



Physical Therapy Board of California

BOARD MEMBER **ADMINISTRATIVE MANUAL** PHYSICAL THERAPY BOARD OF CALIFORNIA

JUNE 2019



PHYSICAL THERAPY BOARD OF CALIFORNIA

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This manual is a general reference including laws, regulations, and basic Board policies to guide the actions of Board members to ensure Board effectiveness and efficiency.

This administrative procedure manual, regarding Board policy, can be amended by a majority of affirmative votes of any current or future Board. The Board authorizes authority to staff to make nonsubstantive changes as necessary.¹

¹ Was first authorized in May 2014 and reauthorized at the June 2019 Board Meeting.

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CHAPTER 1. INTRODUCTION

Acronyms/Definitions

ALJ	Administrative Law Judge
BPC	Business and Professions Code
CPS	Consumer Protection Services
CCR	California Code of Regulations
DOI	Division of Investigation
DCA	Department of Consumer Affairs
GC	Government Code
Board	Physical Therapy Board of California
SAM	State Administrative Manual

Mission Statement

The mission of the Physical Therapy Board of California is to advance and protect the interests of the people of California by the effective administration of the *Physical Therapy Practice Act*.

Overview

In 1953, the Physical Therapy Examining Committee was created by Chapter 1823, Statutes of 1953 (AB 1001). While the name has been changed to the Physical Therapy Board of California (Board), the charge to the Board by the Legislature has always been to protect the public from incompetent, unprofessional and criminal acts during the provision of physical therapy. The Board is one of over 40 regulatory entities that exist under the organizational structure of the Department of Consumer Affairs (DCA). The Board has a close and cooperative relationship with DCA.

BPC § 2603

The Board consists of seven members, four licensed physical therapists, and three public members, who serve a maximum of two four-year terms. The governor appoints the four licensed physical therapists and one public member, and the Senate Rules Committee and the speaker of the Assembly each appoint one public member.

The Board appoints an executive officer as its administrator who oversees the Board's staff and ensures all of its programs function efficiently and effectively.

The Board is primarily funded through license and application fees; therefore, the Board does not receive appropriations from the General Fund.

General Rules of Conduct (Board Policy)

Board members shall not speak to interested parties (such as vendors, lobbyists, legislators, or other governmental entities) on behalf of the Board or act for the Board without proper authorization.

Board members shall maintain confidentiality of information received in closed session.

Board members shall commit time to prepare for Board meeting responsibilities. This includes reviewing Board meeting minutes, administrative cases, and any other materials provided to the Board members by staff that are related to official Board business.

Board members shall respect and recognize the equal role and responsibilities of all Board members, whether public or professional.

Board members shall treat all applicants and licensees in a fair and impartial manner.

Board members' actions shall uphold the Board's primary mission—protection of the public.

Board members shall not use their positions on the Board for political, personal, familial, or financial gain. Any employment subsequent to employment as a Board member shall be consistent with the Department of Consumer Affairs, Policy on Incompatible Work Activities, OHR 14-01.

All Board members shall act in accordance with their oath of office, and shall conduct themselves in a courteous, professional, nonpartisan, unbiased, and ethical manner at all times.

CHAPTER 2. BOARD MEETING PROCEDURES

Frequency of Meetings (BPC § 2611)

The Board shall meet at least three times each calendar year, meeting at least once in Northern California and once in Southern California.

(Bagley-Keene Open Meeting Act)

Special meetings of the Board may be held at such times and locations as the Board deems necessary.

Due notice of each meeting and the time and place thereof shall be given in the manner provided by law.

Board Member Attendance at Board Meetings (Board Policy and BPC § 106)

Board members shall attend each meeting of the Board. If a member is unable to attend, he or she must contact the Board president and ask to be excused from the meeting for a specific reason.

The governor has the power to remove from office any member appointed by him for continued neglect of duties, which may include unexcused absences from meetings.

Board members shall attend the entire meeting and allow sufficient time to conduct all Board business at each meeting.

Public Attendance at Board Meetings (Gov. Code § 11120 et seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act. This law governs meetings of state regulatory boards and meetings of committees or task forces of those boards where the committee consists of more than two members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included on the agenda. However, according to the Bagley-Keene Open Meeting Act, "While the body cannot act on any matter not included on the agenda, it can schedule issues raised by the public for consideration at future meetings."

If the agenda contains matters which are appropriate for closed session, the agenda must cite the particular statutory section and subdivision authorizing the closed session.

CHAPTER 2. BOARD MEETING PROCEDURES

Quorum (BPC § 2611)

Four members of the Board shall constitute a quorum for the transaction of business.

The concurrence of a majority of those members of the Board present and voting at a duly noticed meeting at which a quorum is present shall be necessary to constitute an act or decision of the Board.

Agenda Items (Board Policy)

Any Board member may submit items for a meeting agenda during the “Future Agenda Items” section of a Board meeting or directly to the executive officer no less than 30 days prior to the meeting with the approval of the Board president or chair of the committee or task force.

The public may submit an item for consideration for a future meeting agenda. The item shall be submitted no less than 30 days prior to the meeting and must be approved by the Board president to be added to a future meeting agenda.

Notice of Meetings (Gov. Code § 11125 et seq.)

In accordance with the Open Meeting Act, meeting notices (including agendas for Board, committee, or task force meetings) shall be sent to persons on the Board’s mailing list at least 10 calendar days in advance. The notice shall include the name, work address, email address, and work phone number of a staff person who can provide further information prior to the meeting.

Notice of Meetings to be Posted on the Internet (Gov. Code § 11125 et seq.)

Notice shall be given and also made available on the internet at least 10 days in advance of the meeting and shall include the name, address, and phone number of any person who can further provide information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the internet site where notices required by this article are made available.

CHAPTER 2. BOARD MEETING PROCEDURES

Record of Meetings (Gov. Code § 111261)

The Board and each committee or task force shall keep an official record of all their proceedings. The minutes are a summary, not a transcript, of each Board, committee, or task force meeting. They shall be prepared by staff and submitted to members for review before the next meeting. Minutes shall be submitted for approval at the next scheduled meeting of the Board, committee, or task force. When approved, the minutes shall serve as the official record of the meeting.

Electronic Recording (Board Policy)

The meeting may be electronically recorded, whether by video or audio. Electronic recordings will be disposed of upon approval of the minutes in accordance with the Board's record retention schedule.

(Gov.Code § 11124.1 (b))

Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the *California Public Records Act* (Chapter 3.5 (commencing with section 6250) of Division 7 of title 1) (hereafter *Public Records Act*), but may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

Meeting Rules (Board Policy)

The Board will use *Robert's Rules of Order*, to the extent that it does not conflict with state law (e.g., the Bagley-Keene Open Meeting Act), as a guide when conducting its meetings.

Public Comment (Bagley-Keene Open Meeting Act & Board Policy) (Continued on page 12)

Public comment is always encouraged and allowed; however, if time constraints mandate, the comments made by each person may be limited to a time specified by the Board president.

Due to the need for the Board to maintain fairness and neutrality when performing their adjudicative function, the Board shall not receive any substantive information from a member of the public regarding any matter that is currently under or subject to investigation or involves a pending criminal or administrative action.

1. If, during a Board meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information, and the person shall be instructed to refrain from making such comments.

CHAPTER 2. BOARD MEETING PROCEDURES

(Continued from page 11)

Public Comment (Bagley-Keene Open Meeting Act & Board Policy)

(Gov. Code § 11125.7)

2. If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the Board will address the matter as follows:
 - a. When the allegation involves errors of procedure or protocol, the Board may designate either its executive officer or a Board employee to review whether the proper procedure or protocol was followed and to report back to the Board.
 - b. When the allegation involves significant staff misconduct, the Board may request the person to put the allegation in writing and send it to the executive officer of the Board or the director of DCA who may forward the allegation to the Division of Investigation (DOI) or California Highway Patrol for investigation.
3. The Board may deny a person the right to address the Board and have the person removed if such person becomes disruptive at the Board meeting.
4. At the discretion of the Board president or chair of the committee, speakers may be limited in the amount of time to present to give adequate time to everyone who wants to speak. In the event the number of people wishing to address the Board exceeds the allotted time, the Board president or chair of the committee may limit each speaker to a statement of his/her name, organization, and whether they support or do not support the proposed action.

CHAPTER 3. TRAVEL AND SALARY POLICIES AND PROCEDURES

Travel Approval (DCA Travel Guide)

The Board president's approval is required for all Board members for travel, except for travel to regularly scheduled Board, committee, or task force meetings to which the Board member is assigned.

Approval of Unscheduled Travel (Board Policy)

The president of the Board will be responsible for approving all unscheduled travel plans submitted by Board members and staff. Unscheduled travel plans will be submitted in writing to the executive officer, who will then seek the approval of the president.

Travel Arrangements (Board Policy)

Board members may make their own travel arrangements but are encouraged to coordinate with Board staff on travel accommodations.

Out-of-State Travel (SAM section 700 et seq.)

For approved out-of-state travel, Board members will be reimbursed for actual lodging expenses, supported by receipts, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled by and must be approved by the Governor's Office.

Travel Claims (SAM section 700 et seq. and DCA Travel Guide)

Rules governing reimbursement of travel expenses for Board members are the same as management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms or through CalATERS (California Automated Travel Expense Reimbursement System). If Board members use paper claims, Board staff maintain these forms and complete them as needed. Board members should submit their travel expense forms or information in CalATERS immediately after returning from a trip and no later than two weeks following the trip.

For the expenses to be reimbursed, Board members shall follow the procedures contained in the *DCA Travel Guide*, which are periodically disseminated by the Administrative Services manager, or his or her designee.

Salary Per Diem

(BPC §§ 103, 2606 and Board Policy)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by BPC section 103, which states:

Each such member shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties. The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money. Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, committees, or the Consumer Advisory Council on any day when the officer or employee also received compensation for his or her regular public employment.

In relevant part, this section provides for the payment of salary per diem for Board members “for each day actually spent in the discharge of official duties,” and provides that the Board member “shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.”

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board members, except for attendance at an official Board, committee, or task force unless a substantial official service is performed by the Board member. Attendance at gatherings, events, hearings, conferences, or meetings other than official Board, committee, or task force meetings, in which a substantial official service is performed, shall be approved in advance by the Board president. The executive officer shall be notified of the event and approval shall be obtained from the Board president prior to a Board member’s attendance.

Salary Per Diem

(BPC §§ 103, 2606 and Board Policy)

2. The term “day actually spent in the discharge of official duties” shall mean such time as is expended from the commencement of a Board, committee, or panel meeting to the conclusion of that meeting. When it is necessary for a Board member to leave a meeting early, the Board president shall determine if the member has provided a substantial service during the meeting, and if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses.

For Board-specified work, Board members will be compensated for work authorized by the Board president. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences. It includes preparation time for Board, committee, or task force meetings.

It is the Board’s intent that a member shall receive a per diem for the day for any work performed within the 24-hour period.

CHAPTER 4. SELECTION OF OFFICERS AND COMMITTEES

Officers of the Board (BPC § 2604)

The Board shall select a president and a vice president annually.

Election of Officers (Board Policy)

The Board shall elect the officers at the last meeting of the calendar year. Officers shall serve a term of one year beginning the next calendar year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Election of Delegates (Board Policy)

The Board shall elect delegates at the last meeting of the calendar year. Delegates shall serve a term of one year beginning the next calendar year. All delegates may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. A delegate may be re-elected and serve for more than one term.

Officer Vacancies (Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the president becomes vacant, the vice president shall assume the office of the president. Elected officers then shall serve the remainder of the term.

Committee or Task Force Appointments (Board Policy)

The Board president shall establish committees, whether standing or special, as he or she deems necessary. The composition of the committees and the appointment of the members shall be determined by the Board president in consultation with the vice president, and the executive officer. Committees may include the appointment of non-Board members.

Attendance at Committee or Task Force Meetings (Board Policy)

If a Board member wishes to attend a meeting of a committee or task force of which he or she is not a member, the Board member should notify the committee or task force chair and staff. Board members who are not members of the committee or task force that is meeting cannot vote during the committee or task force meeting and may participate only as observers if a majority of the Board is present at a committee meeting.

CHAPTER 5. BOARD ADMINISTRATION AND STAFF

Board Administration (Board Policy)

Board members should be concerned primarily with formulating decisions on Board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for Board members to become involved in the details of program delivery. Strategies for the day-to-day management of programs and staff shall be the responsibility of the executive officer. Board members should not interfere with day-to-day operations, which are under the authority of the executive officer.

Executive Officer (BPC § 2607.5)

The Board may appoint an executive officer. The executive officer is responsible for the financial operations and integrity of the Board and is the official custodian of records. The executive officer is an at-will employee, who serves at the pleasure of the Board, and may be terminated, with or without cause.

Executive Officer Evaluation (Board Policy)

Board members shall evaluate the performance of the executive officer at least on an annual basis.

Board Staff (Board Policy)

Employees of the Board, with the exception of the executive officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the executive officer. Board members shall not intervene or become involved in specific day-to-day personnel transactions.

CHAPTER 5. BOARD ADMINISTRATION AND STAFF

Experts—Consultants (Board Policy)

The Board requires special services, certain content experts, or consultants for specific projects and problems. Such services are arranged by means of state-approved contracts established in DCA policy. Consistent with state law, such individuals may not serve as members of subcommittees; nor may they function as ex officio members of the Board.

Board Budget (Board Policy)

The executive officer or the executive officer's designee will attend and testify at the legislative budget hearings and shall communicate all budget issues to the administration and Legislature.

Business Cards (Board Policy)

Business cards will be provided to each Board member with the Board's name, address, phone number, fax number, website address and email address.

Strategic Planning (Gov. Code § 11816 and Board Policy)

The Board will conduct periodic strategic planning sessions.

Projects/Approval for New Projects (Board Policy)

The Board president will be responsible for approving all new projects submitted by Board members and staff. New projects will be submitted in writing to the executive officer for perspective and feasibility.

Definition of the Positions Taken by the Physical Therapy Board Regarding Proposed Legislation (Board Policy)

The Board may adopt the following positions regarding pending or proposed legislation.

Oppose: The Board will actively oppose proposed legislation and demonstrate opposition through letters, testimony, and other action necessary to communicate the oppose position taken by the Board.

Oppose, Unless Amended: The Board will take an opposed position and actively lobby the Legislature to amend the proposed legislation.

Neutral: The Board neither supports nor opposes the addition/ amendment/repeal of the statutory provision(s) set forth by the bill.

Definitions of the Positions Taken by the Physical Therapy Board Regarding Proposed Legislation (Board Policy)

Watch: The watch position adopted by the Board will indicate concern regarding the proposed legislation. Board staff and members will closely monitor the progress of the proposed legislation and amendments.

Support, if Amended: The Board will take a supportive position and actively lobby the Legislature to amend the proposed legislation.

Support: The Board will actively support proposed legislation and demonstrate support through letter, testimony, and any other action necessary to communicate the support position taken by the Board.

The Board president has the authority to take interim positions on pending legislation on behalf of the Board, if necessary. The interim position taken by the Board president is the interim position of the Board until the next meeting of the Board at which the Board will decide to either ratify the interim position or reject it.

CHAPTER 6. ENFORCEMENT AND DISCIPLINARY ACTIONS

Priority of Complaints (Board Policy)

The Board adopted DCA's Complaint Prioritization Policy to assist staff in determining how to manage incoming complaints in light of available resources. The policy is found in Appendix A.

Investigative Staff and Services (BPC § 2634, BPC § 2607.5 and Board Policy)

The executive officer is responsible for directing the course of any investigation into the conduct of an applicant or licensee. The Board utilizes the Department's Division of Investigation for its formal investigative services.

The executive officer may determine the resources to be expended on any given case, including whether a subject matter expert should be consulted, and who may act as a subject matter expert.

Discipline and Citations (BPC § 125.9, BPC § 2660 et seq., and title 16 CCR § 13 et seq.)

The Board is authorized to take enforcement action against a licensee for any violation of the *Physical Therapy Practice Act* (Act). There are two types of license enforcement actions: 1) discipline and 2) citations.

Discipline is a formal action against the license that becomes a permanent part of the licensing record. Disciplinary actions may result in revocation of the license (and the loss of the ability to practice physical therapy) or the contingent loss of the license (a stayed revocation) with probationary conditions for a specified term.

A citation, which may be issued with or without a fine, is an enforcement tool by which the Board may address relatively minor violations of the Act that do not necessarily warrant disciplinary consequences in order to protect the public. A citation is not a disciplinary action. Citations are purged and destroyed after five years.

All enforcement actions are available to the public for as long as they exist. Both citations and discipline may be appealed and may result in a matter coming before the Board for decision.

Administrative Proceedings (BPC §§ 2608, 2614)

Unless otherwise specified in the Business and Professions Code, administrative proceedings against a license are conducted in compliance with Chapter 5 of the Administrative Procedure Act (Gov. Code, § 11500 et seq.).

An administrative proceeding refers to any action to deny, restrict, or revoke a license. The proceeding begins when the executive officer files a charging document—usually a Statement of Issues (to deny a license) or an Accusation (to restrict or revoke a license).

If the licensee fails to respond to a charging document, a default decision is prepared and submitted to Board members for vote. If the licensee and the executive officer agree to a particular enforcement outcome, a stipulation is prepared and presented to Board members for vote. If neither of the above occurs, the case is sent to a formal hearing before an administrative law judge (ALJ). After considering the evidence from the hearing (usually documents and witness testimony), the ALJ issues a proposed decision (a recommended resolution), which is then presented to Board members for vote.

Review of Decisions (Gov. Code § 11500, et seq.; BPC § 2602.1; title 16, CCR § 1399.15)

Board members, by majority vote of a quorum, must approve any decision (proposed decision, stipulation or default) before the decision becomes final and the formal discipline (penalty), if any, can take effect.

Each Board member shall thoroughly review any decision presented for vote. Each case shall be evaluated on a case-by-case basis, considering the following factors:

1. Whether the Board's highest priority, protection of the public, is affected by the decision.
2. Whether the Board's Guidelines for Issuing Citations and Imposing Discipline are satisfied or whether variation is warranted.
3. Whether the decision addresses any misconduct in a way consistent with the nature and degree of the violation.
4. Whether the standards of practice in physical therapy were used as a decision.
5. Whether community was used as a basis for reaching the decision.
6. Whether the decision may be reasonably and practically implemented.

Member Questions and Communications about Decisions

(Gov. Code § 11430.10, et seq.)

Communications with staff concerning pending proceedings, including decisions, are limited by the provisions of the Administrative Procedure Act. There are two parties to any disciplinary proceeding—the complainant (the executive officer and other staff) and the respondent (the licensee). The Board members decide the case and therefore act as judges. To avoid the fact or appearance of bias or impropriety, communications between one party (staff or the licensee) and Board members are limited.

There are two common exceptions to this restriction. First, staff may answer questions of procedure and ministerial questions (e.g., when is a vote due, when will a decision become effective).

Second, staff or the deputy attorney general may communicate about stipulated decisions—and only stipulated decisions—only to explain why the stipulated decision should be adopted.

Board members may direct questions about a decision to the Board's legal counsel, who is not involved in the investigative stage of the proceeding. Questions about permissible or impermissible communications should also be directed to legal counsel.

Proposed decisions, stipulations, and default decisions are provided to each Board member for voting. Board members may vote to adopt, reject (non-adopt) or seek to hold the case (discussed in detail below).

A 10-calendar day deadline is generally given for a mail ballot to be completed and returned to the Board's office. Board staff review the ballots and, if a decision is reached by a majority of the Board, prepare the decision for the president's signature.

When voting on a mail ballot, a Board member may wish to discuss a particular aspect of the decision before voting. If one or more members mark their ballot to "hold for discussion," the case will be scheduled for the closed session of the Board's next meeting. At the time the ballot is prepared, the Board member should record his or her concern. Recording the concern facilitates the discussion by allowing staff, if permitted to comment, and legal counsel an opportunity to prepare to respond to the concern as appropriate. Since there can also be a delay before the next meeting, it can preserve the member's memory.

Mail Ballots

(Gov. Code § 11526 and Board Policy)

Holding Disciplinary Cases for Board Meetings

(Board Policy)

CHAPTER 6. ENFORCEMENT AND DISCIPLINARY ACTIONS

Rejection (nonadoption) of a Proposed Decision (Gov. Code § 11517)

When a matter is held for closed session, Board legal counsel will be present to advise and assist the Board.

If the Board votes to reject a Proposed Decision of an ALJ, absent specific direction to the contrary from the Board, the transcript and exhibits of hearing will be ordered and it will provide an opportunity for written argument. No new evidence will be taken. The executive officer will fix the date for submission of written argument to ensure Board members have time to review any materials prior to a Board meeting.

Reconsideration (Gov. Code § 11517 and Board Policy)

The Board, on its own motion or on petition of any party, may order a reconsideration of all or part of a case at any time prior to the effective date of the decision. Board staff may grant any stay of the effective date authorized by law. If no action is taken on a petition for reconsideration prior to the effective date of the decision, the petition is deemed denied by operation of law. After ordering reconsideration, the Board may reconsider the matter, with or without taking additional evidence, or it may assign the matter to an ALJ. If oral evidence is introduced before the Board on reconsideration, no member may vote unless they have heard the evidence.

Petitions for Penalty Relief (BPC § 2661.7 and Board Policy)

If a licensee files a petition for penalty relief (for modification or termination of existing probation or reinstatement), as long as that petition meets statutory requirements, the matter will be heard by the Board members themselves at a Board meeting. Absent direction to the contrary, an ALJ sits with the members to preside over the hearing where evidence and argument are taken.

Enforcement Actions— Disclosure to the Public (Gov. Code § 6250, et seq., BPC § 125.9)

Enforcement actions, including citations and disciplinary actions, are a matter of public record and shall be provided upon request in accordance with applicable law and Department of Consumer Affairs' Guidelines for Access to Public Records. However, particular records of enforcement investigations may be exempt from disclosure to protect the confidentiality of other parties.

(Department of Consumer Affairs' Guidelines for Access to Public Records)

Disciplinary action against a license shall be disclosed to the public by means of the Board's website (through license look-up features or otherwise). It may also be disclosed through other means of communication, including direct email distribution, newsletter, or a social media service.

CHAPTER 6. ENFORCEMENT AND DISCIPLINARY ACTIONS

(Department of Consumer Affairs' Guidelines for Access to Public Records)

Whenever possible, the actual documents that resulted in the disciplinary action shall also be posted on the Board's website to facilitate consumer access. Disciplinary action documents include the charging document (Statement of Issues or Accusation) and any final decision.

Citations are posted on the Board's website. When citation records are provided to the public, and the licensee paid a fine, the record shall reflect that payment represents satisfactory resolution of the matter.

In a particular case, action by the Board itself supersedes any general Board policy set forth in this manual that is not otherwise required in law.

Policy Variation

CHAPTER 7. OTHER POLICIES AND PROCEDURES

Board Member Address

(Board Policy, Bagley-Keene
Open Meeting Act)

Board member addresses, email addresses, and phone numbers are confidential and shall not be disclosed to the public without expressed authority of the individual Board member. However, if the Board member is a licensee with the Board, his or her address of record is available to the public upon request in accordance with the Public Records Act. Also, if a teleconference is held from the home of a Board member, the address of where the teleconference occurs must be published. Board-issued email addresses are not confidential.

Board Member Written Correspondence and Mailings

(Board Policy)

All correspondence, press releases, articles, memoranda, or any other communication written by any Board member in his or her official capacity must be provided to the executive officer.

Communications: Other Organizations/Individuals/ Media

(Board Policy)

All communication relating to any Board action or policy to any individual or organization, or a representative of the media shall be made only by the Board president, his or her designee, or the executive officer. Any Board member who is contacted by any of the above should inform the Board president or executive officer.

Communication with Interested Parties

Board members are required to disclose at Board meetings all discussions and communications with interested parties regarding any item pending or likely to be pending before the Board. The Board minutes shall reflect the items disclosed by the Board members.

Ex Parte Communications

(Gov. Code § 11430.10 et seq.)

The Government Code contains provisions prohibiting ex parte communications. An “ex parte” communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

Ex Parte Communications (Gov. Code § 11430.10 et seq.)

“While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative or if an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication.”

(Board Policy)

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom a disciplinary action is being taken, will attempt to directly contact Board members.

If the communication is written, the member should read only enough to determine the nature of the communication. Once they realize it is from a person against whom an action is pending, he or she should reseal the documents and send them to the executive officer.

If a Board member receives a phone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to him or her about the matter. If the person insists on discussing the case, he or she should be told that the Board member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful ex parte communication, he or she should contact the Board’s legal counsel or executive officer.

Board Member Disciplinary Actions (Board Policy)

A member may be censured by the Board if, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner.

The president of the Board shall sit as chair of the hearing unless the censure involves the president’s own actions, in which case the vice president of the Board shall sit as president. In accordance with the Bagley-Keene Open Meeting Act, the censure hearing shall be conducted in open session.

CHAPTER 7. OTHER POLICIES AND PROCEDURES

Conflict of Interest (Gov. Code § 87100)

No Board member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any Board member who has a financial interest shall disqualify himself or herself from making or attempting to use his or her official position to influence the decision. Any Board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the executive officer or the Board's legal counsel.

Board members should refrain from attempting to influence staff regarding applications for licensure or potential disciplinary matters.

Service of Legal Documents

If a Board member is personally served as a party in any legal proceeding related to his or her capacity as Board member, he or she must contact the executive officer immediately.

Gifts from Candidates (Board Policy)

Gifts of any kind to Board members from candidates for licensure with the Board shall not be permitted.

Request for Records Access (Board Policy)

No Board member may access the file of a licensee or candidate without the executive officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the board's office.

Resignation of Board Members (Gov. Code § 1750)

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the appropriate appointing authority (governor, Senate Rules Committee, or speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter also shall be sent to the director of the Department of Consumer Affairs, the Board president, and the executive officer.

Removal of Board Members (BPC § 106)

The governor has the power to remove from office, at any time, any member of any Board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct.

CHAPTER 7. OTHER POLICIES AND PROCEDURES

Board Member Training Requirements

(BPC § 453)

(Gov. Code § 87200 et seq. and 11146.3)

(Gov. Code § 12950.1, DCA Policy EEO 12-01, Board Policy)

Outreach/Information/Complaints (Board Policy)

Upon initial appointment, Board members will be given an overview of Board operations, policies, and procedures by Board executive staff.

Every newly appointed or reappointed Board member shall, within one year of assuming office, complete a training and orientation program offered by the Department of Consumer Affairs. This is in addition to the Board orientation given by Board staff.

All Board members are required to annually file a Form 700—Statement of Economic Interests. Members must also complete an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. The Government Code requires completion of this ethics orientation within the first six months of appointment and completion of a refresher every two years thereafter.

Board members are required to complete the following:

- Authorized use of privately owned vehicle.
- Board member orientation.
- Defensive driver training.
- Ethics training.
- Form 700—Statement of Economic Interest.
- Nondiscrimination policy.
- Sexual harassment prevention policy.
- Sexual harassment prevention training.
- Use of applicant criminal offender record information.

Outreach and consumer education shall be provided by the Board to applicants, licensees, and consumers regarding the role of the Board, laws and regulations, and how to file complaints against licensees. This information shall be provided by the Board through:

1. Board newsletters.
2. Speaking engagements by Board members and staff.
3. Press releases and public affairs announcements.
4. Phone responses.
5. Responses to written, faxed, and emailed inquiries.
6. The Board's website.
7. Social media.

APPENDIX A. COMPLAINT PRIORITIZATION GUIDELINES FOR DCA HEALTH CARE AGENCIES

As complaints are received, a staff person should immediately review each complaint to determine the appropriate course of action based on complaint prioritization guidelines. The table below represents true guidelines—depending on the facts, a different level of priority may be warranted. For example, a complaint based on a report from a health care practitioner data bank (normally routine) may be reprioritized to a higher level of response based on the nature of the underlying acts.

Agencies should continue to review complaints warranting urgent or high attention to determine whether to seek an Interim Suspension Order, a Penal Code section 23 request or other interim action as described in Deputy Director for Legal Affairs Doreathea Johnson’s memorandum dated December 15, 2008.

Complaints in Categories 1 and 2 Are Referred to Division of Investigation

CATEGORY 1 • HIGH

- Acts of serious patient/consumer harm, great bodily injury, or death.
- Mental or physical impairment of licensee with potential for public harm.
- Practicing while under the influence of drugs/alcohol.
- Repeated allegations of drug/alcohol abuse.
- Narcotic/prescription drug theft; drug diversion; other unlawful possession.
- Sexual misconduct with a patient.
- Physical/mental abuse of a patient.
- Over-prescribing.
- Gross negligence/incompetence resulting in serious harm/injury.
- Media/politically sensitive cases.

CATEGORY 1 • HIGH

- Prescribing/dispensing without authority.
- Unlicensed practice/unlicensed activity.
- Aiding and abetting unlicensed activity.
- Criminal violations including but not limited to prescription forgery, selling, or using fraudulent documents and/or transcripts, possession of narcotics, major financial fraud, financial elder abuse, insurance fraud, etc.
- Exam subversion where exam is compromised.
- Mandatory peer review reporting (Business Professions Code section 805).
- Law enforcement standby/security (subject to staff availability).

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APPENDIX A. COMPLAINT PRIORITIZATION GUIDELINES FOR DCA HEALTH CARE AGENCIES

(Continued from page 29)

Complaints in Categories 1 and 2 Are Investigated by Board/Bureau Staff

CATEGORY 3 • ROUTINE

- General unprofessional conduct and/or general negligence/incompetence resulting in no injury or minor harm/injury (nonintentional act, nonlife threatening).
- Subsequent arrest notifications (no immediate public threat).
- Exam subversion (individual cheating where exam is not compromised).
- Medical malpractice reporting (Business and Professions Code section 801) cases unless evaluated as categories 1 or 2.
- Serving subpoenas for hearings and for records (non-DOI investigations).
- Patient abandonment.
- Applicant misconduct.
- False/misleading advertising (not related to unlicensed activity or criminal activity).
- Applicant misconduct.

CATEGORY 4 • ROUTINE

- Unsanitary conditions.
- Project abandonment.
- Failure to release medical records.
- Recordkeeping violations.
- Continuing education violations.
- Declaration and record collection (e.g., licensee statements, medical records, arrest and conviction records, employment records).
- Complaints of offensive behavior or language (e.g., poor bedside manner, rude, abrupt, etc.).
- Quality-of-service complaints.
- Complaints against licensee on probation that do not meet categories 1 or 2.
- Anonymous complaints unless Board is able to corroborate that it meets categories 1 or 2.
- Nonjurisdictional issues.

**Complaint prioritization is statutory for some clients and supersedes these guidelines. See Business and Professions Code sections 2220.05 (Medical Board/Board of Podiatric Medicine) and 4875.1 (Veterinary Medical Board). (Revised: 12/2017)*



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