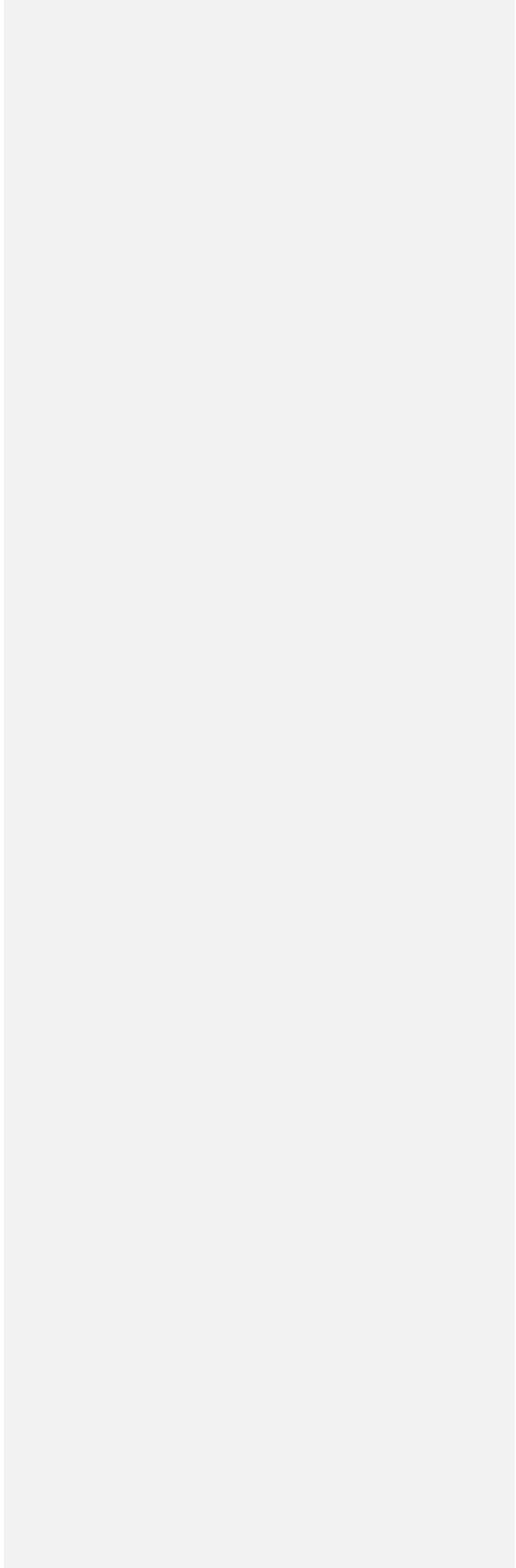
"Petition for Reinstatement" as used in this standard is an informal request as opposed to a "Petition for Reinstatement" under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license:

1. Sustained compliance with the terms of the disciplinary order, if applicable;
2. Successful completion of recovery program, if required;



3. A consistent and sustained participation in activities that promote and support recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Ability to practice safely; and
5. Continuous sobriety for three (3) to five (5) years.



**PROBATIONARY TERMS AND CONDITIONS**

**MODEL DISCIPLINARY ORDERS**

**Revocation-Single Cause**

Certificate No. (Ex.: 12345) issued to Respondent (Ex: John Smith. O.D.) is revoked. Cost Recovery in the amount of (Ex: 5,000) is due within 90 calendar days of the effective date of this decision or within a Board-approved payment plan.

**Revocation - Multiple Causes**

Certificate No. \_\_\_\_ issued to Respondent \_\_\_\_ is revoked pursuant to Determination of Issues (Ex: II. and III) separately and for all of them. Cost Recovery (if any) in the amount of (Ex: 5,000) is due within 90 calendar days of the effective date of this decision or within a Board-approved payment plan.

**Suspension - Single Cause**

Certificate No. \_\_ issued to Respondent \_\_\_\_ is suspended for a period of (Ex: 30 calendar days/one year).

**Suspension - Multiple Causes (run concurrently)**

Certificate No. issued to Respondent \_\_\_\_ is suspended pursuant to Determination of Issues \_\_\_\_, separately and for all of them. All suspensions shall run concurrently.

**Suspension - Multiple Causes (run consecutively)**

Certificate No. issued to Respondent \_\_\_\_ is suspended (Ex: 30 calendar days) pursuant to Determination of Issues. These suspensions shall run consecutively, for a total period of (Ex: 90 calendar days).

**Standard Stay Order**

However (revocation/suspension) is stayed and Respondent is placed on probation for (Ex: three) years upon the following terms and conditions:

**MODEL PROBATIONARY ORDERS**

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

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

In order to provide clarity and consistency in its decisions, the following language should be used in proposed decisions or stipulated agreements for applicants, and for petitioners for reinstatement who are issued a license that is placed on probation.

**Applicants who are placed on probation:**

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

**Reinstatement of licensure with conditions of probation:**

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

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

**STANDARD TERMS AND CONDITIONS**

A probationary term is generally issued for a period between three (3) and five (5) years, dependent upon whether any aggravating or mitigating factors exist. Standard conditions are imposed on each and every probationer regardless of cause for discipline. For applicants, Condition 8, Cost Recovery, does not apply. For Registered Dispensing Optician Program registrants, Condition 9, Take and Pass California Laws and Regulations Examination, does not apply.

1. Obey all laws
2. Submit Quarterly Reports
3. Cooperate With Probation Monitoring Program
4. Probation Monitoring Costs
5. Function as an Optometrist
6. Notice to Employer
7. Changes of Employment or Residence
8. Cost Recovery
9. Take and Pass California Laws and Regulations Examination
10. Community Service
11. Valid License Status
12. Tolling for Out-Of-State Residence or Practice
13. License Surrender
14. Violation of Probation
15. Completion of Probation
16. Sale or Closure of an Office and/or Practice

**SEVERABILITY CLAUSE**

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

**1. OBEY ALL LAWS**

Respondent shall obey all federal, state, and local laws, governing the practice of ~~optometry~~opticianry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against Respondent.

**CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be

deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

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

**2. QUARTERLY REPORTS**

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's [Optometrist license/[Registered Dispensing Optician/Spectacle Lens Dispenser/Contact Lens Dispenser registrations](#)]. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

**3. COOPERATE WITH PROBATION MONITORING PROGRAM**

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's probation monitoring program representative at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's [Optometrist license/[Registered Dispensing Optician/Spectacle Lens Dispenser/Contact Lens Dispenser registrations](#)].

**4. PROBATION MONITORING COSTS**

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased.

Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board of Optometry and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead, to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted ~~license/registration~~ will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

**5. FUNCTION AS [AN OPTOMETRIST/REGISTERED DISPENSING OPTICIAN/SPECTACLE LENS DISPENSER/CONTACT LENS DISPENSER]**

Respondent shall function as ~~[an optometrist/a registered dispensing optician/spectacle lens dispenser/contact lens dispenser]~~ for a minimum of 60 hours per month for the entire term of his/her probation period.

**6. NOTICE TO EMPLOYER**

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the ~~licensee-Respondent~~ authorizes the Board and the employers and supervisors to communicate regarding the ~~licensee's-Respondent's~~ work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

**7. CHANGES OF EMPLOYMENT OR RESIDENCE**

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from

employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

**8. COST RECOVERY**

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ \_\_\_\_\_ and shall be paid in full directly to the Board, in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

**9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION**

Within 60 calendar days of the effective date of this decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. Respondent shall pay the established examination fees.

If Respondent fails the first examination, Respondent shall immediately cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to Respondent from the Board.

If Respondent has not taken and passed the examination within six months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

**10. COMMUNITY SERVICES**

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free [non-optometric/opticianry] or professional [optometric/opticianry] services on a regular basis to a community or charitable facility or agency, amounting to a minimum of \_\_\_\_\_ (Ex: 20)

**Commented [SJ1]:** There is no law exam for the RDO Program registrants. Staff recommends removing this section. An optional condition could be to take one (or both) of the national exams, if warranted.  
If/when a law exam is created, the DOC can revisit making this a standard probation condition.

hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

**11. VALID LICENSE STATUS**

Respondent shall maintain a current, active and valid [license/registration] for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her [license/registration] expiration date shall constitute a violation of probation.

**12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon his/her return to California and prior to the commencement of any employment where representation as an [optometrist/registered dispensing optician/spectacle lens dispenser/contact lens dispenser registration] is/was provided.

Respondent's [license/registration] shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's [license/registration] shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

**13. [LICENSE/REGISTRATION] SURRENDER**

During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a Disciplinary Action and shall become a part of Respondent's license history with the Board.

**14. VIOLATION OF PROBATION**

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

**15. COMPLETION OF PROBATION**

Upon successful completion of probation, Respondent's [license/registration] shall be fully restored.

**16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE**

If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure ~~the continuity of patient care and the transfer of patient records.~~ Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.



**STANDARD ALCOHOL/DRUG CONDITIONS**

The following standards are in addition to standards 1-16 and apply to every licensee who is on probation for substance abuse, pursuant to Business and Professions Code §315 Uniform Standards.

- 17. Abstention From Use of Controlled Substances/Alcohol
- 18. Biological Fluid Testing

**17. ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL**

Respondent shall abstain completely from the use or possession of alcohol, any and all other mood altering drugs or substances, and their associated paraphernalia. Respondent shall identify for the Board, a single physician, nurse practitioner or physician assistant who shall be aware of Respondent’s history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, or mood altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent’s name;
2. [license/registration] number;
3. physician, nurse practitioner, or physician assistant’s name and signature;
4. physician, nurse practitioner, or physician assistant’s license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with physician, nurse practitioner, or physician assistant;
6. the Respondent’s compliance with this condition;
7. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
8. any change in behavior and/or personal habits;
9. assessment of the Respondent’s ability to practice safely;
10. recommendation dependant on Respondent’s progress and compliance with this condition on whether to continue with current prescription plan and/or treatment, modify plan and/or treatment, or require Respondent to cease practice;
11. other relevant information deemed necessary by the physician, nurse practitioner, physician, or the Board.

Respondent is ultimately responsible for ensuring his/her physician, nurse practitioner or physician assistant submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require a single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cut off level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometric license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cut off level shall be reported to each of Respondent's employers.

#### **18. BIOLOGICAL FLUID TESTING**

Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. The length of time shall be for the entire probation period. The Respondent will be randomly drug tested at the frequency outlined in Uniform Standards for Substance Abuse #4.

Respondent shall make daily contact to determine if he/she is required to submit a specimen for testing, including weekends and holidays, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California, must be approved by the Board prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, Respondent understands that, while at the work site, any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a prohibited substance per his/her probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and his/her employers, supervisors, managers, work site monitors, and contractors and notify them that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and support group facilitators to determine whether the positive test is in fact evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall immediately reinstate the license and inform the Respondent and others previously contacted, that the license is no longer suspended.

Failure to submit to testing on the day requested, or appear as requested by any Board representative for testing, as directed, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license.

**OPTIONAL CONDITIONS**

The conditions imposed are dependent upon the violation(s) committed.

- 19. Participate in Group Support Meeting
- 20. Notice to Patients
- 21. Alcohol and Drug Treatment
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 29. Medical Health Evaluation
- 30. Medical Treatment
- 31. Restitution
- 32. Audit Required
- 33. Lens Prescriptions – Maintain Records
- 34. Restricted Practice
- 35. Restrictions as to Branch Offices
- 36. Restrictions as to Advertisement
- 37. Take and Pass NBEO Exams
- 38. Continuing Education
- 39. Medical Record Keeping Course

**19. PARTICIPATE IN GROUP SUPPORT MEETING**

Respondent shall attend at least one (1), 12-step recovery meeting or equivalent during each week of probation, as approved or directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation

**20. NOTICE TO PATIENTS**

During the period of probation, Respondent shall post a notice in a prominent place in his/her office that is conspicuous and readable to the public. The notice shall state the Respondent's Optometric license is on probation and shall contain the telephone number of the State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to his/her practice of Optometry. The notice described above shall be approved by the Board within 30 calendar days of the effective date of this decision.

**21. ALCOHOL AND DRUG TREATMENT**

Respondent, at his/her expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration and approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist, or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

Respondent shall inform the program director, psychiatrist or psychologist, of his/her probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing.

Positive results shall be reported immediately to the Board and may be used in administrative discipline.

## **22. WORKSITE MONITOR**

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's practice shall be monitored by the approved worksite monitor. The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The worksite monitor shall not have any financial, personal, or familial relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee. Any cost for such monitoring shall be paid by Respondent.

The Board or its designee shall provide the approved worksite monitor with copies of the decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved worksite monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the worksite monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designees to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until a worksite monitor is approved to provide worksite monitoring responsibility.

The worksite monitor must adhere at a minimum, to the following required methods of monitoring the Respondent:

- a) Have face-to-face contact with the Respondent in the work environment on a frequent basis as determined by the Board, at least once per week.
- b) Interview other staff in the office regarding the Respondent's behavior, if applicable.
- c) Review the Respondent's work attendance.

The Respondent shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

The worksite monitor must submit quarterly reports documenting the Respondent's work performance. Reports are due for each year of probation and the entire length of probation from the worksite monitor as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. worksite monitor's name and signature;
4. worksite monitor's license number;
5. worksite location(s);
6. dates Respondent had face-to-face contact or correspondence (written and verbal) with monitor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation dependant on Respondent's performance on whether to continue with current worksite monitor plan or modify the plan;
12. other relevant information deemed necessary by the worksite monitor or the Board.

Respondent is ultimately responsible for ensuring his/her worksite monitor submits complete and timely reports. Failure to ensure his/her worksite monitor submits complete and timely reports shall constitute a violation of probation.

If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit in writing to the Board or its designee, for prior approval, the name and qualifications of a replacement worksite monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement monitor is approved and assumes monitoring responsibility.

### **23. DIRECT SUPERVISION**

During the period of probation, Respondent shall be under the direct supervision of an optometrist or ophthalmologist holding a current and valid un-restricted license issued by their respective Board. "Direct supervision" means assigned to an optometrist who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he/she is functioning as a licensed optometrist. The appropriate level of supervision must be approved by the Board prior to engaging in practice.

Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. direct supervisor's name and signature;
4. direct supervisor's license number;
5. worksite location(s);
6. dates Respondent had face-to-face contact or correspondence (written and verbal) with direct supervisor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation dependant on Respondent's performance on whether to continue with current direct supervisor plan or modify the plan;
12. other relevant information deemed necessary by the direct supervisor or the Board.

Respondent is ultimately responsible for ensuring his/her supervisor submits complete and timely reports. Failure to ensure each supervisor submits complete and timely reports shall constitute a violation of probation.

**24. REMEDIAL EDUCATION**

Respondent shall take and successfully complete the equivalency of (Ex:\_\_\_\_) semester units in each of the following areas **pertaining to the practice of Optometry**: (Ex: eye disease, when to refer, contact lenses). All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as an optometrist, or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this decision. Successful completion is a grade of "C" or "70%" or better for any completed course.

Within 90 calendar days of the effective date of the decision Respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the Respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

**25. SUSPENSION**

As part of probation, Respondent shall be suspended from the practice of optometry for a period of \_\_\_\_\_ (Ex: 90 calendar days) beginning the effective date of this decision. If not employed as an optometrist or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of

the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

**26. EMPLOYMENT LIMITATIONS**

Respondent shall not work in any health care setting as a supervisor of optometrists. The Board may additionally restrict Respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of optometry or as an instructor in a Board-approved continuing education program.

Respondent shall work only in a regularly assigned, identified and predetermined worksite(s) and shall not work in a “float” capacity.

**27. PSYCHOTHERAPY OR COUNSELING PROGRAM**

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist, or counselor of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until such time as the Board releases him/her from this requirement and only upon the recommendation of the treating psychotherapist or counselor.

The treating psychotherapist or counselor must submit quarterly reports. Reports are due each year of probation and the entire length of probation from the treating psychotherapist or counselor as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. psychotherapist or counselor's name and signature;
4. psychotherapist or counselor's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with psychotherapist or counselor;
6. the Respondent's compliance with this condition;
7. the Respondent's diagnosis, prognosis, and progress;
8. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation dependant on Respondent's progress and compliance with this condition on whether to continue with current treatment plan, modify plan treatment plan, or require Respondent to cease practice;

12. other relevant information deemed necessary by the psychotherapist, counselor or the Board.

Respondent is ultimately responsible for ensuring his/her treating psychotherapist or counselor submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require Respondent to undergo psychiatric or psychological evaluations by a Board- approved psychiatrist or psychologist.

**NOTE:** This condition is for those cases where the evidence demonstrates that the Respondent has had impairment (mental illness, alcohol abuse and drug abuse) related to the violations but is not at present a danger to patients.

**28. MENTAL HEALTH EVALUATION**

Respondent shall, within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, to submit to a mental health evaluation, including psychological testing as appropriate, to determine his/her capability to perform the duties of an optometrist. The evaluation will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. An immediate suspension may be imposed by the Board until further notification if the results from the mental health evaluation prove the Respondent is unsafe to practice.

If Respondent fails to have the above evaluation submitted to the Board within the 30 calendar day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the evaluation, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluator within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo treatment, Respondent shall, within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a licensed psychiatrist, psychologist or other licensed mental health practitioner of Respondent's choice. Upon approval of the treating psychiatrist, psychologist or other licensed health practitioner, Respondent shall within 15 calendar days undergo treatment and shall continue such treatment until further notice from the Board or its designee.

The treating psychiatrist psychologist or other licensed mental health practitioner shall consider the information provided by the Board or its designee or any other information the treating psychiatrist, psychologist or other mental health practitioner may deem pertinent prior to the commencement of treatment. Respondent shall have the psychiatrist, psychologist or other health practitioner submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing optometry safely. The quarterly reports are due each year of probation and the entire length of probation from the psychiatrist, psychologist or other licensed mental health practitioner as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.



- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. treating psychiatrist, psychologist or other licensed mental health practitioner's name and signature;
4. treating psychiatrist, psychologist or other licensed mental health practitioner's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with treating psychiatrist, psychologist or other licensed mental health practitioner;
6. the Respondent's compliance with this condition;
7. the Respondent's diagnosis, prognosis, and progress;
8. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation dependant on Respondent's evaluation, progress and compliance with this condition on whether to continue with current treatment plan, modify treatment plan, or require Respondent to cease practice;
12. other relevant information deemed necessary by the treating psychiatrist, psychologist, other licensed mental health practitioner, or the Board.

Respondent is ultimately responsible for ensuring his/her psychiatrist, psychologist or other licensed mental health practitioner submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment deemed necessary by the Board or its designee.

If, prior to the completion of probation, Respondent is found to be mentally incapable of resuming the practice of optometry without restrictions, the Board shall retain continuing jurisdiction of Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally capable of resuming practice of optometry without restrictions. Respondents shall pay the cost of the evaluation(s) and treatment.

**(OPTIONAL):** Respondent shall not engage in the practice of optometry until notified by the Board of its determination that Respondent is mentally fit to practice safely.

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

### **29. MEDICAL HEALTH EVALUATION**

Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation, at Respondent's cost, by a Board- appointed physician who shall furnish a medical

report to the Board or its designee. Based on the medical evaluation, the Board may require Respondent to undergo medical treatment.

If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice submit to the Board for its prior approval the name and qualification of a physician of Respondent's choice. Upon approval of the treating physician, Respondent shall undergo and continue medical treatment, at Respondent's cost, until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Quarterly reports are due each year of probation and the entire length of probation from the treating physician as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. treating physician's name and signature;
4. treating physician's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with treating physician;
6. the Respondent's compliance with this condition;
7. the Respondent's diagnosis, prognosis, and progress;
8. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation dependant on Respondent's evaluation results, progress and compliance with this condition on whether to continue with current treatment plan or modify the treatment plan;
12. other relevant information deemed necessary by the treating physician, or the Board.

Respondent is ultimately responsible for ensuring his/her physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

**(OPTIONAL):** Respondent shall not engage in the practice of optometry until notified by the Board of its determination that Respondent is medically fit to practice safely.

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

### **30. MEDICAL TREATMENT**

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval the name and qualifications of a physician of Respondent's choice.

Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until the Board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports to the Board. Quarterly status reports are due each year of probation and the entire length of probation from the treating physician as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. treating physician's name and signature;
4. treating physician's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with treating physician;
6. the Respondent's compliance with this condition;
7. the Respondent's diagnosis, prognosis, and progress;
8. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation dependant on Respondent's progress and compliance with this condition on whether to continue with current treatment plan or modify the treatment plan;
12. other relevant information deemed necessary by the treating physician, or the Board.

Respondent is ultimately responsible for ensuring his/her physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require Respondent to undergo periodic medical evaluations by a Board-approved physician.

**31. RESTITUTION**

Within 90 calendar days of the effective date of this decision, Respondent shall provide to the Board or its designee proof of restitution in the amount of \$\_\_\_\_\_ paid to \_\_\_\_\_.

**32. AUDIT REQUIRED**

The Board shall require quarterly audits of patient visits, billings, and payments as a condition of probation.

Within 30 calendar days of the effective date of this decision, Respondent shall provide to the Board or its designee the names and qualifications of three third party auditors. The Board or its designee shall select one of the three auditors to audit Respondent's billings. During said audit,

randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices.

The Board or its designee shall provide the approved auditor with copies of the decision(s) and accusation(s), and a proposed auditing plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the auditor shall sign an affirmation that he or she has reviewed the terms and conditions of the Respondent's disciplinary order, fully understands the role of auditor, and agrees or disagrees with the proposed auditing plan set forth by the Board. If the auditor disagrees with the proposed auditing plan, the auditor shall submit a revised auditing plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's patient visits, billings and payments shall be audited by the approved auditor. Respondent shall make all records available for immediate inspection and copying on the premises by the auditor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of an auditor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until an auditor is approved to provide auditing responsibility.

The Board shall be advised of the results of the audit, and may obtain any and all copies of any documents audited or the results of the audit. The cost of the audits shall be borne by Respondent. Failure to pay for the audits in a timely fashion within ten (10) calendar days from audit completion shall constitute a violation of probation.

Quarterly reports of the audit results are due each year of probation and the entire length of probation from the auditor as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. auditor's name and signature;
4. auditor's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with auditor;
6. the Respondent's compliance with this condition;
7. the Respondent's compliance with accepted auditing/accounting standards and practices;
8. any change in behavior and/or personal habits;
9. assessment of the Respondent's ability to practice safely;

10. recommendation dependant on Respondent's audit results and compliance with this condition on whether to continue with current audit plan or modify the plan;
11. other relevant information deemed necessary by the auditor, or the Board.

Respondent is ultimately responsible for ensuring his/her auditor submits complete and timely reports. Failure to ensure each auditor submits complete and timely reports shall constitute a violation of probation.

If the auditor resigns or is no longer available, Respondent shall, within five (5) days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the names and qualifications of a replacement third party auditor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement auditor within 60 calendar days of the resignation or unavailability of the auditor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement auditor is approved and assumes auditing responsibility.

### **33. LENS PRESCRIPTIONS - MAINTAIN RECORDS**

Respondent shall maintain patient records of all lens prescriptions dispensed or administered by Respondent during probation, showing all the following:

1. name and address of the patient;
2. date;
3. price of the services and goods involved in the prescription;
4. visual impairment identified for which the prescription was furnished.

Respondent shall keep these patient records in a separate file, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

### **34. RESTRICTED PRACTICE**

During probation, Respondent is prohibited from practicing \_\_\_\_\_ (Ex. Specified optometric procedures).

### **35. RESTRICTION ON BRANCH OFFICES**

During the period of probation, Respondent shall be restricted as to the number and location of branch offices that the Respondent may operate or in which the Respondent may have any proprietary interest as designated and approved in writing by the Board.

### **36. RESTRICTIONS ON ADVERTISEMENTS**

During the entire period of probation, the Respondent shall, prior to any publication or public dissemination, submit any and all advertisement of professional services in the field of optometry to the Board for its prior approval. Such advertisement may be published or disseminated to the public only after written approval by the Board.

### **37. TAKE AND PASS NBEO EXAM**

Respondent shall take and pass part(s) \_\_\_\_ of the National Board of Examiners of Optometry (NBEO). Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination within twelve months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

**38. CONTINUING EDUCATION**

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval an educational program or course to be in areas of (E.g., practice management, retinal disease, drug/alcohol addiction). The education program or course(s) shall consist of a minimum of four (4) hours for each practice area.

This program or course shall be in addition to the Continuing Optometric Education requirements for renewal, and shall be obtained with all costs being paid by the Respondent. Following completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses approved by the Board.

**39. MEDICAL RECORD KEEPING COURSE**

Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the continuing optometric education requirements for renewal of licensure.

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

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

**RECOMMENDED DISCIPLINE BASED ON VIOLATION**

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the California State Board of Optometry and the appropriate range of penalties for each violation. Each discipline listed corresponds with a number under the chapters:

- Probationary Terms and Condition – Standard Terms and Conditions;
- Standard Alcohol/Drug Conditions; and
- Optional Conditions

Examples are given for illustrative purposes, but no attempt is made to list all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation.

**OPTOMETRISTS:**

**Excessive Prescribing** (B&P Code sec. 725).

**Maximum Discipline: Revocation and Cost Recovery**

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 33. Lens Prescription- Maintain Records
- 39. Medical Record Keeping Course

**If Warranted:**

- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 24. Remedial Education
- 38. Continuing Education

**Violation of Prescription Standards: Information Required** (B&P Code sec. 3025.5; 3041; Title 16 CCR sec. 1565)

**Maximum Discipline: Revocation and Cost Recovery**

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 33. Maintain Records
- 39. Medical Record Keeping Course

**If Warranted:**

- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 24. Remedial Education
- 38. Continuing Education

**Excessive Prescribing or Treatment** (B&P Code sec. 725; 3110(n); 3110 (o))

**Maximum Discipline: Revocation and Cost Recovery**

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 33. Lens Prescriptions – Maintain Records
- 38. Continuing Education
- 39. Medical Record Keeping Course

**If Warranted:**

- 24. Remedial Education
- 25. Suspension of 30 days or more
- 22. Worksite Monitor

34. Restricted Practice

**Sexual Misconduct** (B&P Code sec. 726)

**Maximum Discipline: Revocation and Cost Recovery**

**Minimum Discipline:** Revocation

**Mental or Physical Fitness** (B&P Code sec. 820)

**Maximum Discipline: Revocation and Cost Recovery**

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 28. Mental Health Evaluation

**If Warranted:**

- 25. Suspension
- 34. Restricted Practice
- 22. Worksite Monitor
- 27. Psychotherapy or Counseling Program
- 29. Medical Evaluation
- 30. Medical Treatment

**Gross Negligence** (B&P Code sec. 3110 (b); Title 16 CCR sec. 1510)

**Maximum Discipline: Revocation and Cost Recovery**

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 24. Remedial Education
- 22. Worksite Monitor

**If Warranted:**

- 23. Direct Supervision
- 25. Suspension of 30 days or more
- 26. Employment Limitations
- 34. Restricted Practice
- 31. Restitution
- 36. Restrictions on Advertisements
- 37. Take and Pass NBEO Exam
- 39. Medical Record Keeping Course

**Failure to Refer Patient** (B&P Code sec. 3110(y); 3041)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 24. Remedial Education
- 34. Restricted Practice
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 26. Employment Limitations
- 39. Medical Record Keeping Course

**Violation of Quality Standards for Prescription Ophthalmic Devices** (B&P Code sec. 2541.3; Title 16 CCR sec. 1519)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation



**Required:**

- 1-16. Standard Conditions
- 24. Remedial Education

**If Warranted:**

- 34. Restricted Practice
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 37. Take and Pass NBEO Exam
- 39. Medical Record Keeping Course

**Violation of Health and Safety Standards** (B&P Code sec. 3025.5; Title 16 CCR sec. 1520)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 24. Remedial Education
- 34. Restricted Practice
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 39. Medical Record Keeping Course

**Failure to Follow Infection Control Guidelines** (B&P Code sec. 3110(w))

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 22. Worksite Monitor
- 38. Continuing Education

**If Warranted:**

- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension

**Violations Regarding Topical Pharmaceutical Agents** (B&P Code sec. 3041.2; Title 16 CCR sec. 1560; 1561; 1562; 1563)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 24. Remedial Education
- 34. Restricted Practice
- 25. Suspension of 30 days or more
- 22. Worksite Monitor

**Fraud, Misrepresentation or Dishonesty** (B&P Code sec. 810; 3101; 3110 (e))

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 24. Remedial Education
- 32. Audit Required

39. Medical Record Keeping Course

**If Warranted:**

- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 23. Direct Supervision
- 26. Employment Limitations
- 31. Restitution
- 36. Restrictions on Advertisements
- 38. Continuing Education

**Procuring a License by Fraud** (B&P Code sec. 123; 496; 3110(i))

**Maximum Discipline:** Denial or Revocation

**Minimum Discipline:** Denial or Revocation

**Practicing without Valid License** (B&P Code sec. 3110(s); 3110(i))

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 22. Worksite Monitor
- 25. Suspension
- 36. Restrictions on Advertisements
- 38. Continuing Education

**Using Controlled Substances or Alcohol** (B&P Code sec. 3110 (l))

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 17-18. Standard Alcohol/Drug Conditions

**If Warranted:**

- 21. Alcohol and Drug Treatment
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 22. Direct Supervision
- 34. Restricted Practice
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 29. Medical Health Evaluation
- 30. Medical Treatment
- 38. Continuing Education

**Employing Suspended or Unlicensed Optometrist** (B&P Code sec. 3110 (t); 3106)

**Permitting Another to Use License** (B&P Code sec. 3110 (u); 3106)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 35. Restrictions on Branch Offices
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 34. Restricted Practice

- 26. Employment Limitations
- 38. Continuing Education

**Accepting Employment By Unlicensed Person (B&P Code sec. 3109)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 25. Suspension of 30 days or more

**Unlawful Location for Practice (B&P Code sec. 3070; 3075; 3076; 3077; Title 16 CCR sec. 1505; 1506; 1507)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 35. Restrictions on Branch Offices
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 34. Restricted Practice

**Deceptive Advertising (B&P Code sec 651; 651.3; 3099 ; 3100; 3102; 3103; 3110(g); 17500; Title 16 CCR sec. 1512; 1513; 1514; 1515)**

**Maximum Discipline:** Revocation and Cost Recovery

**Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 25. Suspension of 30 days or more
- 36. Restrictions on Advertisements

**Prohibited Arrangements by Optometrists (B&P Code sec 655; Title 16 CCR sec. 1514)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 25. Suspension of 30 days or more
- 36. Restrictions on Advertisements

**Advertising While Not Holding Valid License (B&P Code sec. 3101)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 25. Suspension of 30 days or more
- 36. Restrictions on Advertisements

**Misuse of Professional Titles or Abbreviations** (B&P Code sec. 3098; Title 16 CCR sec. 1512)

**Maximum Discipline:** 6-month suspension. Revocation for successive violation

**Minimum Discipline:** 30 days suspension, and at least one-year probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 25. Suspension of 30 days or more
- 36. Restrictions on Advertisements

**Unlawful Solicitation** (B&P Code sec. 3097)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 34. Restricted practice

**Unlawful Referrals** (B&P Code sec. 650; 650.01)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 38. Continuing Education
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 34. Restricted practice
- 36. Restrictions on Advertisements

**Employing Cappers or Steerers** (B&P Code sec. 3104)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 34. Restricted practice
- 36. Restrictions on Advertisements

**Criminal Conviction** (B&P Code sec. 3094; 3107; Title 16 CCR sec. 1517)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 24. Remedial Education

- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 34. Restricted practice
- 17-18. Standard Alcohol/ Drug Conditions
- 38. Continuing Education

**Fictitious Name Violation** (B&P Code sec. 3078; Title 16 CCR sec. 1513; 1518)

**Maximum Penalty:** 6 month Suspension. Revocation and Cost Recovery for successive violations

**Minimum Discipline:** Stayed Revocation, 3 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education

**If Warranted:**

- 36. Restrictions on Advertisements

**Violation of Probation**

**Maximum Discipline:** Impose discipline that was stayed

**Minimum Discipline:** Impose an actual period of suspension

The maximum discipline should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. Other violations of probation should draw at least a period of actual suspension.

**Violations by Professional Corporations** (B&P Code sec. 3160; 3161; 3162; 3163; 3164; 3165; 3166; Title 16 CCR sec. 1544; 1546; 1547; 1548; 1549; 1550)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 24. Remedial Education Course for corporate principals involved
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 34. Restricted practice
- 31. Restitution
- 36. Restrictions on Advertisements
- 38. Continuing Education

**Fraudulently Altering Medical Records** (B&P Code sec. 3105)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 38. Continuing Education
- 39. Medical Record Keeping Course

**If Warranted:**

- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension
- 32. Audit Required

**False Representation of Fact** (B&P Code sec. 3106)

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

1-16. Standard Conditions

**If Warranted:**

- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution
- 32. Audit Required
- 34. Restricted Practice
- 35. Restrictions on Branch Offices
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

**Unprofessional Conduct (B&P code sec. 3110)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 5 years probation

**Required:**

- 1-16. Standard Conditions
- 22. Worksite Monitor
- 24. Remedial Education

**If Warranted:**

- 23. Direct Supervision
- 25. Suspension
- 26. Employment Limitations
- 38. Continuing Education
- 39. Medical Record Keeping Course

**Violating or abetting violation of any section of Optometry Practice Act (B&P Code sec. 3110(a))**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 5 years probation

**Required:**

- 1-16. Standard Conditions
- 24. Remedial Education

**If Warranted:**

- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution
- 32. Audit Required
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

**Repeated Negligent Acts (B&P Code sec. 3110 (c))**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Revocation and Cost Recovery

**Incompetence (B&P Code sec. 3110 (d))**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**If Required:**

- 1-16. Standard Conditions
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations

**If Warranted:**

- 37. Take and Pass NBEO Exam
- 39. Medical Record Keeping Course

**Conduct Warranting License Denial (B&P Code sec. 3110 (f))**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 17-18. Standard Alcohol/ Drug Conditions
- 21. Alcohol or Drug Treatment
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 31. Restitution
- 32. Audit Required
- 33. Lens Prescription – Maintain Records
- 36. Restrictions on Advertisements
- 37. Take and Pass NBEO Exam
- 38. Continuing Education
- 39. Medical Record Keeping Course

**License Discipline by Other State or Agency (B&P Code sec. 3110 (h))**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 17-18. Standard Alcohol/ Drug Conditions
- 21. Alcohol or Drug Treatment
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 32. Audit Required
- 33. Lens Prescription – Maintain Records
- 37. Take and Pass NBEO Exam
- 38. Continuing Education
- 39. Medical Record Keeping Course

**Making False Statement on Application (B&P Code sec. 3110 (j))**

**Maximum Discipline:** Revocation and Cost Recovery  
**Minimum Discipline:** Stayed Revocation, 3-5 years probation  
**Required:**  
1-16. Standard Conditions  
**If Warranted:**  
22. Worksite Monitor  
24. Remedial Education  
25. Suspension  
26. Employment Limitations  
38. Continuing Education

**Prescribing, Furnishing, or Administering Drugs without Good Faith Examination (B&P Code sec. 3110 (p))**

**Maximum Discipline:** Revocation and Cost Recovery  
**Minimum Discipline:** Stayed Revocation, 3-5 years probation  
**Required:**  
1-16. Standard Conditions  
24. Remedial Education  
25. Suspension  
**If Warranted:**  
22. Worksite Monitor  
23. Direct Supervision  
38. Continuing Education  
39. Medical Record Keeping Course

**Failure to Maintain Adequate Records(B&P Code sec. 3110 (g))**

**Maximum Discipline:** Revocation and Cost Recovery  
**Minimum Discipline:** Stayed Revocation, 3-5 years probation  
**Required:**  
1-16. Standard Conditions  
39. Medical Record Keeping Course  
**If Warranted:**  
22. Worksite Monitor  
24. Remedial Education  
25. Suspension  
32. Audit Required  
38. Continuing Education

**Altering or Using Altered License (B&P Code sec. 3110 (v))**

**Maximum Discipline:** Revocation and Cost Recovery  
**Minimum Discipline:** Stayed Revocation, 3-5 years probation  
**Required:**  
1-16. Standard Conditions  
22. Worksite Monitor  
25. Suspension  
**If Warranted**  
38. Continuing Education

**Professional Services Beyond the Scope of the License (B&P Code sec. 3110 (r))**

**Maximum Discipline:** Revocation and Cost Recovery  
**Minimum Discipline:** Stayed Revocation, 3-5 years probation  
**Required:**  
1-16. Standard Conditions  
**If Warranted:**  
22. Worksite Monitor



- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 38. Continuing Education

**Failure to Comply with Patient Records Request (B&P Code sec. 3110 (x))**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions
- 39. Medical Record Keeping Course

**If Warranted:**

- 24. Remedial Education
- 38. Continuing Education

**Use of Fraudulently issued, counterfeited, etc., Certificate (B&P Code 3107)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 22. Worksite Monitor
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 38. Continuing Education

**REGISTERED DISPENSING OPTICIAN PROGRAM:**

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**Conviction of a Substantially Related Crime (B&P Code 2555.1)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

**If Warranted:**

- 17-18. Standard Alcohol/ Drug Conditions
- 21. Alcohol or Drug Treatment
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 32. Audit Required
- 33. Lens Prescription – Maintain Records
- 38. Continuing Education

**Gross Negligence (B&P Code 2555, 2559.3, 2563)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

- 1-16. Standard Conditions

24. Remedial Education

22. Worksite Monitor

**If Warranted:**

23. Direct Supervision

25. Suspension of 30 days or more

26. Employment Limitations

34. Restricted Practice

31. Restitution

36. Restrictions on Advertisements

**Dispensing Spectacle Lenses after the Prescription Expiration Date (B&P Code 2559.6)**

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** Stayed Revocation, 3-5 years probation

**Required:**

1-16. Standard Conditions

**If Warranted:**

22. Worksite Monitor

26. Employment Limitations

33. Lens Prescription – Maintain Records

38. Continuing Education

**ABO & NCLE STANDARDS OF PROFESSIONAL PRACTICE  
AND DISCIPLINARY GUIDELINES**

***I. Scope and Purpose***

The purpose of this Guideline is to establish standards of professional practice and conduct for ophthalmic dispensers holding Certificates [hereinafter “Certificants”], issued by the American Board of Opticians [hereinafter “ABO”] and/or the National Contact Lens Examiners [hereinafter “NCLE”]; procedures for the investigation and adjudication of complaints alleging violations of those standards; and grounds for disciplinary action against Certificants holding credentials issued by the Board of the ABO and/or NCLE.

***II. Applicability to Certificants and Re-Certification***

In applying for, obtaining, or maintaining certification under ABO and/or NCLE, a Certificant agrees to be subject to the ABO & NCLE Standards of Professional Practice and Disciplinary Guidelines, [hereinafter “Guidelines.”] These Guidelines, first adopted in February, 1993, modified as of February 4, 2012, apply to any professionally related conduct, or such other conduct, of a Certificant, which materially and directly bears upon the fitness of that individual to perform his or her professional functions. Each Certificant agrees, by virtue of their possession of such certification, that ABO and/or NCLE can impose sanctions under these procedures on any candidate or Certificant who is found to have (a) engaged in misrepresentation or misconduct in the application or examination process, or (b) violated the ABO & NCLE Standards of Professional Practice and Disciplinary Guidelines. Disciplinary Proceedings addressing potential and/or actual violations of these Guidelines shall be conducted in accordance with the ABO & NCLE Standards of Professional Practice and Disciplinary Guidelines. Each Certificant also understands and agrees to accept Certified Mail sent to the last-identified address provided by the Certificant to the Board for purposes of applying for, obtaining, or maintaining Certification by ABO and/or NCLE, as well as receipt of any formal Notices as required by these Guidelines.

***III. Standards for Certificants Engaging in Dispensing of Contact Lenses or Eyeglasses***

- A. A Certificant shall not prepare or dispense any ophthalmic lenses, spectacles, eyeglasses, contact lenses or appliances related thereto except in accordance with the terms of an eyeglass or contact lens prescription written or issued by a duly licensed physician or by an duly registered or licensed optometrist, and in accordance with any state law or statute that may govern.
- B. Before delivering or furnishing any ophthalmic lenses, spectacles, eyeglasses, or contact lenses to the intended wearer or user thereof, a Certificant shall:
  - 1. Verify that the ophthalmic lenses, spectacles, eyeglasses or contact lenses in question conform in all material respects to the terms and specifications contained in the prescription issued by the intended wearer’s physician or

optometrist;

2. Verify that the ophthalmic lenses, spectacles, eyeglasses or contact lenses in question fit the intended wearer or user properly, and make any and all adjustments in the fit of such items as may be reasonably necessary to ensure that they fit the intended wearer or user properly;
3. Provide the intended wearer or user with appropriate instruction in the handling, insertion, removal and care of such ophthalmic lenses, spectacles, eyeglasses or contact lenses; and
4. Document his or her performance of the procedures undertaken, in writing, in the written records pertaining to that intended wearer or user which are maintained by him or her, or by the optical goods establishment from which those items are dispensed. Such documentation shall bear the signature or initials of the Certificant, or any individual acting under the authority and/or control of the Certificant, who performed the procedures required under the prescription.

C. Record-keeping Requirements

1. A Certificant shall establish and maintain a separate, adequate, legible and accurate written service record for each person for whom he or she prepares or dispenses ophthalmic lenses, spectacles, eyeglasses, contact lenses, or appliances related thereto. The record shall be kept in chronological and alphabetical order in the office where the Certificant rendered such services, or in the office of the optical goods establishment from which such items were dispensed, if different. Record entries shall be made contemporaneously with the performance of the function or service being documented. Each such entry shall be signed by, or shall otherwise adequately identify, the Certificant who provided, or supervised the provision of, that function or service. Such records shall include, at a minimum, documentation of the following:
  - A. The name, address and telephone number of the person to whom the record pertains;
  - B. The date on which each function or service documented in the record was performed, and the name of the individual who provided or performed that function or service; and
  - C. All eyeglass and contact lens prescriptions presented to the Certificant at that location by or for the person to whom the record pertains.
2. Such service records and all information contained therein shall be kept

confidential to the extent provided by state or federal law.

3. Upon the written request of the person receiving the services, that person's authorized legal representative, or, in the case of an unemancipated minor, the service recipient's parent or legal guardian, a Certificant shall furnish a complete copy of that person's service records, including all supporting documentation and reports, to the party authorized to receive it. A reasonable fee may be charged for this service.
4. A Certificant shall furnish to the ABO and/or NCLE Board or its duly authorized representative a complete copy of a service recipient's service record upon presentation of a HIPAA-compliant Release from the affected patient(s)/customer(s). No fee may be charged for this service.
5. No person shall be required to sign any release from liability or waiver as a condition for the receipt of his or her service record.
6. Service records shall be maintained for a period of not less than five (5) years from the date of the last client encounter or professional consultation with the client.
7. Violation of any of the above-identified provisions shall be considered sufficient grounds for disciplinary action by the Board as further set forth hereinbelow.

D. Identification of Dispensing Opticians

1. Every Certificant shall conspicuously display his or her ABO and/or NCLE Certificate in his or her place of business or employment. Every Certificant employed by a corporation or other business organization shall ensure that his or her own ABO and/or NCLE Certificate is displayed conspicuously in the offices of the corporation or organization where members of the public come to obtain opticianry services.

E. Notification of Changes in Name, Address, Employment or Office Location

1. Every ABO and/or NCLE Certificant shall notify the Board in writing of any change in his or her name, residence or business address, or place of employment within 30 days of such change. In the event that a Certificant fails to provide notification of such change of address, Certificant understands and agrees that formal notices sent to the previously-identified address will be deemed proper service upon Certificant for purposes of notification, disciplinary actions, or other formal action taken by the Board.

- F. Requirement to Cooperate with ABO and NCLE
  - 1. A Certificant shall respond to written communications sent by ABO or NCLE, or their designee(s), within thirty (30) days of receipt of such communications requesting information or documentation. ABO and NCLE shall send any such communications requiring responsive information by Certified Mail, return receipt requested. Upon request, the Certificant shall make available any relevant and authorized records with respect to any inquiry or complaint about a Certificant, or an individual who is acting as a Certificant without authority.
  
- G. Duty to Self-Report
  - 1. A Certificant shall self-report any activities which are identified hereinbelow as constituting grounds for disciplinary action. Such self-reporting will be taken into consideration by the Disciplinary Committee in determining an appropriate level of disciplinary action.

***IV. Disciplinary Complaint Procedures***

- A. A written, signed complaint or charge may be presented to ABO and/or NCLE, [hereinafter referred to, jointly, as “the Board”], by any interested person, or may be instituted, independently, by ABO and/or NCLE.
  
- B. Except in extraordinary circumstances, to be determined at the discretion of the Board or its designee, the complaint must be filed within two (2) years of the date of the last occurrence raising an alleged violation or incident.
  
- C. Upon the filing of a complaint or charge, the Disciplinary Committee, shall initially determine if there is a reasonable basis to proceed and whether the allegations, if proven, would constitute a violation of these Guidelines. If the Board determines, by a majority vote, that there is sufficient evidence to establish, if proven true, a violation of these Guidelines, it shall provide the Charged Certificant [hereinafter “Respondent”] with a written Complaint detailing the nature of the allegations, the Guidelines that are at issue, and shall enclose a copy of these Guidelines and Procedures, issued to the Respondent by Certified Mail, return receipt requested, sent to the Respondent’s current address on file with ABO and/or NCLE. A copy of the Complaint shall also be provided to the individual or individuals who initiated the written complaint or charge by Certified Mail, return receipt requested.
  
- D. Any misconduct subject to the Disciplinary Guidelines of ABO and/or NCLE may be considered and result in sanctions by one or both organizations. The organizations may communicate with each other about potential misconduct. Each body, however,

will make its own decision.

- E. The Respondent shall be given not less than thirty (30) days from receipt of the formal Complaint to submit a written Answer to the formal Complaint, to be sent to the Board at its current address, by Certified Mail, return receipt requested, with an additional copy being served, by Certified Mail, return receipt requested, upon each additional individual or entity identified in the formal Complaint as having received a copy thereof. The Respondent is entitled to a formal hearing on the allegations raised in the Complaint. Such a request for hearing, if sought, must be included in the Respondent's written Answer to the formal Complaint, and must be requested within thirty (30) days of receipt of the formal Complaint. In the event that Respondent refuses to accept the Certified Mail, or has failed to notify the Board of a new address, the Complaint will be deemed to have been served upon receipt, by the Board, of the return-receipt, or, in the event of a failed service, notification of the failed service.
- F. In the event that a Respondent requests a formal hearing, ABO and/or NCLE, as applicable, shall set a time for a hearing before the Disciplinary Committee, which shall be comprised of at least three Directors appointed by the Chairs of the Disciplinary Committees. The hearing shall consist of no more than two (2) hours, unless, in the sole discretion of the Committee, extraordinary circumstances require additional time within which to present the allegations and allow for response by the Respondent. Both the Respondent and the Committee may be represented by counsel at any such formal hearing, and may present documents and witnesses. However, formal legal rules of evidence will not be applied, and the Committee will determine which evidence will be considered for purposes of reaching a determination. The hearing shall be digitally recorded. If the Respondent and Committee agree, the formal hearing may be conducted by telephone conference call. In the event that the Respondent requires an in-person hearing, such a hearing shall take place at the headquarters of ABO & NCLE. Any determination by the Disciplinary Committee shall be by majority vote. In the event that a majority vote cannot be reached, the matter shall be presented to the full Board of Directors of ABO and/or NCLE, as applicable, for a determination as to the allegations and disciplinary action, if any. In the event that a majority still cannot be reached, the charges set forth in the Complaint shall be deemed to have not been proven, and the Complaint shall be Dismissed, with the Certificant cleared of any charges made therein.
- G. ABO and/or NCLE may also seek information from any other source in order to properly investigate the allegations, and to reach a proper determination related thereto. Any non-charged Certificant with relevant information is required to provide all responsive information that would assist the Board in reaching its determination. A copy of any such information received by the Board shall be provided to the Respondent at least ten (10) days prior to the hearing or decision, so that the Respondent can review the information obtained, provide any additional information

and/or explanation, and otherwise defend him or herself against the allegations raised in the Complaint.

- H. All complaints, reports, records, documents or other information received or kept by ABO and/or NCLE in connection with any investigation conducted by the Board shall remain confidential until such time as the Board has disposed of the matter by dismissing the complaint, issuing an Order to Show Cause, or taking other final action on said complaint. Notwithstanding the foregoing:
  - 1. Certain records or information received or kept by the Board in connection with any investigation conducted pursuant to this section shall remain confidential even after final action on the complaint has been taken by the Board, to the extent that disclosure of such information is restricted by other applicable state or federal law, including, but not limited to, patient data or information, specific treatment information, and identification of patients, victims (if applicable), HIPAA or other privacy-related data and information; and
  - 2. The requirement that investigative records or information shall be kept confidential shall not apply to requests for such information received from the person under investigation or the complainant, unless such data or information would impermissibly require production of information protected from disclosure under any federal, state, or local law.
- I. The Board will review written requests for investigative records or other confidential information from, and may furnish such information to federal, state and/or local regulatory and law enforcement agencies, in the event that the Board believes that actions taken by the Certificant require additional investigation by such governmental authorities.
- J. Except as set forth otherwise herein, all recipients of confidential information pertaining to a complaint, charge, investigation of a charge, issuance of a formal Complaint, or subsequent hearing pertaining thereto, shall preserve the confidentiality of such data.

***V. Grounds for Disciplinary Action by the Board***

The Disciplinary Committee shall, by majority vote after reviewing the applicable evidence, or, in the event of a request for a formal hearing, after the evidence has been received, take disciplinary action against any Certificant, or any individual claiming to maintain Certification by ABO and/or NCLE (such person shall be included in the definition of “Certificant” for purposes of these Guidelines). Grounds for such disciplinary action shall include, but shall not be limited to:

- A. Engaging in, authorizing, or aiding or abetting fraud, deceit, misrepresentation of



material facts, the provision of false or forged evidence, or bribery in connection with any application for, or continuation of, an ABO and/or NCLE Certificate;

- B. Procuring, or attempting to procure, ABO and/or NCLE certification or state licensure, if applicable, by misrepresentation, bribery, fraud, or deception;
- C. Failing to adhere to the mandates of Section III above, Standards for Contact Lens Dispensers and Opticians;
- D. Disclosure of confidential patient, customer, and/or student records and/or information without properly-documented authorization;
- E. Altering patient and/or customer records without proper notation on the records as to the basis for any such modification;
- F. Engaging in, authorizing, or aiding or abetting theft or tampering with any ABO and/or NCLE examinations;
- G. Representing to the general public, in any manner, that the individual is practicing opticianry or as a contact lens dispenser as a Certificant, without appropriate Certification, including, but not limited to, practicing on a revoked, suspended, or inactive Certificate, or license, in those states where licensing is required;
- H. Violating any provision of any state or federal law or regulation relating to the authorized opticianry and/or contact lens dispenser practice, or the performance of contact lens dispensing and/or opticianry-related functions or services;
- I. Engaging in willful and/or gross misconduct in the practice of his or her profession as a Certificant, or engaging in such other conduct which is determined by ABO and/or NCLE to be unethical or constitutes a deviation from the professional standards of care associated with the professions of contact lens dispensing and/or opticianry, or that creates a serious risk of harm to or deception of patients, customers and/or students;
- J. Engaging in practice which is fraudulent or beyond the authorized scope of practice for the level of ABO and/or NCLE Certificate held by the Certificant;
- K. Advertising goods and/or services in a manner which is, or is intended to be, misleading, deceptive, false, or fraudulent;
- L. Engaging in, authorizing, or aiding or abetting attempts to intimidate, coerce, or deceive anyone from reporting possible misconduct by a Certificant to ABO and/or NCLE, or interfering with an ongoing investigation commenced by ABO and/or NCLE;

- M. Engaging in, authorizing, or aiding or abetting exploitation, abuse, assault, or battery of a patient, customer, student, colleague, or charge;
- N. Failing to adequately supervise staff, students, apprentices, and dispensing opticians within your supervision, to the extent that a patient/customer's health, welfare, or safety may be at risk;
- O. Engaging in, authorizing, or aiding or abetting attempts to offer to pay rebates, commissions, compensation, or any other tangible asset of any value to a licensed physician, licensed optometrist, or any other person, for the purpose of referring a patient and/or customer to the Certificant;
- P. Engaging in, authorizing, or aiding or abetting, in those states where licensing is required, any person under your supervision who is not licensed (or participating in a state-recognized student or apprenticeship program), to fit or dispense contact lenses, spectacles, or other optical devices which are part of the practice of contact lens dispensing or opticianry;
- Q. Practicing with gross incompetence or gross negligence on a particular occasion, or with negligence on repeated occasions;
- R. Knowingly practicing in a manner involving contact with patients and/or customers of a type or nature that could create a serious and material health risk to such patients and/or customer while suffering from a contagious and/or infectious disease;
- S. Practicing while his or her ability to practice is substantially impaired by physical disability that cannot be remedied by a reasonable accommodation, to such an extent that a patient/customer's health, welfare, or safety may be at risk, or while he or she has been adjudged mentally ill or mentally incompetent by a court of competent jurisdiction;
- T. Engaging in the use of, alcohol, narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effects to an extent which impairs his or her ability to practice;
- U. Engaging in discrimination in the provision of services to patients, customers, and/or students on the basis of that individual's age, race, color, national origin, disability, gender, or any other basis proscribed by Federal law.
- V. Knowingly permitting, or aiding or abetting, an uncertified ABO and/or NCLE person to perform activities which require a ABO and/or NCLE Certificate;
- W. Having been convicted of or entered any guilty plea (including a "no-contest," *nolo contendere*, or "Alford Plea") for any criminal offense which involves moral

turpitude or which reasonably calls into question his or her fitness or ability to practice as a contact lens dispenser or an optician; or having been convicted of, or entered any guilty plea (including a “no-contest,” *nolo contendere*, or “Alford Plea”), in any state or federal court, including the District of Columbia, for any crime related to the Certificant’s optical-related practice;

- X. Having been denied or refused issuance of any practice as an optician or contact lens dispenser by an applicable governmental licensing authority of any state, territory or political subdivision of the United States;
- Y. Having had a license to practice opticianry and/or as a contact lens dispenser suspended, revoked, placed on probation, or otherwise subject to disciplinary action by the applicable governmental licensing authority of any state, territory or political subdivision of the United States. For purposes of this Section, the term “disciplinary action” shall include, but shall not be limited to: denial, revocation or suspension of a full certificate, license, or other identifying credential pertaining to opticianry and/or contact lens dispenser; refusal to renew a certificate, license, or other identifying credential pertaining to opticianry and/or contact lens dispenser; issuance of a letter of censure; issuance of a written reprimand; or placing on probation of a certificate, license, or other identifying credential pertaining to opticianry and/or contact lens dispenser.
- Z. Having failed to self-report any violations of any provision of these Guidelines within thirty (30) days of the occurrence of any such violation. In the event the Disciplinary Committee determines that a Certificant has willfully withheld information pertaining to actions taken by that Certificant, or their knowledge pertaining to such actions taken by any other Certificant, the Board shall take such willful misconduct into consideration in assessing an appropriate punishment. It is the intent of these Guidelines to encourage self-reporting of violations and, as such, any failure to do so shall result in substantially stiffer punishment associated with the Certificant’s misconduct.