

**MEMBERS OF THE BOARD**

Mark Morodomi, President  
Glenn Kawaguchi, OD, Vice President  
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Maria Salazar Sperber  
David Turetsky, O.D.  
Lillian Wang, OD



**CONSUMER PROTECTION COMMITTEE  
TELECONFERENCED MEETING AGENDA**

**Friday, September 13, 2019  
1:30 to 2:30PM  
(or until the conclusion of business)**

**MEMBERS OF THE COMMITTEE**

Cyd Brandvein, Chair  
Martha "Ruby" Garcia, CLD, SLD  
Debra McIntyre, OD  
David Turetsky, OD

DCA Del Paso – Yosemite Room  
2420 Del Paso Road, 1<sup>st</sup> floor  
Sacramento, CA 95834

Irvine Civic Center  
1 Civic Center Plaza  
Room L 103 (First Floor)  
Irvine, CA 92606

Charter College – Oxnard Campus  
2000 Outlet Center Dr #101  
Oxnard, CA 93036

California Eye Professionals  
41637 Margarita Rd. Ste 100  
Temecula, CA 92591

**ORDER OF ITEMS SUBJECT TO CHANGE. ACTION MAY BE TAKEN ON ANY ITEM ON  
THE AGENDA**

1. Call to Order/Roll Call/Establishment of a Quorum
2. Public Comment for Items Not on the Agenda  
*Note: The committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code §11125, §11125.7(a)].*
3. Discussion and Possible Action Regarding Meeting Minutes from:
  - A. March 23, 2018
  - B. January 11, 2019
4. Review, Discussion and Possible Action on Optometry Disciplinary Guidelines
5. Future Agenda Items
6. Adjournment

*The mission of the [California State Board of Optometry](#) is to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of Optometry and Opticianry.*

*Meetings of the California State Board of Optometry and its committees are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Committee may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.*

***NOTICE:** The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Jessica Swan – [Jessica.swan@dca.ca.gov](mailto:Jessica.swan@dca.ca.gov) or calling 916-575-7174. Written requests can be mailed to the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*



CALIFORNIA STATE BOARD OF OPTOMETRY  
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**CONSUMER PROTECTION COMMITTEE**  
**March 23, 2018**  
**DRAFT MEETING MINUTES**

**Moraga Country Club**  
**1600 St Andrews Dr.**  
**Moraga, CA 94556**

**Charter College – Oxnard Campus**  
**2000 Outlet Center Drive #150**  
**Oxnard, CA 93036**

**California Eye Professionals**  
**41637 Margarita Rd., Suite 100**  
**Temecula, CA. 92591**

**Department of Consumer Affairs**  
**HQ2 - Hearing Room**  
**1747 North Market Boulevard,**  
**Sacramento, CA 95834**

**Listen to Audio for Discussions**  
[March 23, 2018](#)

**Members Present**

Ruby Garcia  
David Turetsky, OD  
Debra McIntyre, OD  
Mark Morodomi, JD

**Staff Present**

Jessica Siefertman, Executive Officer  
Robert Stephanopoulos, Assistant Executive Officer  
Todd Kerrin, Policy Analyst  
Mina Hamilton, Legal Counsel

**Members Absent**

Glenn Kawaguchi, OD

**Guest List**

On File

**1. Call to Order/Roll Call**

*Audio of Discussion: 00:03 / 01:14:59*

Mark Morodomi called roll at 1:30 p.m. Mr. Morodomi was present at the Moraga, CA location; Ruby Garcia was present at the Oxnard, CA location; Debra McIntyre was present at the Temecula, CA location; David Turetsky was present at the Sacramento, CA location. A 4-1 quorum was established.

**2. Public Comment for Items Not on the Agenda**

*Audio of Discussion: 01:14 / 01:14:59*

There were no public comments.

**3. Discussion and Possible Action on December 14, 2017 Meeting Minutes**

*Audio of Discussion: 01:27 / 01:14:59*

No changes were made. There were no public comments.

**Debra McIntyre moved to approve the December 14, 2017 meeting minutes. Ruby Garcia seconded. The committee voted 3-0 with one abstention and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Garcia	X				
Turetsky			X		
McIntyre	X				
Mordomi	X				

**4. Discussion and Possible Action Regarding Board’s Disciplinary Guidelines**

*Audio of Discussion: 03:32 / 01:14:59*

Executive Officer, Jessica Sieferman provided an introduction to the Board’s Disciplinary Guidelines. She stated that at the last Committee meeting staff requested that the Committee create a small workgroup to work with staff on amending the Disciplinary Guidelines and updating and revising where necessary pursuant to the Strategic Plan. She announced that staff met and discussed possible amendments, and now the document is presented to the Committee for discussion, and to make any final edits before it goes before the full Board and to Legal. She noted the real substantive changes go for the recommended minimum and maximum sanctions for various violations. One of the significant changes was how suspension is characterized; Ms. Kimball stated that the changes staff made by removing the “30 days or more,” made the discipline recommended for each violation fit the violation more appropriately.

Mr. Morodomi explained that there is a concern among the optometrists that if an error is made in calculating their continuing education (CE), that they may become subject to harsh discipline such as an allegation of fraud and misrepresentation and a 30-day suspension. Ms. Sieferman responded that in the last round of CE audits, 40% were non-compliant in one way or another. Some were grossly non-compliant, and some were closer. Staff believes that for those who are completely non-compliant, their non-compliance rises to the level of discipline. Ms. Sieferman argued that if we are charging a violation of 3106 which is “a false representation of fact,” and in order to renew they have certified under penalty of perjury that they have completed their CE requirements, that is obviously a false representation of facts and it subjects their license to discipline. However, the Disciplinary Guidelines do not take into account what happened as it relates to CE audit. One of the required disciplines is a medical record keeping course. Also, an audit of their billing records is required. Many of the requirements are just not applicable to a CE audit. Staff feels those requirements are not very applicable to an issue where an optometrist just failed to complete their education. Therefore, staff is requesting that the Committee and the Board perform a breakout of what the minimum and maximum should be for a CE audit; what would be appropriate discipline.

Ms. Garcia questioned suspending their license. She can see giving them the strict order and opportunity to complete their CE. If they fail to comply, she believes the next step would be to bring disciplinary actions upon them. She feels that, although they know they should be completing their CE, we should give them one more opportunity.

Ms. Siefertman explained that rationale on suspension is because they did not meet their requirements by statute which is set by the Legislature, and they certified that they have met the requirement. Then the audit reveals that they did not. These optometrists should not have even been able to renew since they did not meet their CE requirement.

Dr. Turetsky argued that if someone takes 10 CE hours, then claims they have completed 50 hours, obviously that is making a false statement. However, if an optometrist takes a course that for some reason turns out to not be approved by the Board, should they receive a suspension for an honest mistake? Ms. Siefertman clarified that enforcement cases are taken on a case-by-case basis. This type of scenario would not rise to discipline. Mr. Morodomi stated that for the optometrist who certifies that he/she has taken 50 hours of CE and has only completed 10 hours, this is a serious violation. Ms. Siefertman agreed.

Ms. Garcia questioned at what point does the Board determine that the optometrist has truly and deliberately gone outside of the regulations? At what point do we want to initiate discipline? Ms. Siefertman replied that it just depends upon the circumstances surrounding it and she provided the Committee with an example. She reiterated that action is determined on a case-by-case basis; she stated that if they are smaller amounts, oftentimes during the audit the optometrists are permitted to make up the CE and receive an educational letter or a low-level citation. However, the more egregious situations are the ones the Board will pursue disciplinary action on.

Mr. Morodomi asked, and Ms. Siefertman explained, the category for non-compliance of CE is false representation of fact. They would become subject to the standard 1-16 conditions, remedial education, the audit required, and the medical record keeping course. Ms. Garcia questioned, and Ms. Siefertman explained that it is incumbent upon the optometrist to keep records of his/her CE completion.

Ms. Garcia asked, and Ms. Siefertman clarified that the Disciplinary Guidelines is broken down into recommended discipline for specific violations. For someone who fails to complete CE, the Board usually charges 3110 which is Unprofessional Conduct, and 3106 which is the False Misrepresentation of Fact. The problem is that there exists minimum discipline that does not really apply to the situation of a CE audit. Staff's request is for a separate section to be created for those with CE violations; to have a minimum/maximum for those outside of the standard violation for unprofessional conduct and false representation. Legal Counsel, Mina Hamilton suggested taking it step-by-step, and in a particular situation ask how much probation and standard conditions would be appropriate.

Mr. Morodomi suggested creating a separate section for CE violations; remove from the minimum discipline the 3 to 5 years of probation and remove the medical record keeping course. Committee agrees. Ms. Siefertman asked for clarification if the recommendation is to break it out and have no required terms and just have something under "if warranted?" Ms. Morodomi confirmed. Ms. Siefertman replied that this does not provide much guidance to Administrative Law Judges (ALJs) and staff.

Deputy Attorney General Ananita Crawford commented that by the time they get to the point where they are looking at Disciplinary Guidelines, it is egregious enough that it is

not a citation, it is not a letter of reprimand or a letter of education. It is egregious enough where an accusation needs to be filed where potentially at a minimum probation might be warranted. Probation is one of the minimum levels of discipline when it has been determined that a citation or letter of reprimand is not an appropriate level of discipline; it needs to be something greater than that.

Mr. Morodomi asked Ms. Crawford if the Board should not make any changes to the Disciplinary Guidelines to address CE violations, or should the Board change the minimum probation from 3-5 years from none to 5 years? Ms. Crawford replied that the number of years of probation may be modified. Five years would be for the most egregious conduct that would not require revocation. False representation of fact is usually something that is charged for the egregious cases, however it requires an intent to falsely represent that they took CE units when they did not. Intent would have to be proven.

Ms. Crawford stated that whether the Board leaves it as false representation of fact or create an entire new carve out section specific for CEs, is up to the Board. It does not make much of a difference from a prosecution standpoint. Ms. Siefertman argued that when an ALJ is looking at the Disciplinary Guidelines to determine what is appropriate, what to apply for a CE audit, the Board is saying when you have a violation of 3106, for every instance we want an audit required of their billing records; we want them to take a separate independent medical record keeping course; we want them to go back and take remedial education.

Mr. Morodomi noted that, for the purpose of allowing the false representation of fact category of violation to have its maximum responsibility and scope, removing audit required and record keeping course might be the simplest solution. Ms. Garcia feels that, because of the different scenarios involved, it would probably be worth it to break this out separately.

Ms. Siefertman stated that staff will just present it; break out the continuing education and recommended discipline and put in a memo a specific topic dealing with suspensions letting the Board know the differing viewpoints rather than making a full recommendation from this Committee.

Public comment: Kara Corches from California Optometric Association noted she was just beginning review of the document but would have feedback in the future.

## **5. Update, Discussion and Possible Action Regarding Board Inspection Program**

*Audio of Discussion: 05:22 / 01:14:59*

Ms. Siefertman provided an update on the Board Inspection Program. She reported that at the last Committee meeting there were discussions regarding holding off on the types of inspectors (licensees or contractor) to do the inspections. It was decided that the Board would focus on the actual tools the inspectors would be using. Additionally, there were discussions regarding what inspectors will do when they go into the locations, and the thought was to look at what the Board has already approved and use that as a starting point for developing the inspection tools.

Dr. McIntyre asked, and Ms. Sieferman clarified that the inspections are not necessarily complaint based; they are not specific to complaint based versus a regular proactive audit. If the Board were to see, through other investigations, something that looked suspect, we can initiate our own internal investigation. This would be interpreted as a complaint-based process. Proactive would be a percentage of inspections done automatically each year. She clarified that the tools would be used for any investigation; regardless of whether it is complaint driven or proactive. Ms. Sieferman addressed Ms. McIntyre's concern by explaining that while an inspector is performing an inspection, if other concerns are found, in addition to the complaint, the Board would look at all the concerns.

Drs. Turetsky and McIntyre noted that regarding the infection control part of the guidelines, the vast majority of optometrists have no idea what their responsibilities are under the law. He considers this tool a great educational tool as well as a monitoring tool, and he believes the Board needs to get this information out to the profession, so they fully understand their responsibilities.

Dr. Turetsky inquired and Ms. Sieferman clarified that a worksite monitoring plan has not been developed yet for the Registered Dispensing Optician (RDO) program. This is currently being discussed by the Dispensing Opticians Committee (DOC) in reference to their Disciplinary Guidelines. There will need to be a separate worksite monitoring plan developed for the RDO program.

Dr. McIntyre explained that she is concerned about developing something that will get this information out to all optometrists eventually. Ms. Sieferman responded that staff currently creates monthly reports of all optometrists that are up for renewal. Staff then sends those optometrists an email with a link to BreEZe. She noted that additional information can be provided in the email.

Public Comment: Kara Corches, on behalf of the California Optometric Association (COA), commented that at the previous Board meeting she promised Mr. Morodomi that she would look at some of the existing requirements pertaining to cleanliness and hygiene of optometrists. She announced that through the Committee's current worksite monitoring plan this is already being addressed. Ms. Corches expressed a concern and Dr. Turetsky mirrored her concern by stating that unless a complaint is filed, he does not believe under HIPAA laws that charts can even be monitored. Mr. Morodomi agrees.

Ms. Sieferman clarified that with regards to HIPAA, there is an exemption for regulatory boards when it comes to medical records. However, it must be part of an investigation. As part of the pro-active route she does not believe it would fall under HIPAA's exemption clause.

Ms. Kathryn Scott with EyeExam had a question about the regulatory timeline. Ms. Sieferman stated that this particular document is incorporated in the Disciplinary Guidelines which is incorporated in regulation. But as far as using the inspection tools, she is not sure if it needs to be put into a regulation that our inspectors will be using these tools.

## **6. Update and Discussion Regarding Strategic Plan Enforcement Objectives and Deliverables**

*Audio of Discussion: 31:58 / 01:14:59*

Ms. Sieferman provide on update on where the Board stands in the Strategic Plan Enforcement Objectives and Deliverables. We stated the Board is on track. There are some that have not been started yet because of where they fell in line of implementing the strap plan.

There was no public comment.

## **7. Future Agenda Items**

*Audio of Discussion: 01:14:29 / 01:14:59*

Members did not have any items. There was no public comment.

## **8. Adjournment**

Committee adjourned at 2:45 p.m.



**MEMBERS OF THE BOARD**

Cyd Brandvein, President  
David Turetsky, OD, Vice President  
Rachel Michelin, Secretary  
Madhu Chawla, OD  
Martha Garcia, CLD, SLD  
Glenn Kawaguchi, OD  
Debra McIntyre, OD  
Mark Morodomi, JD  
Maria Salazar Sperber, JD  
Lillian Wang, OD



CALIFORNIA STATE BOARD OF  
**OPTOMETRY**



**CONSUMER PROTECTION COMMITTEE**

January 11, 2019

**Draft Meeting Minutes**

**MEMBERS OF THE COMMITTEE**

Mark Morodomi, JD, Chair  
Martha "Ruby" Garcia, CLD, SLD  
Glenn Kawaguchi, OD  
Debra McIntyre, OD  
David Turetsky, OD

**Teleconference locations:**

Oakland Marriott City Center  
Second Floor Lobby  
1001 Broadway  
Oakland, CA 94607

Charter College – Oxnard Campus  
2000 Outlet Center Drive #150  
Oxnard, CA 93036

California Eye Professionals  
41637 Margarita Rd., Suite 100  
Temecula, CA. 92591

Department of Consumer Affairs  
HQ2 – Pearl Room  
1747 North Market Boulevard,  
Sacramento, CA 95834

Link for audio of meeting here: <https://www.optometry.ca.gov/meetings/index.shtml>

Members Present	Staff Present
Mark Morodomi, JD, Chair	Shara Murphy, Executive Officer
Martha "Ruby" Garcia, CLD, SLD	Evan Gage, Assistant Executive Officer
Debra McIntyre, OD	Mina Hamilton, Legal Counsel
David Turetsky, OD	Marc Johnson, Policy Analyst
	Cheree Kimball, Enforcement Program Lead
Member Absent	
Glenn Kawaguchi, OD	Guest List
	On File

**1. Call to Order/Roll Call/Establishment of a Quorum**

**Audio of discussion: 0:00**

Mr. Morodomi called the meeting to order at 2:30 p.m. Roll was taken: Mr. Morodomi – present in Oakland, CA; Ms. Garcia – present in Oxnard, CA; Dr. Kawaguchi – not present; Dr. McIntyre – present in Temecula, CA; Dr. Turetsky – present in Sacramento, CA. **4-1 quorum established.**

**2. Public Comment for Items Not on the Agenda**

**Audio of discussion: 1:26**

There was no public comment made at any of the teleconference locations.

### **3. Discussion and Possible Action on Meeting Minutes: March 23, 2018**

Link for materials: [https://www.optometry.ca.gov/meetings/materials/20190111\\_cpc\\_mm3.pdf](https://www.optometry.ca.gov/meetings/materials/20190111_cpc_mm3.pdf)

**Audio of discussion: 1:40**

The date of the meeting minutes was corrected to March 23, 2018 and the link was updated. There were no other changes to the minutes.

**Motion: Dr. Turetsky moved to approve the March 23, 2018 CPC meeting minutes with the changes made here today. Dr. McIntyre seconded the motion. Motion passed 4-0-1.**

<b>Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
<b>Morodomi</b>	X				
<b>Garcia</b>	X				
<b>Kawaguchi</b>				X	
<b>McIntyre</b>	X				
<b>Turetsky</b>	X				

There was no public comment made at any of the teleconference locations.

### **4. Update, Discussion and Possible Action Regarding Board's Disciplinary Guidelines**

Link for materials: [https://www.optometry.ca.gov/meetings/materials/20190111\\_cpc\\_mm4.pdf](https://www.optometry.ca.gov/meetings/materials/20190111_cpc_mm4.pdf)

**Audio of discussion: 4:24**

Ms. Hamilton recommended tabling the item. She reported that several pending changes to Uniform Standard number four and potentially other Standards were being considered by DCA and are anticipated to be announced in the next few weeks. Due to these changes, the Guidelines will not be ready for approval at the full Optometry Board meeting in February. It was estimated three to six months would be needed by staff to formulate final language for the Guidelines; Committee agrees with this timeline.

Dr. McIntyre asked that the working committee of her and Mr. Morodomi be given future drafts of the Guidelines to review.

There was no public comment made at any of the teleconference locations.

### **5. Review, Discussion, and Consideration of Requirements for Board's Implementation of AB 2138 (Chapter 995, Statutes of 2018, Chiu; Denial of Applications Based Upon Criminal Convictions); Suggested Updates to Optometry Regulations; Recommendation to Full Board**

Link for materials: [https://www.optometry.ca.gov/meetings/materials/20190111\\_cpc\\_mm5.pdf](https://www.optometry.ca.gov/meetings/materials/20190111_cpc_mm5.pdf)

**Audio of Discussion: 25:01**

Ms. Hamilton reported DCA Legal was working on implementation language for AB 2138 but would not be available until mid-January. There is a statutory deadline of implementation by June 1, 2020, so in the interest of time Mr. Morodomi suggested referring the regulatory changes to the full Board for consideration.

**Motion: Mr. Morodomi moved to direct staff to make changes to regulations as a result of AB 2138 and refer the changes directly to the full Board. Ms. Garcia seconded the motion. Motion passed 4-0-1.**

Member	Aye	No	Abstain	Absent	Recusal
Morodomi	X				
Garcia	X				
Kawaguchi				X	
McIntyre	X				
Turetsky	X				

There was no public comment made at any of the teleconference locations.

**6. Update and Discussion Regarding Strategic Plan Enforcement Objectives and Deliverables**

Link for materials: [https://www.optometry.ca.gov/meetings/materials/20190111\\_cpc\\_mm6.pdf](https://www.optometry.ca.gov/meetings/materials/20190111_cpc_mm6.pdf)

**Audio of Discussion: 36:31**

Ms. Murphy asked the Committee to clarify its priorities regarding consumer protection that are either not started or are not actively being implemented. She proposed making Item #4.5 as an outreach item, potentially holding a public informational meeting on the issue or working with national associations or businesses; Committee agrees.

The Committee prioritized implementation of the following strategic plan items:

- Item #4.1
- Item #4.3

Items #4.6 and #4.7 were considered low priority.

Mr. Morodomi asked about licensees self-reporting convictions; staff was also directed to draft potential regulatory language to certify convictions, or lack thereof, on licensee renewals. Additionally, Ms. Murphy noted staff would be doing a presentation on Enforcement processes and statistics at a future meeting.

There was no public comment made at any of the teleconference locations.

**7. Future Agenda Items**

***Audio of Discussion: 1:24:15***

Committee members had no future agenda items. There was no public comment made at any of the teleconference locations.

**8. Adjournment**

Committee adjourned at 3:57 p.m.



## ISSUE MEMORANDUM

<b>DATE</b>	September 13, 2019
<b>TO</b>	Members, Consumer Protection Committee (CPC)
<b>FROM</b>	Cheree Kimball, Acting Assistant Executive Officer
<b>SUBJECT</b>	Agenda Item #4 – Review, Discussion and Possible Action on Optometry Disciplinary Guidelines

**Summary of Requested Action: Staff requests the Committee review the proposed updates to the attached Disciplinary Guidelines and support a motion to move the draft Disciplinary Guidelines to the full Board for approval.**

### Disciplinary Guidelines Amendments

As previously reported, the CPC was tasked with implementing the Board’s Strategic Plan Objective 4.8:

Analyze the [2012 Disciplinary Guidelines](#) for optometrists and revise where necessary, enhance consumer protection and to promote consistency and fairness within enforcement decisions.

The CPC selected two members (Dr. Debra McIntyre and Mark Morodomi) to assist in reviewing the current guidelines and develop recommendations for CPC consideration. The CPC discussed the recommendations on March 23, 2018 and proposed further amendments focusing on the following areas:

1. Suspension: Under the “Recommended Discipline Based on Violation” [p. 38 of DRAFT guidelines], whenever Suspension is ordered under “Required” or “If Warranted,” current language requires a 30-day minimum suspension period. Draft changes delete the 30-day minimum requirement to allow more discretion for the Board to order shorter suspension periods. Staff also notes the greater ability to negotiate settlement agreements without the blanket requirement to enact a suspension of no less than 30 days.
  
2. Failing Continuing Education Audits: To renew an optometrist license, licensees self-certify they met the continuing education requirements. Those licensees are then subject to random Board audits to ensure compliance. In disciplinary cases involving failing to complete continuing education requirements, the Board typically charges the violations of BPC § 3106, 3110(a), 3110 (e). According to the current disciplinary guidelines, the required terms would be the following [p. 41 (“Fraud, Misrepresentation or Dishonesty”) or 47 (“False Representation of Fact”)]:  
  - 1-16.1 Standard Conditions
  - 24. Remedial Education
  - 32. Audit Required
  - 39. Medical Record Keeping Course

**However, the CPC requested the Board consider a separate section for those who fail CE audits that rise to the level of discipline, and have more applicable, required conditions, as drafted by staff:**

CE Audit Failure (B& P Code 3110(1))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 1-3 years probation, actual suspension until CE Compliance verified

Required:

1-16 Standard Terms

25. Suspension

38. Continuing Education

3. Worksite Monitor for Failing to Refer: Current language lists “Worksite Monitor” under the “If Warranted” section for those on probation for failing to properly refer patients [p. 40]. Draft changes move “Worksite Monitor” to required. **The CPC requested the Board further discuss if this condition should be required in every case involving failing to refer violations or whether it should remain under “If warranted”.**
  
4. Part III Clinical Skills for Violation of Health and Safety Standards: Recommended changes require every probationer pass the clinic skills portion of the national exam. **However, the Board may want to determine if, based on the Clinical Exam Skills [Candidate Guide](#), this requirement should be required in every case to adequately address the violation.**

The following is a summary of the other amendments to the guidelines:

- Technical/Non-substantive Changes
  - Several technical/non-substantive changes were made throughout the document to promote clarity and consistency.
  
- Employment Limitations
  - The current language prohibits the probationer’s ability to work in any health care setting as a supervisor of optometrists and allows discretion for the Board to additionally restrict supervising technicians and/or unlicensed assistive personnel.
  
  - The recommended change allows probationers to supervise optometrists on a case by case basis.
  
- Discontinuing Treatment
  - Current language requires probationers to continue treatment until further notice from the Board.
  
  - Recommended language clarifies treatment can be discontinued after Board notification and upon the recommendation of the treating psychiatrist, psychologist, or other health practitioner.
  
- Billing Auditor Report
  - Current report language was copied from the worksite monitor report for those monitoring probationers due to substance abuse.

- Recommended language removes the requirement for a worksite monitor to report changes in behavior and/or personal habits and the assessment of the Respondent's ability to practice safely. A billing auditor (a certified public accountant) reviewing financial records should not be responsible for this assessment.
- Prescription Records
  - Current language applies only to lens prescriptions.
  - Recommended language makes the language applicable to both lens and medication prescriptions.
- Recommended Discipline Based on Violation
  - Current language includes required probation terms that may not relate to the violation. For example, a licensee who was placed on probation for excessively prescribing hydrocodone is currently required to take a Medical Record Keeping course. A Board approved course (e.g., PACE) is typically two days and costs roughly \$1,300. However, the licensee may not have had any issues with record keeping.
  - Recommended language updates “Required” and “If Warranted” conditions to better fit the violation(s).

The updated Disciplinary Guidelines were scheduled to be presented to the full Board at its August 3, 2018 quarterly meeting. After discussion, it was decided to suspend review of the guidelines pending the update to the Uniform Standards for Substance Abusing Licensees by the Department of Consumer Affairs. Those changes have been made to the guidelines, and staff is requesting that the CPC motion to accept the draft Disciplinary Guidelines and vote to move them to the full Board for adoption.

### Attachment

1. Draft Disciplinary Guidelines



**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE**  
**&**  
**DISCIPLINARY GUIDELINES**

**(DG 4, 05-2012)**  
**(Rev 09-2019)**

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

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optometry@dca.ca.gov

*This text will be removed before rulemaking submission. Yellow highlights: changes made by CPC prior to 2019; blue highlights: changes made by enforcement department; green highlights: changes made by staff in 2019*



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**Commented [JM1]:** Non substantive change: page numbers will update when text is finalized

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## INTRODUCTION

The California State Board of Optometry's (hereafter Board) mission is to 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 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 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. The Board's disciplinary guidelines 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.

Commented [JM2]: Added for clarity

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.

**Commented [JM3]:** Global change: he/her to their/they. complies with current law requiring gender neutrality

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. 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 2019** 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 their** 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" ~~(DC-4, 5-2012)~~ (Rev 09-2019) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; Uniform Standards shall 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 they have** 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.

## VI. LICENSED SUPERVISION DURING PRACTICE

A board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor approved by the board.

Commented [KC4]: This addition was made by the SACC

## 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~~ they 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.

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

Licensees 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, any alternative to the licensee's drug testing location(s) requirements (including frequency) must be approved by the Board.

Commented [KC5]: These changes were made by the SACC

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**

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~~ **they have** 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**

The following introductory language is to be included in decisions that include Disciplinary Orders:

Commented [JM6]: Added for clarity

#### **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 LICENSEE 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.

### **MODEL APPLICANT PROBATIONARY ORDERS**

Commented [JM7]: Added header for clarity of purpose of the section



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

**Commented [JM8]:** Removal clarifies purpose of section

#### ~~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:

**Commented [JM9]:** Removed to be consistent with header

#### ~~MODEL REINSTATEMENT PROBATIONARY ORDERS Reinstatement of licensure with conditions of probation:~~

**Commented [JM10]:** Added header for clarity of purpose of section

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

**Commented [JM11]:** Added for clarity

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.

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 in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in ~~his/her their~~ 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. 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 determined by the Board or its designee, 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.~~

Commented [KC12]: Provides more discretion for due dates

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 they~~ have has a question or concern regarding ~~his/her their~~ 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.

#### **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 they~~ shall be required, instead, to submit an explanation of why ~~he/she they are~~ is unable to submit the costs, and the date(s) ~~he/she they~~ 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 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**

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of ~~his/her their~~ 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 authorizes the Board and the employers and supervisors to communicate regarding the licensee'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 their** employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing **his/her their** 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 they are 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 their** 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 their** 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 they** shall be required instead to submit an explanation of why **he/she they are is** unable to submit these costs in part or in entirety, and the date(s) **he/she they** 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 or professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of \_\_\_\_\_ (Ex: 20) 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 for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her their license 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 their return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license 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 SURRENDER**

During Respondent's term of probation, if **he/she they** ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender **his/her their** 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 shall be fully restored.

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

If Respondent sells or closes **his or her their** 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 determined by the Board or its designee, 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.~~

Commented [KC13]: Provide Board discretion as to due dates

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

1. the Respondent's name;
2. license 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 dependent** 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 their** 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-the** 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 they** 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 their** 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 they are 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/their probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and his/her/their 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 Practice~~ 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 their~~ 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 their~~ practice of Optometry. The notice described above shall be **submitted to the Board for approval approved by the Board** within 30 calendar days of the effective date of this decision **and shall be approved by the Board prior to posting.**

Commented [JM14]: ck – language changed for clarity

### **21. ALCOHOL AND DRUG TREATMENT**

Respondent, at ~~his/her their~~ 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 they~~ 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** **their** 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 Practice 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 practice** 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 practice** monitor. The **worksite practice** monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The **worksite practice** monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The **worksite practice** 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 practice** monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's **worksite practice** monitor be an employee of the licensee. **The practice monitor shall be contracted by the Board as an Expert Witness.** Any cost for such monitoring shall be ~~paid by Respondent~~ added to the total Probation Monitoring Reimbursement costs paid by Respondent.

**Commented [JM15]:** change to practice monitor, as the term more accurately describes the role of the monitor

The Board or its designee shall provide the approved **worksite practice** 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 practice** monitor shall sign an affirmation that ~~he or she has~~ **they have** reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of **worksite practice** monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the **worksite practice** monitor disagrees with the proposed monitoring plan, the **worksite practice** monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

**Commented [KC16]:** Board will contract with monitor as an expert witness, will add costs to probation monitoring reimbursement

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 practice** monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the **worksite practice** 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 **practice** 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 practice** monitor is approved to provide worksite monitoring responsibility.

The **worksite practice** 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.
- d) **Immediately report any significant departure from the standard of care or violation of the Optometry Practice Act.**

The Respondent shall complete the required consent forms and sign an agreement with the **worksite practice** 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 determined by the Board or its designee. 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 dependent** 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.

**Commented [JM17]:** Added for additional consumer protection with oversight by board and allows for immediate response if violated

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

If the practice 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 practice 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 practice 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 practice 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 they are 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 determined by the Board or its designee, 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~~ **dependent** 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 their** 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.~~

**Commented [JM18]:** ck – language changed for consistency in limiting probationer's ability to supervise others during probation

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 **duly licensed** psychotherapist or counselor of Respondent's choice. Upon approval, Respondent shall

**Commented [JM19]:** clarity

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 determined by the Board or its designee. ~~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~~ dependent 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 their 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/their 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 and only upon the recommendation of the treating psychiatrist, psychologist or other licensed

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 determined by the Board or its designee, 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~~ **dependent** 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 their** 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 and upon recommendation from the treating physician. 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 determined by the Board or its designee. ~~as follows:~~

**Commented [JM21]:** CK - Language added for clarity and consistency

- ~~• 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 dependent 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 their 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 **and upon the recommendation of the treating physician.** 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 determined by the Board or its designee. as follows:**

**Commented [JM22]:** CK – language added for clarity and consistency

- ~~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 dependent** 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 their** 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~~ **they have** 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 determined by the Board or its designee 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. 8. recommendation dependant dependent on Respondent's audit results and compliance with this condition on whether to continue with current audit plan or modify the plan;
11. 9. other relevant information deemed necessary by the auditor, or the Board.

**Commented [KC23]:** Non-substantive change: number strikeouts are a formatting issue

**Commented [JM24]:** CK – inappropriate use of a billing monitor

Respondent is ultimately responsible for ensuring his/her their 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. lens or drug prescribed, including dose and duration, as applicable
- 3-4. price of the services and goods involved in the prescription;
- 4-5. visual impairment identified for which the prescription was furnished.

**Commented [JM25]:** CK – term updated so that it can be used for both lens and medication prescriptions

**Commented [JM26]:** Allows more oversight by the Board

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 **providing the following procedures or courses of treatment:** \_\_\_\_\_ practicing \_\_\_\_\_ (Ex. Specified optometric procedures).

Commented [KC27]: For clarity of purpose

#### **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.

**Commented [KC28]:** Add a table of contents, styled like the conditions sections, give each violation a letter designation

- A. Excessive Prescribing or Treatment (B&P Code sec. 725, 3100(n); 3110(o)).**
- B. Violation of Prescription Standards: Information Required (B&P Code sec. 3025.5; 3041; Title 16 CCR sec. 1565)**
- C. Sexual Misconduct (B&P Code sec. 726)**
- D. Mental or Physical Fitness (B&P Code sec. 820)**
- E. Gross Negligence (B&P Code sec. 3110 (b); Title 16 CCR sec. 1510)**
- F. Failure to Refer Patient (B&P Code sec. 3110(y); 3041)**
- G. Violation of Quality Standards for Prescription Ophthalmic Devices (B&P Code sec. 2541.3; Title 16 CCR sec. 1519)**
- H. Violation of Health and Safety Standards (B&P Code sec. 3025.5; Title 16 CCR sec. 1520)**
- I. Failure to Follow Infection Control Guidelines (B&P Code sec. 3110(w); Title 16 CCR sec. 1520)**
- J. Violations Regarding Topical Pharmaceutical Agents (B&P Code sec. 3041.2; Title 16 CCR sec. 1560; 1561; 1562; 1563)**
- K. Fraud, Misrepresentation or Dishonesty (B&P Code sec. 810; 3101; 3110 (e))**
- L. Procuring a License by Fraud (B&P Code sec. 123; 496; 3110(i))**
- M. Practicing without Valid License (B&P Code sec. 3110(s); 3110(i))**
- N. Using Controlled Substances or Alcohol (B&P Code sec. 3110 (l))**
- O. Employing Suspended or Unlicensed Optometrist (B&P Code sec. 3110 (t); 3106)**
- P. Permitting Another to Use License (B&P Code sec. 3110 (u); 3106)**
- Q. Accepting Employment By Unlicensed Person (B&P Code sec. 3109)**
- R. Unlawful Location for Practice (B&P Code sec. 3070; 3075; 3076; 3077; Title 16 CCR sec. 1505; 1506; 1507)**
- S. Deceptive Advertising (B&P Code sec 651; 651.3; 3099 ; 3100; 3102; 3103; 3110(g); 17500; Title 16 CCR sec. 1512; 1513; 1514; 1515)**
- T. Prohibited Arrangements by Optometrists (B&P Code sec 655; Title 16 CCR sec. 1514)**
- U. Advertising While Not Holding Valid License (B&P Code sec. 3101)**
- V. Misuse of Professional Titles or Abbreviations (B&P Code sec. 3098; Title 16 CCR sec. 1512)**
- W. Unlawful Solicitation (B&P Code sec. 3097)**
- X. Unlawful Referrals (B&P Code sec. 650; 650.01)**
- Y. Employing Cappers or Steerers (B&P Code sec. 3104)**
- Z. Criminal Conviction (B&P Code sec. 3094; 3107; Title 16 CCR sec. 1517)**



- AA. Fictitious Name Violation (B&P Code sec. 3078; Title 16 CCR sec. 1513; 1518)
- BB. Violation of Probation
- CC. 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)
- DD. Fraudulently Altering Medical Records (B&P Code sec. 3105)
- EE. False Representation of Fact (B&P Code sec. 3106)
- FF. Violating or abetting violation of any section of Optometry Practice Act (B&P Code sec. 3110 and/or sec. 3110(a))
- GG. Repeated Negligent Acts (B&P Code sec. 3110 (c))
- HH. Incompetence (B&P Code sec. 3110 (d))
- II. Conduct Warranting License Denial (B&P Code sec. 3110 (f))
- JJ. License Discipline by Other State or Agency (B&P Code sec. 3110 (h))
- KK. Making False Statement on Application (B&P Code sec. 3110 (i))
- LL. Prescribing, Furnishing, or Administering Drugs without Good Faith Examination (B&P Code sec. 3110 (p))
- MM. Failure to Maintain Adequate Records (B&P Code sec. 3110 (g))
- NN. Altering or Using Altered License (B&P Code sec. 3110 (v))
- OO. Professional Services Beyond the Scope of the License (B&P Code sec. 3110 (r))
- PP. Failure to Comply with Patient Records Request (B&P Code sec. 3110 (x))
- QQ. Use of Fraudulently issued, counterfeited, etc., Certificate (B&P Code 3107)

**Commented [JM29]:** Ck – changed to mirror false representation of fact as the violations are similar and frequently charged together

**A. 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
- 39. ~~Medical Record Keeping Course~~
- 38. Continuing Education

**Commented [JM30]:** Ck -Updated to reflect new term language

**Commented [JM31]:** CK – not directly related to violation

**If Warranted:**

- ~~25. Suspension of 30 days or more~~
- 20. Notice to Patients
- 22. Worksite Monitor
- 24. Remedial Education
- 25. Suspension
- 38. Continuing Education
- 31. Restitution
- 39. Medical Record Keeping Course

**Commented [JM32]:** CK – provides opportunity for increased knowledge base

**Commented [JM33]:** CK – removed the 30 day minimum for more discretion

**Commented [JM34]:** Moved to “if warranted” for discretion, not always related to violation

**B. 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. ~~Prescriptions~~ - Maintain Records
- 38. Continuing Education
- 39. ~~Medical Record Keeping Course~~

**Commented [JM35]:** CK – updated to reflect new language

**Commented [JM36]:** CK – provides opportunity for increased knowledge base

**If Warranted:**

~~25. Suspension of 30 days or more~~

~~22. Worksite Monitor~~

~~24. Remedial Education~~

~~25. Suspension~~

~~38. Continuing Education~~

~~39. Medical Record Keeping Course~~

**Commented [JM37]:** CK – removed 30-day minimum for more discretion

**Commented [JM38]:** CK - Moved to if warranted for discretion. Not always related to the violation.

**Commented [JM39]:** Duplicative. Question – who made this change and why?

~~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~~

**E. Sexual Misconduct (B&P Code sec. 726, [redacted])**

**Maximum Discipline: Revocation and Cost Recovery**

**Minimum Discipline: Revocation**

**F. 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

23. Direct Supervision

25. Suspension

27. Psychotherapy or Counseling Program

30. Medical Treatment

28. Mental Health Evaluation

**Commented [JM40]:** Ck – helps ensure practice on daily basis

**Commented [JM41]:** Ck Provides time to ensure safe practice

**Commented [JM42]:** Ck Directly related to the charge

**Commented [JM43]:** Ck Directly related to the charge

**Commented [JM44]:** Ck - In most cases, Respondent will have already completed a mental health evaluation

**If Warranted:**

25. Suspension

20. Notice to Patients

34. Restricted Practice

22. Worksite Monitor

28. Mental Health Evaluation

29. Medical Evaluation

30. Medical Treatment

**Commented [JM45]:** CK -May be appropriate in some cases for consumer protection

**Commented [JM46]:** CK - For those cases where Respondent has not already completed a mental health evaluation, this was added to “if warranted”

**G. 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

22. Worksite Monitor

24. Remedial Education

25. Suspension

22. Worksite Monitor

**If Warranted:**

20. Notice to Patients

23. Direct Supervision

25. Suspension of 30 days or more

26. Employment Limitations

31. Restitution

34. Restricted Practice

36. Restrictions on Advertisements

37. Take and Pass NBEQ Exam

38. Continuing Education

39. Medical Record Keeping Course

**Commented [JM47]:** CK – may be appropriate in some cases for consumer protection

**Commented [JM48]:** CK – removed for more discretion

**Commented [JM49]:** Ck - Provides opportunity for increasing knowledge base in subjects directly related to the charge

**F. 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

22. Worksite Monitor

38. Continuing Education

**If Warranted:**

20. Notice to Patients

23. Direct Supervision

24. Remedial Education

34. Restricted Practice

25. Suspension of 30 days or more

22. Worksite Monitor

26. Employment Limitations

33. Prescriptions – Maintain Records

34. Restricted Practice

39. Medical Record Keeping Course

**Commented [JM50]:** Ck – helps ensure practice on daily basis

**Commented [JM51]:** Ck – removed for more discretion

**Commented [JM52]:** Ck - Allows the opportunity to verify that Respondent is not over-prescribing instead of referring patients

**G. 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

33. Prescriptions – Maintain Records

38. Continuing Education

24. Remedial Education

**If Warranted:**

34. Restricted Practice

22. Worksite Monitor

25. Suspension of 30 days or more

22. Worksite Monitor

**Commented [JM53]:** Ck – allows change to verify quality of dispensed prescriptions

**Commented [JM54]:** Ck – opportunity to increase knowledge base

**Commented [JM55]:** Ck – cumbersome to complete than CE; not appropriate to this violation

**Commented [JM56]:** Ck – allows more discretion

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

**H. 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
- 37. Take and Pass NBEO Exam – Part III Clinical Skills Exam
- 38. Continuing Education

**If Warranted:**

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

**Commented [JM57]:** CK – provides opportunity to assess clinical skills

**Commented [JM58]:** Ck – removed – more discretion

**I. Failure to Follow Infection Control Guidelines** (B&P Code sec. 3110(w); Title 16 CCR sec. 1520)

**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:**

- 20. Notice to Patients
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension

**J. 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
- 33. Prescriptions – Maintain Records
- 38. Continuing Education

**If Warranted:**

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

**Commented [JM59]:** CK – opportunity to verify pharmaceutical prescriptions

**Commented [JM60]:** Ck – for more discretion

**Commented [JM61]:** Ck – may be warranted where record keeping is an issue

**K. 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:**

- 20. Notice to Patients**
- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension of 30 days or more
- 26. Employment Limitations
- 31. Restitution
- 33. Prescriptions – Maintain Records**
- 36. Restrictions on Advertisements
- 38. Continuing Education

**Commented [JM62]:** Ck – allows for more discretion

**Commented [JM63]:** Ck – may be warranted where record keeping is an issue

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

**Maximum Discipline:** Denial or Revocation

**Minimum Discipline:** Denial or Revocation

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

**Maximum Discipline:** Revocation and Cost Recovery

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

**Required:**

- 1-16. Standard Conditions
- 25. Suspension**

**If Warranted:**

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

**Commented [JM64]:** Moved to Required due to the severity of the violation. Removed the 30-day minimum for more discretion

**Commented [JM65]:** As warranted – for discussion

**N. 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:**

- 19. Participate in Group Support Meeting**
- 20. Notice to Patients**
- 21. Alcohol and Drug Treatment
- 25. Suspension of 30 days or more**
- 22. Worksite Monitor
- 22. Direct Supervision
- 25. Suspension**
- 34. Restricted Practice**

**Commented [JM66]:** CK – directly related to violation

**Commented [JM67]:** CK- removed 30 day minimum for more discretion

- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 29. Medical Health Evaluation
- 30. Medical Treatment
- 34. Restricted Practice
- 38. Continuing Education

**O. 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
- 25. Suspension

**If Warranted:**

- 35. Restrictions on Branch Offices
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 34. Restricted Practice
- 26. Employment Limitations
- 34. Restricted Practice
- 35. Restrictions on Branch Offices
- 38. Continuing Education

**Commented [JM68]:** CK - Moved to Required due to the severity of the violation. Removed the 30-day minimum for more discretion

**P. 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
- 25. Suspension

**If Warranted:**

- 22. Worksite Monitor
- 26. Employment Limitations
- 34. Restricted Practice
- 35. Restrictions on Branch Offices
- 38. Continuing Education

**Commented [KC69]:** Moved to Required due to the severity of the violation. Removed the 30-day minimum for more discretion

**Commented [KC70]:** Provides opportunity for more direct supervision

**Commented [KC71]:** Allows limitations on employment settings when appropriate

**Commented [KC72]:** Allows restrictions on specific procedures when appropriate

**Commented [KC73]:** Allows restrictions on branch offices when appropriate

**Commented [KC74]:** Moved to "if warranted" for discretion

**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

**Q. 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~~

~~22. Worksite Monitor~~

25. Suspension of 30 days or more

26. Employment Limitations

~~22. Worksite Monitor~~

34. Restricted Practice

35. Restrictions on Branch Operations

36. Restrictions as to Advertisements

38. Containing Education

Commented [JM75]: Ck – removed 30 day for more discretion

Commented [JM76]: Ck – allows restrictions on branch offices where appropriate

Commented [JM77]: CK – allows board oversight of advertisements

Commented [JM78]: Ck – moved to if warranted for discretion

**R. 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

36. Restrictions on Advertisements

**If Warranted:**

20. Notice to Patients

25. Suspension of 30 days or more

~~36. Restrictions on Advertisements~~

Commented [JM79]: Ck – allows oversight of advertisements – directly related to violation

Commented [JM80]: Ck – removed 30 day for more discretion

**S. 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:**

22. Worksite Monitor

25. Suspension of 30 days or more

26. Employment Limitations

34. Restricted Practice

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

Commented [JM81]: Ck – provides opportunity for more discretion

Commented [JM82]: Ck - Allows for limitations on employment settings when appropriate. Directly related to the violation.

Commented [JM83]: Ck - Allows restrictions on specific procedures when appropriate

Commented [JM84]: Ck – allows restrictions on branch offices when appropriate

Commented [JM85]: Ck – moved to if warranted for discretion

**T. 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

36. Restrictions on Advertisements

~~38. Continuing Education~~

Commented [JM86]: Ck – allows oversight of advertisements – directly related to violation

**If Warranted:**

- 22. Worksite Monitor
- 25. Suspension of 30 days or more
- 26. Employment Limitations
- 34. Restricted Practice
- 36. Restrictions on Advertisements

**Commented [JM87]:** Ck – provides opportunity for more discretion

**Commented [JM88]:** Ck - Allows for limitations on employment settings when appropriate. Directly related to the violation.

**Commented [JM89]:** Ck - Allows restrictions on specific procedures when appropriate

**U. 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  
Revocation, 3-5 years' probation

**Required:**

- 1-16. Standard Conditions
- 36. Restrictions on Advertisements

**Commented [JM90]:** Ck – changed for consistency with other violations

38. Continuing Education

**If Warranted:**

- 25. Suspension of 30 days or more
- 26. Employment Limitations
- 34. Restricted Practice
- 36. Restrictions on Advertisements
- 38. Continuing Education

**Commented [JM91]:** Ck – allows oversight of advertisements – directly related to violation

**Commented [JM92]:** Ck - Allows for limitations on employment settings when appropriate. Directly related to the violation.

**Commented [JM93]:** Ck - Allows restrictions on specific procedures when appropriate

**Commented [JM94]:** Ck – moved to if warranted for discretion

**V. 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
- 36. Restrictions on Advertisements
- 38. Continuing Education

**Commented [JM95]:** Ck – allows oversight of advertisements – directly related to violation

**If Warranted:**

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

**Commented [JM96]:** Ck – moved to if warranted for discretion

**W. 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:**

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

**Commented [JM97]:** Ck - discretion



**X. 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

25. Suspension

34. Restricted practice

36. Restrictions on Advertisements

38. Continuing Education

**Commented [JM98]:** Ck – removed the 30 day minimum for more discretion

**Commented [JM99]:** Ck - discretion

**Y. 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:**

17-18. Standard Drug/Alcohol Conditions

22. Worksite Monitor

24. Remedial Education

26. Employment Limitations

27. Mental Health Evaluation

28. Medical Health Evaluation

34. Restricted practice

38. Continuing Education

**Commented [JM100]:** Ck – this violation can be related to a substance abuse conviction

**Commented [JM101]:** Ck - Allows for limitations on employment settings when appropriate.

**Commented [JM102]:** Ck – may be appropriate depending on circumstances of violation

**Commented [JM103]:** Ck – may be appropriate depending on circumstances of violation

**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

36. Restrictions on Advertisements

**If Warranted:**

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

**Commented [JM104]:** Ck – allows oversight of advertisements – directly related to violation

**Commented [JM105]:** Ck – allows restrictions on branch offices when appropriate

**Commented [JM106]:** Ck - discretion

**AA. Violation of Probation**

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

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

**Commented [JM107]:** The stayed discipline is not always revocation, adding revocation here gives us the authority to revoke a license for probation violations

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.

**BB. 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:**

22. Worksite Monitor

24. Remedial Education Course for corporate principals involved

25. Suspension of 30 days or more

26. Employment Limitations

31. Restitution

34. Restricted practice

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

**Commented [JM108]:** More discretion

**Commented [JM109]:** Ck - Allows for limitations on employment settings when appropriate.

**Commented [JM110]:** Ck - allows restrictions on branch offices when appropriate

**CC. 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

26. Employment Limitations

32. Audit Required

34. Restricted Practice

38. Continuing Education

**Commented [JM111]:** Ck - Allows for limitations on employment settings when appropriate.

**Commented [JM112]:** Ck - allows restriction on specific procedutres when appropriate

**Commented [JM113]:** Ck - discretion

**DD. 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

32. Audit Required

39. Medical Record Keeping Course

**If Warranted:**

22. Worksite Monitor

23. Direct Supervision

24. Remedial Education

25. Suspension

26. Employment Limitations

31. Restitution

32. Audit Required

**Commented [JM114]:** Ck - moved to required to provide more complete oversight

**Commented [JM115]:** Ck - required

**Commented [JM116]:** Ck - provides opportunity for more direct supervision

- 33. Prescriptions – Maintain Records
- 34. Restricted Practice
- 35. Restrictions on Branch Offices
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

**Commented [JM117]:** Ck – provides opportunity to verify prescription

**Commented [JM118]:** Question – why removing this from 2012 version?

**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

**Commented [JM119]:** Ck – suggest removal as 3110 without a subsection is not necessarily a violation

**EE. Violating or abetting violation of any section of Optometry Practice Act (B&P Code sec. 3110 and/or 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:**
  - 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

**Commented [JM120]:** Ck - This can be used in conjunction with any other violation, so we added all of the probation terms as "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

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

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum Discipline:** ~~Revocation and Cost Recovery~~ 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
- 33. Prescriptions – Maintain Records
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

**Commented [KC121]:** Probation terms added for discretion

**GG. 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:**

- 20. Notice to Patients
- 22. Worksite Monitor
- 33. Prescriptions – Maintain Records
- 37. Take and Pass NBEO Exam
- 38. Continuing Education
- 39. Medical Record Keeping Course

**Commented [KC122]:** Provides direct consumer protection through patient notice

**Commented [KC123]:** Can be cumbersome, not always warranted. Moved from "required" to "if warranted"

**Commented [KC124]:** Provides opportunity for review of prescriptions

**Commented [JM125]:** Ck – provides opportunity for increased knowledge base

**HH. 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

19. Participate in Group Support Meeting

20. Notice to Patients

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

29. Medical Health Evaluation

30. Medical Treatment

31. Restitution

32. Audit Required

33. Lens Prescription – Maintain Records

34. Restricted Practice

35. Restrictions as to Branch Offices

36. Restrictions on Advertisements

37. Take and Pass NBEO Exam

38. Continuing Education

39. Medical Record Keeping Course

**II. 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

19. Participate in Group Support Meeting

20. Notice to Patients

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

29. Medical Health Evaluation

30. Medical Treatment

31. Restitution

32. Audit Required

33. Lens Prescription – Maintain Records

34. Restricted Practice

**Commented [JM126]:** Ck – could be related to any violation, so all optional terms moved into if warranted

**35. Restrictions as to Branch Offices**

- 36. Restrictions on Advertisements
- 37. Take and Pass NBEO Exam
- 38. Continuing Education
- 39. Medical Record Keeping Course

**Commented [JM127]:** Question - "as to" or "on" advertisements?

**JJ. 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
- 24. Remedial Education**
- 32. Audit Required**
- 39. Medical Record Keeping Course

**If Warranted:**

- 22. Worksite Monitor
- 23. Direct Supervision**
- ~~24. Remedial Education~~
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution**
- 33. Prescriptions – Maintain Records**
- 36. Restrictions on Advertisements**
- 38. Continuing Education

**Commented [JM128]:** Ck – changed to mirror false representation of fact as the violations are similar and frequently charged together

**KK. 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
- 33. Prescriptions – Maintain Records**
- ~~38. Continuing Education~~

**If Warranted:**

- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 26. Employment Limitations**
- 34. Restricted Practice**
- 37. Take and Pass NBEO Exams**
- ~~38. Continuing Education~~
- 39. Medical Record Keeping Course

**Commented [JM129]:** Ck – cumbersome that is not appropriate as a requirement

**Commented [JM130]:** Ck – provides opportunity to review and verify scripts

**Commented [JM131]:** Ck- Moved to "required" to replace remedial education in providing the opportunity to increase knowledge base

**Commented [JM132]:** Ck – allows limitations on employment when approp

**Commented [JM133]:** Ck – allows limits on specific procedures

**Commented [JM134]:** Ck – opportunity to verify clinical skills

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

**Maximum Discipline:** Revocation and Cost Recovery

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

**Required:**

- 1-16. Standard Conditions

**33. Prescriptions – Maintain Records**

39. Medical Record Keeping Course

**If Warranted:**

- 22. Worksite Monitor
- 24. Remedial Education
- 25. Suspension

**26. Employment Limitations**

32. Audit Required

**34. Restricted Practice**

38. Continuing Education

**Commented [JM135]:** Ck – provides opportunity to review and verify scripts

**Commented [JM136]:** Ck – allows limitations on employment when approp

**Commented [JM137]:** Ck – allows limits on specific procedures

**MM. 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**

**26. Employment Limitations**

**34. Restricted Practice**

38. Continuing Education

**Commented [JM138]:** Ck – allows limitations on employment when approp

**Commented [JM139]:** Ck – allows limits on specific procedures

**NN. 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

**23. Direct Supervision**

24. Remedial Education

25. Suspension

26. Employment Limitations

**34. Restricted Practice**

**37. Take and Pass NBEO Exams**

38. Continuing Education

**Commented [JM140]:** Ck – provides direct supervision

**Commented [JM141]:** Ck – allows limits on specific procedures

**Commented [JM142]:** Ck – opportunity to verify clinical skills

**OO. 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

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

**Maximum Discipline:** Revocation and Cost Recovery

**Minimum 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

**Commented [JM143]:** Ck- given the severity of the violation, did not feel probation terms were appropriate

**QQ. CE Audit Failure (BPC 3110(i))**

**Maximum discipline:** Revocation and Cost Recovery

**Minimum discipline:** 1-3 years probation including actual suspension until CE compliance verified.

**Required:**

1-16. Standard terms

25. Suspension

38. Continuing Education

**If Warranted:**

22. Practice Monitor

23. Direct Supervision

26. Employment Limitations

32 Audit Required

34. Restricted Practice

39. medical record keeping course

**Commented [JM144]:** Added per CPC request



## **2019 Update of Optometry Board Disciplinary Guidelines**

### **Proposed Text**

#### **Amend Section 1575 of Article 12 of Division 15 of Title 16 of the California Code of Regulations**

#### **§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~~) (Rev 09-2019) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; Uniform Standards shall 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.