



Title 16, Dental Board of California
DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

Hearing Date: No Hearing Has Been Scheduled

Subject Matter of the Proposed Regulations: Disciplinary Guidelines

Sections Affected: Section 1018 of Article 1 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations.

Specific Purpose of Each Adoption:

1. Background:

The Dental Board of California (Board) is responsible for licensing and regulating dental professionals in California pursuant to the provisions of the Dental Practice Act (“Act” – Business and Professions Code (BPC) sections 1600 and following) The Board licenses an estimated 89,000 dental professionals, including approximately 43,500 licensed dentists; 44,500 registered dental assistants (RDAs); and 1,700 registered dental assistants in extended functions (RDAEFs). The Board is also responsible for setting the duties and functions of an estimated 50,000 unlicensed dental assistants. Protection of the public is the Board’s highest priority in exercising its licensing, regulatory, and disciplinary functions as specified in BPC section 1601.2.

BPC section 1614 authorizes the Board, in accordance with the Administrative Procedure Act (APA) (Government Code section 11400 et seq.), to adopt, amend, or repeal rules and regulations concerning the administration and enforcement of the Act. Government Code section 11425.50, subdivision (e), provides that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule unless it has been adopted as a regulation in accordance with the APA.

The document “Dental Board of California Disciplinary Guidelines With Model Language” (“Guidelines”) is used to provide guidance to Board in determining the terms and conditions of discipline for licensees found to have committed actions warranting administrative discipline. Title 16, California Code of Regulations (CCR) section 1018 requires the Board, in reaching a decision on a disciplinary action under the APA, to consider the Guidelines. The Guidelines were first incorporated by reference in California

Code of Regulations Section 1018 on June 30, 1997. The current edition of the Guidelines is dated August 30, 2010 and was incorporated by reference into regulations in December 2010. The Disciplinary Guidelines were last modified in 2010, and this rulemaking would update the Disciplinary Guidelines to better protect California consumers and ensure consistency in the Board's enforcement actions.

2. Problem Being Addressed:

The current Guidelines contain many outdated terms and conditions of probation and, in many instances, do not reflect recent updates to statutory law, Board regulations, and other changes that have occurred in the probationary environment since the last update in 2010. If the Guidelines are amended, the corresponding regulation, CCR section 1018, must also be amended to incorporate by reference the revised Guidelines as approved and revised by the Board on February 10, 2023.

The specific changes to the Guidelines and the reasons therefor are provided in detail below.

3. Anticipated Benefits of the Regulations

. The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, provide model orders, and strengthen consumer protection. The Board anticipates that the updated Disciplinary Guidelines will be a more useful tool for the Board, applicants and licensees, Administrative Law Judges (ALJs), legal counsel, and the public by providing a more accurate overview of the Board's processes in formal disciplinary actions. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. The regulatory proposal will improve the consistency of penalties for violations of the Act and its regulations. This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline or denial by clarifying the conditions under which licensees and applicants shall be subject to varying levels of enforcement actions and terms and conditions of probation, as applicable.

Specific Purpose of, and Factual Basis/Rationale for each amendment, adoption or repeal:

The Board proposes to:

- **Amend Section 1018, Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees.**

Change the title of “Dental Board of California Disciplinary Guidelines With Model Language” within the first sentence to “Dental Board of California Disciplinary and Denial Guidelines with Model Language.”

Purpose: Reflect the entire content of the document which covers both disciplinary actions but also cases where the denial of an application may occur.

Rationale: This change reflects the fact that denial of an application is not the same thing as disciplining a license. As the document addresses cases where an action warrants denial of a license, it is necessary to include ‘and Denial’ in the title of the Disciplinary Guidelines to more accurately convey the intent and purpose of the document and its intended uses.

Change the revision date from 8/30/2010 to February 10, 2023.

Purpose: Reflect the revision date of the new document being incorporated by reference.

Rationale: This change is necessary to accurately reflect the date the Dental Board of California approved the proposed changes to the Disciplinary Guidelines.

Add the words “or aggravating” after the word “mitigating” in the last sentence of subdivision (a) before the word “factors”.

Purpose: This change would add aggravating factors to the list of examples that would justify the Board in deviating from the Disciplinary Guidelines.

Rationale: While the list of examples is not intended to be exhaustive, it currently includes mitigating factors (factors that would tend to lessen the penalty). In the Board’s experience, it would be appropriate to include aggravating circumstances (facts that would tend to increase the penalty) to better reflect the range of circumstances where it would make sense for the Board to deviate from the Disciplinary Guidelines. This is necessary to more accurately describe when a deviation from the Guidelines would occur.

Change references in subdivision (a) of “Dental Board of California” to “Board.”

Purpose: The change would eliminate unnecessary language.

Rationale: In the rest of Section 1018 the Board is referred to as Board rather than the Dental Board of California, so this change would make subdivision (a) consistent with the rest of the section. Additionally, since the regulations in this Division are governed by the definitions in the Board’s regulations at Section 1000(c) (which defines “Board” as the Dental Board of California), using the full name of the Board is unnecessary.

- **Amend the Disciplinary Guidelines that are incorporated by reference in Section 1018**

Aside from nonsubstantive changes (for easier comprehension and consistency including the use of gender neutral terms (removal of references to his/her and replacing them with “respondent” and other gender neutral references), correction of grammar and syntax, and renumbering provisions where amendments have been made or added to the existing text), the proposed amendments to the Disciplinary Guidelines are as follows:

- **Amend the title in the proposed text and to the Disciplinary Guidelines to include the words “and Denial.”**

Purpose: The change would more accurately describe the contents of the Disciplinary Guidelines.

Rationale: This change accounts for references to statutes governing denials of applications (e.g., Business and Professions Code section 480) and recommended enforcement actions in the Disciplinary Guidelines. Additionally, the denial of a license and/or permit application is a distinct enforcement action from discipline (which is imposed as a restriction on an existing license) against a license or permit and changing the title is necessary to reflect this distinction.

- **Add Table of Contents**

Purpose: The purpose of this proposal is to amend the Guidelines to include a table of contents to provide the organization of the Guidelines.

Rationale: The Board anticipates that Administrative Law Judges (ALJs), Deputies Attorney General (DAGs), the public, licensees and applicants will benefit from the addition of a table of contents that will identify the subjects covered and specify their page location in the Guidelines. The proposal is necessary to make the Guidelines more user-friendly and provide transparency and notice as to the disciplinary and

denial authority of the Board and the potential disciplinary or denial outcomes for applicants and licensees.

- **Amend Introduction**

Purpose and Rationale: The purpose of this proposal is to amend the existing introduction in the Guidelines to:

- Add notice of the Board’s policy purpose behind the Disciplinary Guidelines (Guidelines), which includes “to establish consistency in disciplinary penalties for similar offenses on a statewide basis”;
- Add the word “individual” and replace references to “disciplinary actions” with “accusations” to more accurately cover the spectrum of enforcement actions the Guidelines would cover (including applicant denials as well as actions that would restrict the license such as revocation, suspension or probation);
- Add the words “terms and” so that the Guidelines consistently refers to “terms and conditions” of probation since the Guidelines covers both the length of probation as well as the types of restrictions or requirements that each probationer would have to complete;
- Add a third category of terms and conditions of probation: “Uniform Standards for Substance-Abusing Licensees Probationary Terms and Conditions (“Uniform Standards”), to be imposed in accordance with CCR, title 16, section 1018.01, subsection (a), if the individual is found to be a substance-abusing licensee.” This is necessary to ensure that users of the Guidelines are aware of and consistently apply the Board’s regulations, which include imposition of Uniform Standards as mandated by BPC section 315 and that have been adopted at CCR Section 1018.01 when the respondent licensee is determined to be a substance-abuser;
- Adds a notice that quotes the trigger standard for implementing the Uniform Standards for substance-abusing licensees adopted at Section 1018.01, and specifically directs users to use those Uniform Standards terms and conditions “exactly as written” (see Underlying Data AG’s office opinion) in lieu of any similar Standard or Optional terms and conditions listed in these Guidelines. In compliance with Business and Professions Code section 315, in 2014, the Board adopted the document entitled “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders,” New

February 28, 2013 at California Code of Regulations, title 16 (16 CCR), section 1018.01 (“Uniform Standards for Substance-Abusing Licensees”). Per Section 1018.01, the terms in that document are required to be used in any probationary order of the Board affecting a licensee found to be a substance abuser.

Although this directive has been previously adopted at Section 1018.01 (see Underlying Data), the Board has discovered that this added notice to the Guidelines is necessary to remind staff and other users of the Guidelines that the Uniform Standards for Substance-Abusing Licensees must be used in these types of cases when formulating the penalty. The Disciplinary Guidelines would include new notes and additional clarifying direction to help assist the users of the Guidelines in understanding how and when the Uniform Standards are to be used in lieu of the terms listed in the Guidelines. This will help ensure more consistent application of the Uniform Standards when the case involves a substance-abusing licensee; and,

- Adds notice to users of the Guidelines that if there is action taken against a license and the licensee has additional registrations or permits issued by the Board, then the Accusation must identify the license and all registrations or permits issued to the licensee, and the disciplinary order should reflect action against all of Respondent’s licenses, registrations, and/or permits identified in the Accusation. The Act contains a variety of licenses, registrations or permits that may be affiliated with the right to practice dentistry in California (see e.g., elective facial cosmetic surgery permit, the oral and maxillofacial surgery permit, and the permits and endorsements for the provision of general anesthesia, moderate sedation to an adult and/ or pediatric patient, oral conscious sedation for adult patients, pediatric minimal sedation, dental corporation registration, or mobile dental unit registration as described in BPC sections 1628.5, 1638, 1638.1, 1646, 1646.1, 1646.2, 1646.9, 1647.1, 1647.2, 1647.3, 1647.18, 1647.19, 1647.30, 1647.31, and 1657). These permits and registrations are dependent upon the licensee continuing to maintain the primary license (e.g., a GA permit holder may only retain a GA Permit if they also have a current dental license in good standing per BPC section 1646.1(a)), and therefore, any Accusation involving a violation related to the primary license must also list other permits or registrations affiliated with that permit, as those permits’ validity could be affected by the outcome of any action against the primary license.

- Further, Government Code section 11503 of the Administrative Procedure Act requires the Board to plead at the outset all intended restrictions on any license, “to the end that the respondent will be able to prepare his defense.” The courts have found that an agency’s failure to plead a proposed restriction or the legal basis for the proposed restriction in the Accusation prior to imposing the disciplinary action is a constitutional violation and grounds for reversing any discipline imposed (see e.g. *Smith v. State Bd. of Pharmacy* (1995) 37 Cal.App.4th 229, 245.) As a result, the Board proposes the addition of this direction to help ensure that the Board’s Accusations are properly pled consistent with the due process requirements of the APA and that all potential licenses, permits or registrations that may be affected are considered for administrative efficiency and the protection of the public.
- **Add “terms and” before the word “conditions” throughout the Guidelines.**

Purpose: The change would convert any instance of “conditions” into “terms and conditions.”

Rationale: The Disciplinary Guidelines current refer to conditions of probation, with no reference to terms. In the context of disciplinary and denial actions, the word “terms” is intended to address the length of probation and/or other restrictions placed on a licensee/permit holder/applicant subject to discipline. The word “conditions” is intended to address specific restrictions placed on a violator, which will vary dependent on the specific causes of discipline and/or denial. These changes are therefore necessary to more accurately convey the types of restrictions that would be imposed because of a probationary order.

- **Repeal existing text listing the Board’s factors to be considered in determining whether revocation, suspension or probation should be imposed and add to the Guidelines text outlining when to use the Substantially Related Criteria and Rehabilitation Criteria as outlined in 16 CCR sections 1019 and 1020, respectively, and required by Business and Profession Code (BPC) sections 480, 481 and 482, as amended by Chapter 995, Statutes of 2018 (AB 2138).**

Purpose: The purpose of this proposal is to amend the Guidelines to replace the current criteria which has been superseded by the Substantially Related Criteria and

Rehabilitation Criteria the Board has recently adopted in regulations at CCR sections 1019 and 1020. This change adds text to account for the Board's obligation to only consider criminal history that is substantially related to the profession and to consider evidence of rehabilitation when making decisions on the denial of applications or the suspension or revocation of licenses. Existing text (Nos. 1-12) listed under existing title "Factors to be Considered" would be deleted in its entirety and replaced with criteria that reflect the Board's current regulations and criteria for determining substantial relationship of a crime, misconduct or other acts as specified, and rehabilitation at Title 16, California Code of Regulations sections 1019 and 1020. These revisions are needed in light of amendments to the Board's statutory authority to consider such grounds for denial or violations as a basis for denial or discipline as explained below.

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

The Board's current Guidelines enumerate specific factors for the Board to use in determining whether revocation, suspension, or probation is to be imposed in a disciplinary case. However, in accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), operative on July 1, 2020, BPC sections 481 and 493 require the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction, to determine whether the crime is substantially related to the qualifications, functions, or duties of a dentist or dental auxiliary by using specified criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of a dentist or dental auxiliary. (BPC, § 481, subd. (b), as added by AB 2138, § 7; BPC, § 493, subd. (b), as added by AB 2138, § 13.) In addition, BPC section 482 requires the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction or discipline for professional misconduct, pursuant to BPC sections 480 or 490, to consider whether the applicant or licensee is rehabilitated based on either: (1) having completed their criminal sentence without violating parole or probation; or

(2) the Board's standard criteria for evaluating rehabilitation. (BPC, § 482, as added by AB 2138, § 9.) To address the new criteria required to be evaluated by the Board, the Board amended CCR sections 1019 and 1020 in a separate rulemaking.

To maintain consistency with the new substantially related and rehabilitation criteria requirements imposed by AB 2138 that have been incorporated in CCR sections 1019 and 1020, the proposal is necessary to revise the Guidelines to strike the outdated enumerated factors and replace them with these recently adopted criteria references. Further, to avoid having to make changes to the Guidelines any time the substantially related and rehabilitation criteria are revised in statute or regulation, the proposal is necessary to advise the Board, ALJs, DAGs, licensees, and the public that the Board must consider specified criteria under CCR sections 1019 and 1020 generally, without quoting the entire section within the Guidelines, when determining whether a criminal conviction, discipline for professional misconduct, or an act is substantially related to the qualifications, functions, or duties of a dentist or dental auxiliary for the Board to deny, suspend, or revoke the license.

- **Amendments to Evidence of Rehabilitation section**

Purpose: The purpose of this proposal is to amend the Guidelines to include new rehabilitation evidence considerations when determining penalties in proposed decisions. This proposal would also add new examples of the types of evidence which the licensee/applicant (respondent) may submit to the Board to demonstrate their rehabilitative efforts and competency and that will be considered by the Board.

Rationale: BPC section 480 permits the Board to request mitigating evidence to be submitted by an applicant for the purpose of demonstrating substantial relation or evidence of rehabilitation under certain circumstances (BPC, § 480, subd. (f)(2)). The proposed changes to the Rehabilitation Evidence section to the Guidelines is intended to identify criteria to assist individuals with examples of the types of evidence that may be submitted to demonstrate rehabilitative efforts and competency. It is also designed to serve as a guide for the Board in assessing mitigation and rehabilitation as it evaluates an individual's rehabilitation and fitness for the practice of dentistry or as a dental auxiliary in a manner consistent with public health, safety, and welfare.

The Board often receives inquiries from individuals on the types of documents the Board accepts or receives in assessing an individual's rehabilitation. Accordingly, the Board developed a list of examples of the types of documentation it typically receives from applicants or licensees, which the Board has found helpful in making a determination on a person's proposed fitness or rehabilitation. Including a list of rehabilitation evidence clarifies for ALJs what factors the Board wants considered when determining possible mitigation of the penalties in proposed decisions.

The Board proposes to add the words "and the Board shall consider" to the introduction of this section to emphasize and provide notice to affected users that these are types of rehabilitation evidence that the Board will consider in every case. In addition, to more accurately reflect the Board's experience with these rehabilitation issues and possible evidence that the Board has considered over time, the Board also proposes to amend its list of acceptable rehabilitation evidence as specified below.

The types of rehabilitation evidence that would be revised or added to this section include:

- Remove existing text that provides for participation in "dental" support groups and replace the term with "recovery" support groups to allow for a greater variety of recovery group participation options for respondents to submit and for the Board to consider;
- Remove reference to "disease" when referring to education courses related to addiction and replace that term with the word "disorders" to more accurately reflect recognition of addiction as a substance use disorder consistent with Board's understanding of current behavioral health guidance and treatment of addiction and addictive behavior;
- Add the words "recent, dated" to the existing option to submit certificates or transcripts of courses related to dentistry;
- Adding submission of recent, dated, written statements and/or performance evaluations from persons in positions of authority who have

on-the-job knowledge of the Respondent's work as a dentist or dental auxiliary that include the period of time and capacity in which the person worked with the Respondent. Such reports must be signed under penalty of perjury and will be subject to verification by Board staff;

- Adding submission of recent, dated, letters from persons familiar with Respondent in either a personal or professional capacity regarding their knowledge of the Respondent's character; the Respondent's rehabilitation, if any; the conduct of which the Respondent is accused; or any other pertinent facts that would enable the Board to better decide the case. Such letters must be signed under penalty of perjury and will be subject to verification by Board staff; and,
- Adding submission of recent, dated, letters from probation or parole officers regarding the Respondent's participation in and/or compliance with terms and conditions of criminal probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. Such letters and reports will be subject to verification by Board staff.

The inclusion of the foregoing is reasonably necessary to provide consistent guidance to individuals asking about rehabilitation evidence. These types of examples may be submitted at the discretion of the individual and will be reviewed by the Board and considered on a case-by-case basis. In the Board's experience, these items are reasonably related to the question of whether mitigating or extenuating circumstances exist or should be considered and/or whether the person is rehabilitated (i.e., fit to practice with or without restriction and with safety to the public).

The requirement that the Board obtain "recent" information as specified above, also ensures that the Board is making decisions with the most updated, current information available to make a more fully informed and reasonable decision. The Board also retains its discretion to verify or investigate the information provided, as specified above, and also require any reports or letters (as specified above) to be signed under penalty of perjury by the persons submitting such

information to help ensure truthful statements and accurate information are being provided to the Board.

- **Repeal text from “Other Situations in Which Revocation is the Recommended Penalty” section:**

Purpose: To remove the reference to recommended penalty of revocation for “Substantiated evidence or convictions of physical abuse or sexual offenses” as it is essentially duplicative of another proposed section of the Guidelines.

Rationale: The Board proposes to remove this reference as unnecessary as it is essentially the same recommended penalty for this type of offense as the Board is proposing in this rulemaking to add to a new section that includes penalty recommendations for violations of BPC section 480(a)(1), 490 and 1628.5 related to criminal convictions. Since this type of conduct consistently arises in the context of criminal cases and the Board’s authority to deny or discipline for such conduct would be charged under the aforementioned Code sections, the Board proposes to strike this recommendation from this section as unnecessary since an affected user would more likely see this recommendation when searching for the specific Code sections charged in the Accusation or Statement of Issues. As a result, the Board can see no added benefit to retaining this reference in the current location of the Guidelines.

- **Amend the Lists of Standard and Optional Probationary Terms and Conditions**

Purpose: These lists would be amended to track proposed changes to the standard and optional terms of probation including title and numbering changes. The Board proposes to change the title of “additional” probationary terms to “optional” to make clear that the list that follows is not considered mandatory for every case, but rather recommended by the Board and considered for those cases where such restriction is warranted for public protection based on the facts of the case.

Rationale: These amendments are necessary to avoid confusion among users of the Guidelines and to allow for a comprehensive list of all standard and

probationary terms and conditions used in the Guidelines in one convenient location.

- **Add model introductory language for all Disciplinary Orders. The model introductory language for probationary orders in the current edition of the Disciplinary Guidelines will be replaced by model language for all disciplinary and other enforcement orders.**

Purpose: This addition provides template language for use in documents for disciplinary, denial, petition to revoke probation, and petition for reinstatement cases. The Board would repeal or amend existing template language in this section of the Guidelines as unnecessary as the newer proposed model orders may be used for all types of proposed enforcement actions and may be tailored to fit the specific allegations or proposed action as specified below.

Rationale: The current model introductory language is limited to disciplinary orders where the Respondent is placed on probation after an Accusation is decided. This does not cover the breadth of enforcement cases and options available under the Act, under other general provisions of the BPC (as explained below), or the Administrative Procedure Act (Gov. Code, §§ 11500 et seq.). Adding additional model language that addresses these other types of enforcement actions, including denial of applications and other petition actions, will provide additional guidance to Board staff, Deputy Attorneys General and Administrative Law Judges as they draft proposed disciplinary, denial or other enforcement orders.

Numerous boards under the Department of Consumer Affairs have adopted similar model orders to simplify the decision writing process, provide clarity for applicants, respondents, attorneys, and Board staff, and provide transparency for consumers through specific, standard language applicable to each type of enforcement action (see e.g. 16 CCR section 2680). In the Board's experience, providing these templates of model language helps avoid possible mistakes in the Board's orders, and helps guide users of the Guidelines to better understand the Board's orders, requirements and their legal effects.

The proposal would provide applicable language for different enforcement actions authorized by law to be taken by the Board: section A is model language for licensees/respondents in a disciplinary matter; section B is model language for

petitioners seeking reinstatement of their license (Gov. Code, § 11522); section C applies to petitions brought by the Board's Executive Officer to revoke the licensee's probation; and section D is model language to be used for applicants in cases where a Statement of Issues has been filed. Described below are the proposed model disciplinary orders and the rationale for each type of model order:

A. **Accusation** (Licensee Model Orders after the filing of an accusation)

1. Revocation of License. This model order is necessary to instruct the ALJs and DAGs of the clear and concise language to be included in the disciplinary order for the Board's approval. This model order reflects the correct action that would be taken by the Board if the discipline to be imposed on a licensee or permit holder is revocation. The proposal clarifies the respondent's responsibility to relinquish and forward or deliver their license to practice under a license or permit issued by the Board under the Act and wall certificate to the Board. The proposal is necessary to provide a clear and reasonable deadline of ten days for relinquishing the license or permit and wall certificate; such action is necessary to ensure that all indicia of licensure is returned, consistent with the Board's revocation action.

The proposal would also include in the model language the requirement of respondent to pay the costs of investigation and prosecution within 30 days of the effective date of the decision, which in the Board's experience, is a reasonable amount of time for compliance with the order. This provision is necessary to assist the Board in recovering its costs of enforcement as authorized by BPC section 125.3. If the respondent is unable to pay the costs within 30 days, the model order would provide the option of a condition precedent that the respondent could pay these enforcement costs prior to reinstatement of their license and which must be paid in full prior to reinstatement, which is also authorized by BPC section 125.3.

2. Revocation Stayed and Licensee Placed on Probation. Government Code section 11519(b) provides the Board with the following authority:

"A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective.

The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.”

Similar authority to issue a license or permit (as “license” also means “permit” per BPC section 23.7) on probation is found at BPC section 488(a)(2). This model order is necessary to implement the authority in sections 488 and 11519 and to provide ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation, stayed, and probation with terms and conditions.

3. Public Reproval. The Guidelines provide minimum terms and conditions that may include issuance of a public reproval. BPC section 495 authorizes the Board to issue a public reproval. This proposal would add model order language when the proposed decision or stipulated settlement would publicly reprove the licensee or permitholder/respondent. The proposal is necessary to advise the licensee that the reproval constitutes disciplinary action and becomes a part of their license history with the Board consistent with BPC section 27(c)(14) (which requires public disclosure on the Internet of all enforcement actions) and the requirements of the California Public Records Act (Gov. Code §§ 7920.000 et seq). This proposal also is necessary to provide to ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on the licensee or permitholder is public reproval.

4. Surrender of License. This model language is needed when the licensee, after receiving notice of a possible revocation by the Board by way of an Accusation, proposes to settle the matter by surrendering their license (see settlement authority at Government Code section 11415.60). In addition, BPC section 118(b) authorizes the Board to continue disciplinary actions where a licensee’s surrender is done without the written consent of the Board. This model order is therefore necessary to provide clear instruction and notice to the licensee who agrees to surrender their license in lieu of revocation of the Board’s conditions and requirements for acceptance of a surrender. The proposal advises that the surrender would be effective as of the date of the Decision and requires respondent to relinquish and forward or deliver their license or permit to practice

and wall certificate to the Board. The proposal is necessary to provide a deadline of ten days, which in the Board's experience is a reasonable amount of time for the licensee or permitholder to comply, for relinquishing the license or permit and wall certificate. The model order is also necessary to make clear to the licensee or permitholder and the public that the license surrender, and Board acceptance of the surrender, constitutes the imposition of discipline against the licensee or permitholder and becomes part of the licensee's or permitholder's history with the Board. This is necessary to comply with BPC section 27(c)(14) (which requires public disclosure of all enforcement actions on the Internet) and the requirements of the California Public Records Act (Gov. Code §§ 7920.000 et seq.). The Board anticipates that ALJs, DAGs, and respondents will benefit by having standard language that could be included in a decision or stipulated settlement, and the public will be better informed and thereby benefit from clear language describing the implication of the discipline imposed.

B. Model Orders for Petition for Reinstatement

1. Grant Petition with No Restrictions on License. Following formal discipline, the APA authorizes licensees to petition the Board for reinstatement of a revoked or suspended license not less than one year from the effective date of the Board's decision to revoke or suspend the license. (Gov. Code, § 11522.) This model order is necessary to make clear to the former licensee or permitholder (respondent) and the public one of the possible outcomes of a licensee's or permitholder's petition for reinstatement of a revoked or suspended license or permit. In those cases where the Board agrees to grant the petition outright with no restrictions on the reinstated license or permit, this model order would specify that the Board granted the petition for reinstatement of the license or permit, and that it will be fully restored.

2. Grant Petition and Place Licensee on Probation. Following formal discipline, the Act authorizes licensees to petition the Board for reinstatement in accordance with the petition requirements set forth in BPC section 1686. Pursuant to the authority to stay any order under Government Code section 11519 discussed above, the Board may stay any order and place a license on probation with terms and conditions before a petitioner may resume practice. This template language is necessary to provide ALJs and other interested parties

notice of how to draft an order to reflect the Board's intent to reinstate a license or permit on probation pursuant to Section 11519's authority. This model order is necessary to make clear to the licensee or permitholder/respondent and the public the outcome of a licensee's or permitholder's petition for reinstatement of a revoked or suspended license. This model order would specify that the Board granted the petition for reinstatement of the license or permit, the license or permit shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions. This model order would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the licensee or permitholder through probation before restoring the license to an unrestricted license status.

3. Grant Petition and Place Licensee on Probation After Completion of Conditions Precedent. Following formal discipline, BPC section 1686 authorizes licensees or permitholders to petition the Board for reinstatement after the time periods specified therein. This model order is necessary to make clear to the licensee or permitholder/respondent and the public one of the possible outcomes of a licensee's or permitholder's petition for reinstatement of a revoked or suspended license.

This model order would specify that once the Board granted the petition for reinstatement of the license, the license shall be reinstated after petitioner's completion of specified conditions in which examples are provided so ALJs and DAGs have a clearer understanding what can be required as a condition precedent to be satisfied before a license is reinstated. The order would allow an administrative law judge or the Board to require that an applicant meet certain conditions prior to issuance of a license to help ensure public protection and that minimum standards for licensure are met. Examples include paying restitution, cost recovery, completion of continuing remedial education, completion of rehabilitation or recovery program, and take licensing examination (American Board of Dental Examiners, Inc. exam (ADEX)). All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in rehabilitating the licensee or permitholder and ensuring competency in the profession. This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make penalty determinations

more effective and related to the violations alleged. The Board has had problems with different Administrative Law Judge interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the Guidelines when outright denial of a reinstated license or permit is not warranted.

The model order also includes a different provision that upon completion of the conditions precedent, the license shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the licensee or permitholder through probation before restoring the license to an unrestricted status.

Finally, the Board proposes to add a "NOTE" to this proposed model order that directs the user to add a term of probation to any reinstatement order that requires payment of the original cost recovery on a payment plan to be included in the reinstatement action and decision per BPC section 125.3. This is necessary to ensure that any cost recovery that was ordered in the previous revocation or surrender action is paid prior to reinstatement in accordance with BPC section 125.3(g)(1), which mandates that the Board "shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered" in the prior action. Inclusion of this direction will help provide notice and ensure compliance with this legal requirement.

4. Deny Petition. Another possible outcome of a petition matter is outright denial of the petition. This model order would provide that the petition for reinstatement filed by the petitioner [blank space to insert name], is hereby denied. This proposed model language is necessary to specify the clear and concise language to be used by an ALJ drafting a proposed decision when the petition for reinstatement of the license or permit is denied by the Board. This

change is also needed to ensure consistency in the issuance and application of the Board's orders.

C. Model Orders for Petition to Revoke Probation

1. Revocation of Probation. When a licensee or permitholder on probation has been found, following a formal proceeding under the APA, to have violated the terms of their probation, the Board may order revocation of the licensee's or permitholder's probation. (See, e.g., *Goldsmith v. California State Bd. of Pharmacy* (1961) 191 Cal.App.2d 866, 873 petition to revoke probation is merely a continuation of the original Accusation case and board had continuing jurisdiction over the matter to revoke probation.) This model order is necessary to provide clear and concise language to be used when the Board has determined that the licensee's or permitholder's probation is revoked. This change is also needed to ensure consistency in the issuance and application of the Board's orders. This proposal also adds to the order notice that petitioner is not eligible to apply for reinstatement for the applicable time period (as specified in BPC section 1686 and the Guidelines provide guidance to insert the applicable time period within the order itself) from the effective date of the decision. This statement is necessary to provide notice to the licensee of the eligibility requirements for filing a new petition and the legal bar to petitioning the Board again before the applicable time period has elapsed, pursuant to BPC section 1686.
2. Extension of Probation. When a licensee or permitholder on probation has been found, following a formal proceeding under the APA, to have violated the terms of their probation, one possible outcome and alternative to revocation is that the Board may order the licensee's or permitholder's probation term to be extended from the time specified in the Board's original disciplinary Decision. This model order is therefore necessary to provide clear and concise language to be used when a licensee's or permitholder's probation is extended. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

D. Model Orders for Statement of Issues (Applicants)

1. Grant Application with No Restrictions on License. BPC section 488 authorizes the Board to consider a variety of actions following a hearing on a statement of issues for a possible denial of license, including granting the license upon completion of all licensing requirements. These model orders would help implement those various options. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the licensee's application with no restrictions. BPC section 1634.1 authorizes the Board to issue a license to practice dentistry upon satisfactory completion of specified requirements, including submission of a completed application and payment of all fees required by the Board (see fees specified at 16 CCR section 1021). Similar requirements are in place for other dental assistant licensees, as follows at: BPC section 1753 (Registered Dental Assistants), 1753.55 (Registered Dental Assistants in Extended Functions), 1750.2 (Orthodontic Assistants), and 1750.4 (Dental Sedation Assistants).

In addition, the Board issues a variety of affiliated permits to practice in specialty areas. These permits or endorsements would include the elective facial cosmetic surgery permit, the oral and maxillofacial surgery permit, and the permits and endorsements for the provision of general anesthesia, moderate sedation to an adult and/ or pediatric patient, oral conscious sedation for adult patients, or pediatric minimal sedation as described in BPC sections 1638, 1638.1, 1646, 1646.1, 1646.2, 1646.9, 1647.1, 1647.2, 1647.3, 1647.18, 1647.19, 1647.30 and 1647.31. Those BPC sections similarly require applicants to meet specified completed application requirements and current Board regulation specifies the fee required for those permits (see 16 CCR section 1021).

Further, there may be additional information that may need to be updated or submitted as part of the application (see Cal. Code regs., tit. 16, §§ 1019, 1020). This model order is therefore necessary to implement these requirements, provide adequate notice to the licensee or permitholder that additional action may be needed prior to issuance of the license or permit, and to provide clear and consistent language to be used in the Board's decision to grant the license or permit application and issue the license upon successful completion of all licensing requirements, including payment of all licensure or permit fees.

Finally, the model order provides notice to applicants that failure to successfully complete all licensing requirements within 12 months from the effective date of the decision and order shall result in: (A) a license not being issued to respondent, (B) respondent's application being deemed abandoned pursuant to subsection (c) of 16 CCR section 1004, and (C) that respondent shall be required to file a new application and meet all requirements in effect at the time of reapplication. This notice is required to provide affected stakeholders with notice of the requirements for completing the application and the deadline for when an application will be considered abandoned pursuant to existing regulation at 16 CCR section 1004. This is necessary to help ensure that the Board receives completed and timely applications in accordance with existing regulations.

2. Grant Application and Place License on Probation. Following denial of a license or permit and the applicant's subsequent challenge to that denial, the Board may grant the license or permit application but determine the applicant should be monitored by the Board for public protection (see BPC section 488(a)(2)). This model order is necessary to provide clear and consistent language to be used in the Board's decision to grant the license or permit application and issue the license or permit upon successful completion of all licensing requirements, including completion of the licensing examination or payment of all licensure fees, with immediate revocation, stayed, and probation with specified terms and conditions. This model order also helps ensure that applicants have notice that specified licensing conditions (as discussed above under "Grant Application with No Restrictions on License") have been met prior to issuance of the probationary license.

Finally, the model order provides notice to applicants that failure to successfully complete all licensing requirements within 12 months from the effective date of the decision and order shall result in: (A) a license not being issued to respondent, (B) respondent's application being deemed abandoned pursuant to subsection (c) of 16 CCR section 1004, and (C) that respondent shall be required to file a new application and meet all requirements in effect at the time of reapplication. Again, this is necessary to help ensure that the Board receives completed and timely applications in accordance with existing regulations.

3. Grant Application and Place Licensee on Probation After Completion of Conditions Precedent. Following denial of a license or permit and the applicant's subsequent challenge to that denial, the Board may grant the license or permit application after the applicant satisfies certain conditions, such as completing criminal probation (see BPC section 488(a)(2), (4)). This model order is necessary to provide clear and concise language to be used in the Board's decision to grant the license or permit application and issue the license or permit upon successful completion of specified terms and conditions including completion of all licensing requirements (successful completion of the licensing examination and payment of all required licensing fees). Examples of possible conditions precedent are provided so ALJs and DAGs have a clearer understanding what can be required as terms and condition precedent to be satisfied before a license or permit is issued.

Examples include paying restitution, cost recovery, completion of continuing remedial education, completion of rehabilitation or recovery program, and take licensing examination (American Board of Dental Examiners, Inc. exam (ADEX)). All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in ensuring the applicant is adequately rehabilitated before being issued an unrestricted license. This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make applicant orders and determinations more effective and related to the issues that serve as grounds for denial of the application. The Board has had problems with different Administrative Law Judge interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the Guidelines when outright denial of a license is not warranted.

The model order also provides notice to applicants that failure to successfully complete all licensing requirements within 12 months from the effective date of the decision and order shall result in: (A) a license not being issued to respondent, (B) respondent's application being deemed abandoned pursuant to subsection (c) of 16 CCR section 1004, and (C) that respondent shall be required

to file a new application and meet all requirements in effect at the time of reapplication. Again, this is necessary to help ensure that the Board receives completed and timely applications in accordance with existing regulations.

The model order also includes a different provision that upon completion of the conditions precedent and satisfaction of all statutory and regulatory requirements for issuance of a license (see discussion above under “Grant Application with No Restrictions on License”), the license or permit shall be issued, immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be used for circumstances where the applicant has demonstrated they should be able to practice, but the Board determines the public would be better protected by monitoring the licensee or permit holder through probation before issuing a permanent, unrestricted license. The prompt about listing the standard and optional conditions of probation is necessary to remind ALJs and DAGs of the need to specify those terms and conditions in the order, and where the Board recommends that they be placed in the order for easier comprehension.

4. Deny License Application. This model order would provide for the circumstance when an applicant is being denied licensure or a permit (see BPC section 488(a)(3), which also includes “permits” according to BPC section 23.7). This model order is necessary to provide clear and concise language to reflect the correct enforcement action that would be taken by the Board if the application is denied, and no license or permit is issued. This change is also needed to ensure consistency in the issuance and application of the Board’s orders.

- **Amend Standard Probationary Terms and Conditions for All Decisions and Orders**
- **Add a new “note for substance-abusing licensee cases”:**

Purpose: This proposal would add a new notice to the beginning of the list of standard probationary terms and conditions. That notice would direct users of the Guidelines that in addition to the standard terms and conditions of probation (except standard term number 13 “Notification to Employer” as explained below) the Board shall use all of the Uniform Standards terms and conditions listed in

the document entitled “Uniform Standards Related To Substance Abusing Licensees With Standard Language For Probationary Orders” (Uniform Standards) as specified in 16 CCR section 1018.01 in every probationary order where the Board finds that the evidence establishes that an individual is a substance-abusing licensee.

Rationale: This added notice to the Guidelines is necessary to remind staff and other users of the Guidelines that the Uniform Standards must be used in these types of cases when formulating the penalty. In the Board’s experience, this clarifying direction is needed to help assist the users of the Guidelines in understanding how and when the Uniform Standards are to be used in lieu of the terms listed in the Guidelines. This will help ensure more consistent application of the Uniform Standards when the case involves a substance-abusing licensee as the Board is required by law to use the Uniform Standards in accordance with BPC section 315 (see also Underlying Data and the opinion of the California Attorney General’s office). To that end, this note specifies that Standard Term No. 13 shall not be used in substance-abusing licensee cases. Instead, Term No. 13 specifies that the Uniform Standard “Notification to Employer” shall be used in lieu of the standard term and condition specified in the Guidelines for employer notice when the Respondent is determined to be a substance-abusing licensee. Since both terms involve notice to employers, BPC section 315 requires use of the Uniform Standard term for substance-abusing licensees. This ensures accurate implementation of BPC section 315 in accordance with the advice of the Attorney General’s office.

- **Add Notes to Various Standard Terms indicating which Terms the Uniform Standards will apply for Substance Abusing Licensees in Lieu of those Standard Terms.**

Purpose: The change would add a note for each Term (13 – “Notification to Employer”, 19 – “Supervised Practice”, 24 – “Psychological Evaluation”, 27 – “Diversion Program”, 28 – “Biological Testing”, and 29 – “Abstain from Use of Alcohol, Controlled Substances, and Dangerous Drugs”) where the Uniform Standards would apply for Substance Abusing Licensees indicating which Uniform Standard would be used to substitute for a similar associated Standard Term in the Disciplinary Guidelines.

Rationale: These notes, included throughout the document, clarify that the Disciplinary Guidelines will still apply in cases involving substance-abusing licensees. While the Board will use the document “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders” (Uniform Standards) in cases where the Respondent has been shown to be a substance-abusing licensee, the Uniform Standards are intended to augment the Disciplinary Guidelines and not replace them.

- **Add language to Standard Term (1) “Obey All Laws” to clarify compliance and reporting requirements.**

Purpose: The changes in this Standard Term would specify that the payments Respondent must remain in compliance with are criminal-court ordered payments (fines and fees) and that the Respondent must provide a full and detailed report on all misdemeanor and felony arrests and convictions “occurring during the period of probation.”

Rationale: The Board has received complaints from respondents about what the word “payments” refers to and the scope of the respondent’s reporting obligations for arrest and conviction history while on probation. To help alleviate this confusion, It is important to clearly delineate that the term is concerned with court-ordered payments and that the Respondent’s reporting requirements are specific to the period of probation covered by the relevant order.

- **Expand Rationale behind Standard Term (1) to further explain relevance of reporting discipline under “Other Board of Regulatory Agency Orders” (orders from other boards and/or agencies).**

Purpose: The changes in the existing Rationale text add a reference to BPC section 141 to explain the Board’s authority, and specify that the other probationary orders referenced in the Rationale are those issued by other boards or agencies.

Rationale: The current Term and Rationale language already notes that violations of disciplinary actions imposed by other boards and/or agencies against the licensee may result in adverse consequences against the Respondent’s California license. The expansion of the Rationale language specifically cites Business and Professions Code section 141 with respect to discipline by other boards and/or agencies in other states, and explicitly notes that disciplinary actions taken by those other agencies for acts substantially related to the practice is cause for discipline of the license under

BPC section 141. This is necessary to explain why reporting disciplinary orders from other health care related boards is a requirement of the probationary order, as it is grounded in the Board's authority to discipline for such acts. To avoid respondent confusion and further explain the rationale behind reporting other board or agency disciplinary orders, the proposal would further revise and amend the rationale to indicate that a violation of other Board or Regulatory agency orders may indicate that the licensee is unsafe to practice.

- **Strike redundant and unnecessary language on license restoration from Standard Term (3) “Comply with the Board’s Probation Program” and include additional rationale for this term that would discuss how it helps maintain communications between the Board and Respondents between required meetings and provide other pertinent information from respondents.**

Purpose: The changes would remove language indicating that the Respondent’s license would be fully restored upon completion of the terms and conditions of probation and would expand the Rationale to include the function of Term (3) as a means of communication between Respondent and the Board. The term would add to the rationale that compliance reporting provides the Board with the mechanism for maintaining communication with the respondent between meetings, gathering pertinent information from the respondent, and obtaining written materials that might be deemed necessary on an individual basis.

Rationale: Stating that a license would be fully restored upon completion of probation is duplicative and unnecessary, particularly when this concept is already covered in Standard Term “CONTINUANCE OF PROBATIONARY TERM/COMPLETION OF PROBATION”, which states “Upon successful completion of probation, Respondent’s license will be fully restored.” Adding language to emphasize the communications function of compliance with probation helps respondents understand its use and the importance of being responsive to Board inquiries in the monitoring of probationers’ compliance for the rehabilitation of licensees and, by extension, for the protection of the public.

- **Add language to Standard Term (4) “Address Change, Name Change, License Status” clarifying that Respondent must keep the Board informed of any change in license status during any period of non-practice (as defined in the “Tolling of Probationary Period” term) or suspension of practice unless otherwise specified in the disciplinary order.**

Purpose: The change would specify that respondents must maintain a current and active license at all times, including period of non-practice. The change of address notification requirement applies to any period of non-practice (see Term No. 6 “Tolling of Probationary Period”) or suspension from practice. This proposal would make other nonsubstantive changes for easier comprehension and readability.

Rationale: The current language of the Term mentions periods of suspension of practice but does not explicitly mention other periods of non-practice. Further, the Board adds the words “at all times” to the sentence requiring the respondent to maintain an active, current license with the Board. This will help alleviate confusion regarding license status during periods of non-practice as further specified in the Standard Tolling provision in Standard Term No.6, which further explains that their probation will be tolled but they are not relieved of the obligation to maintain a current and active license with the Board during that time. The change provides additional specificity and clarity to Respondent’s obligations to maintain a current and active license status with the Board. The words “to the public” are moved behind the words “any misrepresentation” for easier comprehension of the prohibition against misrepresenting respondent’s restricted license status and that it would be considered a violation of probation terms and conditions.

- **Add the words “unless otherwise” to the “Meetings and Interviews” Term No. 5**

Purpose: The Board proposes to amend existing text requiring respondent to appear in person for meetings and be available by telephone for interviews to add “unless otherwise” directed by the Board.

Rationale: This change is necessary to ensure that respondents understand they need to appear in person and be available by telephone for interviews and that no specific direction is needed to require this appearance. Personal appearance and availability by phone is the minimum required for compliance with probation, unless the Board directs “otherwise” that such appearances or availability is not required in the specific case. This would make it clearer that the respondents must comply with these requirements unless, if upon review of the specific circumstances of the case, respondent’s personal appearance is not necessary for monitoring of probation in that instance.

- **Rename Term (6) on the Standard Probationary Terms and Conditions from “Status of Residency, Practice, or Licensure Outside of State” to “Tolling of Probationary Period”. This reflects the combination of the current term with Term (11) “Function as a Licensee” and focuses the Term on the circumstances under which probation would be tolled.**

Purpose: The change would rename Term (6) to reflect the focus of the term on when a Respondent’s actions require their probation be tolled. The purpose of this proposal is to essentially combine the existing “Function as a Licensee” Term conditions with this term and amend the Guidelines to clarify that if a probationer ceases to practice in California, their probation will be tolled, but they are not relieved of the obligation to maintain a current and active license and it will be a probation violation for a probationer’s license to remain tolled due to this condition for a total of two years. An exemption from this tolling requirement would be included when Respondent is residing and practicing in another U.S. state and is on active probation with the licensing authority of that state, in which case the two-year tolling limitation begins on the date probation is completed or terminated in that state.

This proposal also adds a sentence that specifies that a respondent’s probation is tolled when they cease practicing in California (defined as “non-practice”). In accordance with existing regulations, this proposal would specify that any period of time exceeding 30 calendar days in which respondent is not engaging in dental practice as defined in BPC section 1625 or providing dental supportive procedures as a dental auxiliary as defined in CCR section 1067, as applicable, in California for a minimum of 16 hours per week or 64 hours per calendar month would be considered “non-practice”. The Board also proposes to add further direction to users of the Guidelines that would include notice that engaging in (with instructions to insert appropriate licensing category) shall include volunteer dental practice or work in any non direct patient care position that requires licensure.

Current provisions that permit respondents to be relieved of this tolling requirement if respondents have presented “sufficient documentation of his or her good faith efforts to comply with the condition” to grant an extension of probation up to one year without further hearing (currently in the “Function as a Licensee” Term proposed to be repealed) would be deleted in the “Function as a Licensee” Term and not carried over to this new term. Instead, the Board proposes to add a requirement to this term that “periods of non-practice do not relieve Respondent of the responsibility to comply with the terms and conditions of probation.” In addition, for further advance notice and to reinforce this new compliance requirement, the Board would add that

“at all times” during the probationary period and during any period of non practice, respondent shall continue to comply with all the terms and conditions of probation including the obligation to maintain an active and current license with the Board, meetings in person for interviews, and cost recovery.

Rationale: Existing Standard Term (6) and Term (11) address periods of time where a Respondent may be out-of-state and thereby unable to practice in California. Practicing in-state is a requirement of probation, and it is appropriate to toll probation when a Respondent is no longer practicing in California, irrespective of whether they are residing in or out of state for more than a specified period of time so that this California Board can effectively continue to monitor that licensee and exercise personal jurisdiction over the respondent. Combining the two terms is necessary to cover all possible reasons for a Respondent being out-of-state or otherwise unable to comply with the requirement to practice in California during probation.

Tolling is a difficult legal concept for many probationers to understand, so the Board is adding an additional sentence to help probationers understand that their probation is tolled “when they cease practicing in California” and provides a definition for this non-practice consistent with existing requirements and the Board’s understanding of what amount of time would be considered “practice” sufficient for monitoring an individual on probation. These changes will also provide better guidance on the factual “trigger” for when probation is tolled and the consequences of non-compliance with the practice requirement. The Board proposes to add an “exceeding 30 calendar days” “trigger” for when a respondent would be considered in non-practice status and also required to report to the Board. In the Board’s experience, this is sufficient time to be considered out of practice and when problems with management of patient care and treatment may occur without a practicing licensee. In addition, the Board is adding a 15-day written notice requirement of non-practice, and also of return to practice to the existing reporting requirements. In the Board’s experience, these timeframes provide sufficient time for the respondent to assess their non-practice status and report to the Board their return to practice. This information will also assist the Board in accurately tolling probation for periods of non-practice within the State of California.

Current Standard terms in the Guidelines do not completely cover the meaning of “practice” for dentists and dental auxiliaries by reference to the Act or Board regulations. The Board proposes to resolve that ambiguity by moving the current practice definition of 16 hours per week or 64 hours per calendar month in Term No.

11 (“Function as a Licensee”) to this new term and add further clarification regarding practice as a dentist as specified in BPC section 1625 or providing dental supportive procedures as a dental auxiliary as defined in CCR section 1067 consistent with the scopes of practice for dentists and dental auxiliaries in the Act and Board regulation.

The Board also proposes to add further direction to users of the Guidelines that would include notice that engaging in (with instructions to insert appropriate licensing category to avoid confusion) shall include volunteer dental practice or work in any non direct patient care position that requires licensure. This provision is included to avoid confusion about whether certain practices would be considered “practice” or “non-practice” in accordance with this term and the Act (see e.g., BPC sections 1625.2 and 1626).

The Board proposes to repeal existing requirements in the “Function as a Licensee” term that provides: “If Respondent stops practicing in California for a total of five (5) years, Respondent’s license shall be automatically cancelled.” The Board proposes to lower the period of non-practice bar to 2 years from the current 5-year tolling limitation. Also, instead of automatic cancellation, the Board proposes that exceeding the tolling limitation would be considered a violation of probation. This would address possible legal challenges to the existing automatic cancellation provisions. An exemption would be provided while the licensee is residing in another state and on active probation with the licensing authority of another state, which would ensure that the licensee is still being monitored for the protection of the public and therefore showing continued progress in remediating past conduct.

This proposal would allow the Board to effectively monitor the probationer by limiting the amount of time probation may be tolled to no longer than a total of two years without the Board expending scarce resources for licensees who would otherwise have to be monitored for another 3 years without any assurances of a return to practice. In the Board’s experience, two years is a sufficient and reasonable amount of time for a licensee to determine whether to retire, resume practice in California, petition for termination of probation or request voluntary surrender of the license (all possible methods for resolving status without the Board resorting to disciplinary action to enforce its order). Further, this change would make it clear that the Board considers it a violation of probation to not resume practice within 2 years and would help the regulated community understand how

such non-practice violations would be managed. As a result, this change is necessary to implement how the Board would respond to a licensee who fails to resume practice in California for a total of two years in accordance with the adjudicative provisions of the Administrative Procedure Act (i.e., any action to revoke probation for this violation would be noticed in a petition to revoke probation or accusation and served on the probationer in compliance with the Administrative Procedure Act (Gov. Code, § 11500 et seq.) and would include a right to a hearing).

This proposal would strike the sentences in the “Function as a Licensee” standard term that relate to permitting respondents to present “sufficient documentation” of their good faith efforts to comply with active practice conditions and authorize the Board to grant an extension of respondent’s probation period up to one year without further hearing. These provisions are being eliminated because they drain Board resources and allow licensees to evade the most serious aspects of probation, including obeying all laws, by simply moving out of state or not practicing, documenting “good faith” efforts and requesting an extension. Instead, the Board proposes to add a requirement that unequivocally states that periods of non-practice do not relieve Respondent of the responsibility to comply with the terms and conditions of probation with no opportunity for an extension. This will help eliminate this compliance loophole, ensure consistent treatment of all probationers, and comprehensive, active monitoring by the Board for the protection of the public.

This condition restates the requirement that a probationer continue to comply with all the terms and conditions of probation with an emphasis on the obligations to maintain an active and current license with the Board, meet in person for interviews, and pay cost recovery. This is necessary to provide notice that tolling does not relieve the probationer of these obligations. In the Board’s experience, some probationers believe that non-practice or moving to another state somehow eliminates the need to keep an active license, meet with Board representatives, or otherwise to comply with probation. This sentence would help resolve that possible confusion.

Finally, consistent with the changes noted above, the Board is updating the “Rationale” section of this term to further explain the policy reasons why the Board has included this term in its Standard Conditions of Probation and the issues noted above including the need to ensure consumer protection, payment of probation and

enforcement costs during any period of out-of-state residency, the prevention of the avoidance of the terms and conditions of probation by merely moving out of state, to prevent indefinite monitoring of probationers and draining of staff resources by establishing a two-year tolling limitation, and to allow compliance with this term for situations where respondents are completing probation in another state.

- **Revise text and Rationale of Term (8) “Cost Recovery” to further specify the costs and payments Respondents are responsible for covering.**

Purpose: The changes would remove language (covered in Term 6) concerning Respondent’s obligation to pay during periods of non-practice. The changes also add a reference to BPC section 125.3 and revises language on Respondent’s obligation to reimburse the Board to be consistent with guidance language, rather than language found in an Order. The changes also specify that the costs reimbursed would be enforcement costs, which include investigation and prosecution costs, up to the date of the hearing. The changes remove reference to probation costs in the Rationale for this Term since it is already covered under existing Term No. 9 and BPC section 125.3 indicates that cost recovery is limited to recovery of “the reasonable costs of the investigation and enforcement of the case.”

Rationale: Removing the language on a Respondent’s obligation to pay during periods of non-practice and placing it in a term specific to non-practice helps focus the language in this Term on the precise meaning of Cost Recovery. Adding the reference to BPC section 125.3 references the authority behind this Term for greater comprehension of the users of these Guidelines. Revising the reimbursement language to be more consistent with BPC section 125.3 rather than an Order provides greater notice and understanding as to the Board’s authority to order these costs as part of a term and condition of probation. Indicating that cost recovery considers enforcement costs to include investigation and prosecution better reflects that enforcement costs include recovery of only those items specified in BPC section 125.3. The reference to probation costs in the Rationale is being removed as not related to the text of this Term since it is covered by Term (9) “Probation Monitoring Costs.”

Finally, the Board proposes to update its Rationale and directions on this term to further clarify its authority to order the aforementioned cost recovery consistent with BPC 125.3 and to require users to include a discussion in the Decision as to why cost recovery is not ordered. This is necessary to enable the Board to determine why cost recovery is not being ordered as permitted by BPC 125.3 and to evaluate

whether program changes need to occur to correct any mistakes that may have resulted in the failure of the cost recovery to be ordered in any particular case.

- **Revise text of Term (9) “Probation Monitoring Costs” to emphasize that the term language is specific to probation monitoring.**

Purpose: The changes add qualifiers to references to “probation monitoring” costs and “payments” to clarify that these costs and payments refer to probation monitoring costs. The changes also remove reference to the probation period being extended.

Rationale: The Board has received questions from probationers regarding the meaning of these terms that are currently unqualified. To address the apparent ambiguities, the changes would add references to “probation costs” and “payments”, which would provide additional clarity as to what costs are being paid by Respondent and what types of payments need to be made to comply with this Term. The current reference to extending the probationary period is unclear as written, particularly when the “Continuance of Probationary Term/Completion of Probation” Standard Term already states that probation will be extended if the Board requests that the Attorney General’s Office prepare an Accusation or Petition to Revoke Probation for any violation of probation and the extension does not expire until the Board acts on the Accusation or Petition. Therefore, the Board is removing this sentence as unnecessary and confusing to the regulated community and staff.

- **Add the words “Submit a written request” and make other non-substantive changes to Standard Term (10) “License Surrender”**

Purpose: The Board proposes to add the words “submit a written request” to this current section and make other conforming changes to identify the “Board’s” acceptance is required for the surrender, and revise the term “stipulated agreement” to “stipulated settlement” to more correctly identify the legal document used to execute the proposed license surrender and show that the consent of the Board was obtained consistent with BPC section 118 (which permits the Board to continue discipline for a licensee who surrenders without the consent of the Board).

Rationale: Existing text does not explain how the process would begin for a licensee to voluntarily and with the consent of the Board, surrender their license. This change would resolve that ambiguity and is therefore necessary to explain the requirement for how a respondent would initiate the request of a surrender and seek the consent of the Board to terminate probation and voluntarily surrender in lieu of further

discipline (since non-compliance with probation is a violation of Standard Term No. 12, renumbered as 11 in this proposal).

- **Remove Term (11) “Function as a Licensee” from the list of Standard Probationary Terms and move substantive provisions of that term to the new Term “Tolling of Probationary Period” Condition and renumber subsequent Terms for consistency.**

Purpose: This change would eliminate the current Term (11) and move much of the text into Term (6) as described above to detail circumstances where a Respondent would have to disclose their probation status to patients.

Rationale: The Board believes that the currently proposed Standard Term No. 6 more accurately conveys the Board’s current position on active practice requirements, tolling of probation and related reports, the consequences for failing to comply with probation and any possible exception to the tolling requirements. Both Term (6) and Term (11) address periods of time where a Respondent may be out-of-state and thereby unable to practice in California. Practicing in-state is a requirement of probation, and it is appropriate to toll probation when a Respondent is out of state for more than a specified period of time so that this California Board can effectively continue to monitor that licensee. Combining the two terms would also combine possible reasons for a Respondent being out-of-state or otherwise unable to comply with the requirement to practice in California during probation in one convenient location.

- **Revise text of re-numbered Term (11) “Continuance of Probationary Term/Completion of Probation” to clarify the Board’s continuing jurisdiction in the event of probation violations until the matter is final.**

Purpose: The changes add language stating that the Board retains continuing jurisdiction until the matter is final to existing text that permits the Board to extend probation until a pending Accusation or Petition to Revoke Probation has been acted by the Board. The Board also proposes to move the word “automatically” for grammatical reasons before the word “extended”. The proposed changes would also specify in the Rationale that this is necessary to protect the public from those who show lack of compliance “with the Dental Practice Act” to more clearly specify the areas of the law to which the Board is referring in this existing sentence.

Rationale: This proposal would add words to the sentence that states that if an accusation or petition to revoke probation is filed against a probationer, or the matter

is referred to the Attorney General's (AG) office, prior to the conclusion of the probationary period, the Board shall have continuing jurisdiction, and the probationary period shall be extended until the matter is final. The addition of the "Board shall have continuing jurisdiction until the matter is final" language is necessary to more accurately state the status of the Board's current probation authority, which permits the Board to continue case prosecution while the matter of whether probation has been violated is pending action by the Board consistent with the Board's authority to place licensees on probation (e.g., BPC sections 1628.7 and 1671). The changes are necessary to provide clarity and specificity about the Board's jurisdiction in cases involving probation violations.

- **Remove reference to discipline as unnecessary in the Rationale for re-numbered Term (12) "Sale or Closure of an Office or Practice".**

Purpose: The change to the Rationale would add references to the patients "of the Respondent", and remove existing references to patients "whose dentist of record has been disciplined".

Rationale: As currently written the Rationale does not refer specifically to the patients of the Respondent but to any patients whose dentist has been disciplined. The more specific reference to Respondent provides greater clarity and would more accurately convey that the Board's policy protection extends to any patients of the Respondent. The section would include other non-substantive changes to remove references to "his or her" and replace with gender neutral terms, and replace "condition" with this "term of probation".

- **Revise re-numbered Term (13) "Notification to Employer" to include copies of additional documents in the notice and to include prospective as well as current employers, supervisors and/or contractors, as appropriate.**

Purpose: The changes would add language to apply this term to dental auxiliaries as well as dentists. The changes include expanding the list of documents to provide in the Notification to include the Order, Accusation, Statement of Issues, or Petition to Revoke (as applicable). The changes also include adding language to include supervisors, contractors and to cover prospective employers or contractors. The proposal would also add requirements that the provision of the aforementioned documents would need to be provided "before accepting or continuing employment." This section would also include technical, clean-up to spell out "fifteen" before (15), add a missing parenthesis, add the word "Respondent's" before "place of practice" and substitute the words "term of probation" for "condition" to more accurately convey this term of probation.

Rationale: Respondents in disciplinary and denial cases include dental auxiliaries as well as dentists, and this term should be applied consistently for both licensee populations. Dentists and dental auxiliaries work in a variety of practice settings and may face a variety of enforcement actions for violations of the Act or Board regulations including Accusations, Statements of Issues and Petitions to Revoke probation. Adding the provision of these documents to the required notification will provide the employer or prospective employer additional context and greater understanding about the Respondent’s potential work restrictions and their possible attendant responsibilities to monitor Respondent. Including current and prospective employers, supervisors, and contractors in the language addresses situations where the Respondent may be working outside of a traditional employee/employer relationship and allows for prospective employers or contractors to have a better understanding of the Respondent’s disciplinary or denial case prior to employment. Adding that the aforementioned enforcement documents must be provided before accepting or continuing employment ensures potential supervisor, employer, or contractor advance notice and understanding of Respondent’s history and limitations, and avoids a situation where employment or contract work may be cancelled after the licensee has begun employment or contract work. To avoid this situation and the potential adverse impact to patient continuity of care, the Board proposes to add this advance notice requirement.

- **Add Note to Term (13) “Notification to Employer” indicating when to use the Uniform Standards term for notice to employer rather than this term in the Guidelines.**

Purpose: The Board proposes to add Note language that indicates that if Respondent is found to be a substance-abusing licensee that the Notification to Employer Term in the Uniform Standards document incorporated by reference at Section 1018.01 must be used in lieu of this Standard Term in the Disciplinary Guidelines. The Board would make technical changes to clean-up reference to “condition” and replace it with “this term of probation” and capitalize the word “R” in respondent for consistency throughout the Guidelines.

Rationale: This note, like others throughout the document, clarifies what to do with certain Terms when the Respondent is found to be a substance-abusing licensee. While the Board has already adopted this standard generally at Section 1018.01, the Board has found that it is necessary to remind users of the existence of these Uniform Standards and of the Board’s directive to use those standards as specified in the document “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders” (Uniform Standards) in lieu of other

terms in the Guidelines in cases where the Respondent has been shown to be a substance-abusing licensee. To make implementation even easier, the Board proposes to specifically state in this Note which term (“Notification to Employer”) must be substituted from the Uniform Standards document in place of this term.

- **Add the term (14) “Disclosure of Probation Status to Patients” and rationale to the list of Standard Probationary Terms and Conditions, which is required pursuant to Business and Professions Code (Code) section 1673 only for probationers meeting specified criteria (e.g., commission of any act of sexual abuse, misconduct, or relations with a patient or client).**

Purpose: This change would include in the Disciplinary Guidelines Term (14) “Disclosure of Probation Status to Patients” which outlines the requirement for a Respondent to disclose their probation status if required under the circumstances specified by BPC section 1673. Existing law at BPC section 1673 requires the Board to require a licensee on probation, on or after July 1, 2020, under specified circumstances (as specified in subdivision (a)(1)-(2)), to provide a patient or patient’s guardian or health care surrogate a separate disclosure that includes: the licensee’s probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the Board, the Board’s telephone number, and an explanation of how the patient can further find information about the licensee’s probation on the licensee’s profile page on the Board’s Internet website.

However, BPC section 1673 does not provide guidance to users of the Guidelines on when to place a disclosure requirement in a probationary order, what that disclosure shall specifically contain including the exact location of the Board’s online license information on its Internet website, the method of demonstrating compliance with this term, requirements for where a record of the disclosure would be expected to be maintained, the Board’s records retention requirements for the disclosure statement, requirements for responding to records requests by the Board for this disclosure, and any exemptions from the requirements for this Term. This proposal would address those specific requirements for that disclosure. It would also set records retention and production requirements for respondents to maintain and disclose this document in response to a Board inquiry.

Rationale: The Disciplinary Guidelines need to reflect current laws and regulations. This new Term reflects the trigger for the applying the disclosure requirements of BPC section 1673 and other content requirements of Section 1673, which was enacted into law by AB 1519 (Chapter 865, Statutes of 2020), and requires Respondents provide a separate disclosure to patients if a Respondent is on

probation due to specified circumstances involving direct harm to patients as provided in subdivision (a)(1) of Section 1673. Those circumstances are: the commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729 of the Business and Professions Code; drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely; criminal convictions directly involving harm to patient health; and inappropriate prescribing resulting in harm to patients and a probationary period of five years or more. The term would also include an explanation for the rationale for the use of this term to help provide greater understanding and more accurate implementation of this term consistent with BPC section 1673.

To help avoid confusion about when the disclosure requirement would need to be met for any Respondent licensee, this term includes a “user” note that requests that the user review this notice prior to considering whether to include this term in any probationary order and then re-states the statutory triggers for implementing the disclosure requirements in BPC 1673(a)(1). Restatement of the “triggering” circumstances will help avoid inadvertent omission or inclusion of this term, which is required by Section 1673 to be used in every case where the aforementioned circumstances apply.

To ensure proper implementation of this Term in accordance with Section 1673(a)(1), that explains when, after meeting the trigger circumstances mentioned above, the Board would be authorized by law to place such a disclosure requirement in a probationary order, the Board proposes to add the following directive:

“if any of the foregoing criteria are established after a final adjudication by the Board following an administrative hearing, or otherwise established via admitted findings or a prima facie showing made in a stipulated settlement, then the following shall be added to the probationary order...”

To ensure that respondents understand how to accurately convey the disclosure requirements to patients specified in BPC section 1673(a), the Board adds a sentence that restates those disclosure requirements that are required by law to be included per subdivision (a) of Section 1673, but adds detail about the exact location of the Board’s profile page where the Respondent’s profile page and licensing information can be found: “License Verification” tab at <https://www.dbc.ca.gov/consumers/index.shtml>. This ensures that consumers are provided accurate information about the precise location of the Board’s online look-

up system for checking a respondent's license status and that they can easily locate the information.

To ensure that probationers have notice of and consistently follow the statutory requirements for delivering the notice "before the patient's first visit," the Board restates this statutory directive from BPC 1673(a)(1) in this term and condition of probation. BPC section 1673(b) requires that: "a licensee required to provide a disclosure pursuant to subdivision a shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure." To ensure consistent compliance with that requirement, the Board adds that requirement to this term and condition of probation and adds a retention requirement that specifies respondent retain the disclosure be "maintained in the patient's medical record." This ensures that the record is available for probation monitoring and inspection by the Board for compliance with the terms and conditions of probation during the time period covered by probation.

In addition, consistent with the requirements in existing CCR section 1018.05 (requirements for providing records in response to a records request by the Board), the Board includes a requirement in this term that respondents provide the disclosure document within 15 days of the receipt of the Board's request for such record, unless the respondent licensee is unable to provide the documents for "good cause" (as defined). These requirements are necessary to ensure that the respondent has notice of the need to maintain compliance with the Section 1018.05 (which implements the same records response requirements) and for consistency in the enforcement of the Board's unprofessional conduct standards. The Board restates the "good cause" definition in Section 1018.05 in this term (allowing extension of time to comply where the licensee is unable to provide records due to illness or travel) to ensure uniformity in the implementation of its unprofessional conduct standards.

BPC section 1673(c) exempts, under specified circumstances, the licensee from being required to disclose the information required by that Section if the criteria set forth in subdivision (c) are met. This final paragraph for this term would restate those requirements for greater notice to staff and the regulated community, and for consistency in implementation in accordance with Section 1673's requirements. One of the criteria in this section excludes from compliance any licensee who "does not have direct treatment relationship with the patient." However, direct treatment relationship is not defined in the Act. Therefore, to avoid confusion, and consistent with the common understanding of what direct treatment relationship includes in dentistry, the Board proposes to add a definition that "a direct treatment relationship

is where the healthcare provider delivers healthcare, provides services or products, or reports that diagnosis and/ or results associated with health care, to the patient and not through a third party.”

- **Add Term (15) “Civil Penalty” and Rationale to the list of Standard Probationary Terms and Conditions as this penalty is required in cases where a respondent fails or refuses to comply with a request for patient dental records or fails or refuses to comply with a court order mandating the release of records to the Board pursuant to BPC section 1684.1.**

Purpose: Current law at BPC section 1684.1 authorizes the Board to levy various civil penalties in ranges as specified in that section under circumstances where a licensee fails or refuses to comply, or a health care facility fails to comply. with a request for dental records of a patient that is accompanied by that patient’s written authorization for release of records. However, the current Guidelines do not notify users that this penalty is an option in cases where the respondent licensee fails or refuses to comply with the request for dental records of a patient in accordance with Section 1684.1. This proposal would add this notice and directions for use to users and provide proposed template text to be used in those cases where a violation of section 1684.1 occurs. The change would add Term (15) to address cases in which a Respondent has failed to comply with requests and/or court orders for the release of records in violation of Code section 1684.1.

Rationale: BPC section 1684.1 authorizes the imposition of a civil fine for licensees who fail or refuse to comply with a request for dental records or a court order enforcing a subpoena requesting dental records. Adding a Term addressing this provision of law will provide guidance to Board staff, Deputy Attorneys General and Administrative Law Judges on how to apply the penalty if needed. The template language would provide the user with boilerplate language the tracks the provisions of BPC section 1684.1 and requires them to insert a dollar amount consistent with the requirements of Section 1684.1(a)(1) or (b)(1) as applicable (since those sections apply to civil actions and are therefore available to the Board to enforce by way of Order under the Act and the APA). The other sections of Section 1684.1 are not cross-referenced as those provisions refer to other entities not regulated by the Board, or penalties for criminal prosecutions not available in a disciplinary matter governed by the APA. To help ensure compliance, users are directed to insert “conditions of payment” so that the respondents understand how to make the payments to the Board for any civil penalty levied by this term of probation. Finally, the Board adds a “rationale” section to help explain the need for this disclosure term

per BPC section 1684.1, and to facilitate its use in this context. This will help ensure greater comprehension and consistent implementation for the users of these Guidelines

- **Amend Optional Probationary Terms and Conditions for All Decisions and Orders**
- **Strike the words “Additional” and “Model Language” and replace those terms with “Optional Probationary Terms And”**

Purpose: The changes would strike the words “Additional” and “Model Language” and replace them with “Optional Probationary Terms And” to more accurately convey the types of terms that would only apply if in the discretion of the user, it would be appropriate for remediation in a specific case.

Rationale: The Board proposes to make the title changes here to consistent with the Board’s purpose in offering these other types of probationary terms and conditions, i.e., that they are not compulsory, but voluntarily selected terms and conditions to be used where the Board, in its discretion considers it appropriate for the protection of the public as described in the rationale for each optional term and condition listed in this section.

- **Add clarifying language to re-numbered Optional Term (16) “Suspension” about how monies owed for services prior to the suspension and monies earned by Respondent’s practice during the suspension are to be treated and other clarifying changes.**

Purpose: The changes add language to repeal the word “new” related to the prohibition about receiving monies derived from the practice of dentistry while suspended. Instead, the proposal would add language that would prohibit a respondent from receiving monies derived from the practice “occurring during the suspension period and that their office may remain open for administrative purposes only to accept payments on accounts “receivable for monies earned prior to the suspension period.”

The Board would make other typographical changes to repeal “Decision” and replace it with “Decision and Order” to more accurately convey the two elements of

every enforcement action issued by the Board, add an explanatory note that BPC section 1625 “defines the practice of dentistry” for easier comprehension of the regulated community, make gender neutral changes from “his or her” office to “a dental” office, make other grammatical clean-up changes to add “the”, “for” and “also” in various places to for easier comprehension of the users.

Rationale: The suspension of a license must come with the inability to benefit from the practice of dentistry during the suspension period to truly constitute suspension from practice. As payments for services may come after the provision of those services, it is possible for payments to be made during a period of suspension for services that were provided prior to suspension. The proposed changes would clarify that there cannot be payment for practicing dentistry during a suspension, but that a dental office can be open to administratively handle payments submitted during a period of suspension for dental practice services provided prior to that period of suspension. This is necessary because the existing term on the prohibition in accepting “new” monies” has caused confusion regarding what the Board considers “new”.

To resolve the apparent ambiguity, the Board proposes to repeal the reference to “new”, add text that specifies that the suspension on acceptance of practice-related money relates only to money derived from practice occurring during the suspension period, and does not apply to money received for practice that occurred prior to the period of suspension.

- **Revise re-numbered Term (17) “Remedial Education” to indicate that failure to complete the required course in the first year of probation would constitute a violation of probation and specify the process by which a respondent would submit a written request for Board approval of a remedial course.**

Purpose: The changes would add language to lay out the Board’s approval process for approving the number of hours and specific content of the educational program respondents are required to take, to include: (A) detail regarding what providers would be approved for remedial education courses by the Board to satisfy this term of probation, (B) define what an “approved provider” means, (C) specify that respondents must meet all requirements of this section to be approved, (D) adds a requirement that the courses be “directly relevant to the subject matter of the causes for discipline in the Board’s decision,” and, (E) further specifies what information the Respondent must provide to the Board to process an approval request. The changes

also add a stipulation that failure to complete the required remedial education within the first year of probation shall constitute a violation of probation.

Rationale: Listing acceptable education providers will help Respondents find courses suitable for addressing the deficiencies in their skills and/or knowledge and provide advance notice of how to satisfy this term. The approved providers would include: the American Academy of General Dentistry PACE Program approved organization, an American Dental Association (ADA) Continuing Education Recognition Program (CERP) recognized provider, or a Board approved provider as set forth in CCR section 1016. In the Board's experience and according to minimum standards for providing continuing competency training in accordance with existing Board regulation (for course providers meeting CCR 1016 requirements), these educational providers have demonstrated ability to provide rigorous remedial education in specific subject matter areas involved in the practice of dentistry. An educational course "directly relevant to the subject matter of the causes for discipline" is seen by the Board as one method of remediation to help prevent future violations.

To ensure that the Board has sufficient information to analyze whether the requirements for this term are met (including course content and hours are "directly relevant" to the causes for discipline), and to ensure its rehabilitative goals are met, the Board proposes to require submission of a written request that includes the following:

- (1) A short, descriptive title of the educational program;
- (2) A statement of educational objectives;
- (3) Length of the educational program;
- (4) Sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured; and,
- (5) Instructional mode or methods.

These items will allow the Board sufficient factual information to analyze the sufficiency of the proposed educational programs as well as determine whether they might address any applicable deficiencies in skills and/or knowledge.

Stipulating that failure to complete the remedial education within the first year of probation would constitute a probation violation provides incentive for Respondents to finish the remedial education in a timely matter and helps ensure more timely education and training in areas where competency or ethical lapses may be an issue, which are of great risk to the public. Specifically, the Board seeks to have Respondents take remedial education in a more expedited timeframe to expedite its rehabilitative goals. Stretching out the education past that one-year mark, in the

Board's experience, risks having the Respondent not retain the learned skills and/or knowledge needed to remediate the applicable violations as they would not be as engaged with the material as they would be if the course would be completed over a greater length of time.

Finally, the Board would make technical and grammatical changes to the "Rationale" section of this term for greater understanding by the users of the need to add this term to a probationary order based on the facts of the case and the policy issues already listed here. The Board would resolve an ambiguity by adding the word "dental" before auxiliaries to specify the type of auxiliary under the Board's jurisdiction and for whom this term would apply.

- **Add the American Board of Dental Examiners (ADEX) exam, and remove the Western Regional Examination Board exam reference to the re-numbered Term (18) "Examination".**

Purpose: The change would amend the list of acceptable examinations to better reflect the Board-approved examinations that would be available for re-examination under this Term.

Rationale: These changes would reflect the changes in examinations accepted for licensure since the last version of the Disciplinary Guidelines. The Dental Board now accepts the ADEX exam, and the Board has been notified by the CDCA-WREB (the entity responsible for qualifying exams) that the Western Regional Examination Board exam (WREB) is no longer offered as of the class of 2023 (see Underlying Data). To ensure that respondents are not given an option for examination or re-examination that cannot factually be fulfilled and to avoid confusion, the Board proposes to remove the reference to the WREB in this section. The Board would make grammatical and non-substantive changes to this section and the rationale (including changing "condition" to "term of probation") for greater comprehension. The Board proposes to remove the word "field" from the reference to "specialty field" since the more common understanding of this term is simply to refer to it as a "specialty" when considering practice areas.

- **Add Note to renumbered Term (19) "Supervised Practice" to indicate that the Respondent shall be subject to the Uniform Standards term in lieu of this Term with respect to supervised practice if the Respondent is found to be a substance abusing licensee.**

Purpose: In addition to grammatical and technical clean-up changes to this section, the Board proposes to add the word “prior” and repeal the word “ever” when referring to whether a supervisor has had disciplinary actions as a disqualifying criteria for a supervisor. The proposal would add the word “current” to the disqualifying criteria for a supervisor having any business, professional or familial relationships with the respondent. The Board would remove as unnecessary sentences that provide examples of the types of business relationships (employee, partner or associate) and other irrelevant language that merely restates the prohibitions on relationships between the respondent and supervisor. The Note language indicates that if Respondent is found to be a substance-abusing licensee that the Notification to Employer Term in the Uniform Guidelines must be used in place of the Notification to Employer Term in the Disciplinary Guidelines.

Rationale: The word “ever” is to be removed as unnecessary since this sentence already uses the word “any” when referring to disciplinary actions history for a supervisor. Adding the word “prior” makes it clearer that a supervisor’s history what the Board is most concerned with and would make it easier for a respondent to understand what qualifies a supervisor for the purposes of this Term. The Board would remove references to specific types of relationships as unnecessary since this Term already prohibits “business, professional or familial” relationships, removing these examples will make it clear that the prohibition covers any kind of business, personal or familial relationship. The Board proposes to add the word “current” before the words “business, personal or familial relationship” to specifically ban these types of current as well as prior types of relationships. This helps assure the Board of an unbiased review and assessment of a respondent’s activities while on probation.

Finally, this note, like others throughout the document, clarifies what to do with certain Terms when the Respondent is found to be a substance-abusing licensee. While the Board has already adopted this standard generally at Section 1018.01, the Board has found that it is necessary to remind users of the existence of these Uniform Standards and of the Board’s directive to use those standards as specified in the document entitled “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders” (Uniform Standards) in cases where the Respondent has been shown to be a substance-abusing licensee. To make implementation even easier, the Board proposes to specifically state in this Note which term (“Supervised Practice”) must be substituted from the Uniform Standards document in place of this term.

- **Make non-substantive clean-up changes to re-numbered Term (20) “Restricted Practice”.** The Board proposes to make grammatical, technical

and other non-substantive clean-up changes to this Term for readability and greater comprehension. These include: (A) changing the words “consulting,” “examining,” “treating” to “consultation,” “examination,” and “treatment”, (B) using brackets instead of parentheses, (C) spelling out the word “thirty”, (D) adding the word “Order” to “Decision” (so it reads “Decision and Order”, and (E) replacing “condition” with “This term of probation”.

- **Revise re-numbered Term (21) “Third Party Monitor (Chaperone)” to add additional enforcement documents to the list that the Monitor is required to review and fully understand in their role as a monitor who would be present at all times while Respondent is consulting, examining or treating specified patients.**

Purpose: In addition to grammatical, technical and other clean-up changes to this section for greater comprehension (including adding the word “Order” to “Decision” (so it reads “Decision and Order”) and replacing “condition” with “This term of probation”), the changes to this section would require the third-party monitor to read the Order, Statement of Issues and/or Petition to Revoke Probation, in addition to the existing requirement to read the Decision and Accusation. Additionally, the changes will specify that the notification to patients about a third-party monitor will be made available on the premises at all times during business hours.

Rationale: Adding the additional documents for the third-party monitor’s review provides the monitor additional information and context about the Respondent’s case to help ensure more informed monitoring of the Respondent’s practice. This would better prepare the monitor to fulfill their obligations. The changes specifying when and where the notification will be available for review reduces confusion about the Respondent’s obligation to display the notification and ensures that the availability of the notification for review is done in a manner that is not overly burdensome as to time (only during business hours). The rationale would also be revised to add the word “monitored” before the word “environment” to cover all types of practice restriction for this Term that may be imposed.

- **Revise re-numbered Term (23) “Community Service” to add additional enforcement documents to the list that Respondent must provide to the organization(s) where they are providing community service.**

Purpose: In addition to grammatical, technical and other clean-up changes to this section for greater comprehension (including removing the incorrect word “comply” and replacing it with “apply”), the changes would add the following to the documents the Respondent must provide to any community service and/or non-profit organization: the Order, Accusation, Statement of Issues and/or Petition to Revoke Probation. The changes also add a reference to BPC section 1671(e) and “the fulfillment of community service” language in the rationale, which helps identify for the users which law that permits the Board to impose this Term.

Rationale: Adding the additional documents for the community service organization review provides the management (currently specified as the chief of staff, director, office manager, program manager, officer, or the chief executive officer) at a community or non-profit organization with additional information and context about the Respondent’s case. This would better inform the organization about any issues they might need to be aware of before engaging the services of any respondent for the protection of the public.

Adding the reference to Code section 1671 provides greater notice and specificity to the Board’s authority to impose this term.

- **Revise renumbered Term (24) “Psychological Examination” to delete the Board’s option to excuse a Respondent from complying with recommendations of the evaluator at its discretion.**

Purpose: In addition to grammatical, technical and other clean-up changes to this section for greater comprehension, the proposal removes reference to the possibility of the Board excusing a Respondent from complying with the evaluator’s recommendations. The changes also specify in the Term language that the examination is psychological and add a Note to explain what to do if the Respondent is a substance abusing licensee.

Rationale: Removing the option of the Board excusing compliance with an evaluator’s recommendations reflects the Board’s revised policy decision that a respondent may not do so without the respondent formally requesting that their probation be modified or terminated in accordance with the petition process under BPC 1628.7. Removing this reference would avoid confusion about whether excusing a respondent from compliance with this Term, which includes compliance with the recommendations of the evaluator, may be done more informally. By making this change, the Board defers to the evaluator’s expert recommendations unless relieved of the responsibility by way of the more formal petition process. The Board also revises the confidentiality provision to indicate that the Board “shall

consider” this psychological evaluation to be confidential, recognizing that the ultimate decision about whether a document is privileged from disclosure will be left to the courts (see *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, Courts are not free to create additional privileges by common law).

Finally, the added Note clarifies what to do with certain Terms when the Respondent is found to be a substance-abusing licensee. While the Board has already adopted this standard generally at Section 1018.01, the Board has found that it is necessary to remind users of the existence of these Uniform Standards and of the Board’s directive to use those standards as specified in the document entitled “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders” (Uniform Standards) in cases where the Respondent has been shown to be a substance-abusing licensee. To make implementation even easier, the Board proposes to specifically state in this Note which term (“Clinical Diagnostic Evaluation”) must be substituted from the Uniform Standards document in place of this term as these terms are the most similar in scope and purpose, which could present confusion if both were included in the same probationary order.

- **Make non-substantive clean-up changes to re-numbered Term (25) “Psychotherapy”.** The Board proposes to make grammatical, technical and other non-substantive clean-up changes to this Term for readability and greater comprehension. These include: (A) spelling out Arabic numerals, (B) removing gender-based references and adding gender neutral terms, (C) adding the word “Order” to “Decision” (so it reads “Decision and Order”), and (E) replacing “condition” with “term of probation”.
- **Revise re-numbered Term (26) “Physical Evaluation” to include references to dental auxiliaries, and the process for notifying when practice must cease or resume.**

Purpose: In addition to grammatical and non-substantive other changes to increase comprehension, the proposed changes to this Term would add references to “dental auxiliaries” and performing “the duties of a dental auxiliary, as applicable.” The proposal would also add language regarding when a requirement to cease practice would be triggered (i.e., “upon notification from the Board or its designee” of the determination by a physician that respondent is unable to practice dentistry or as a dental auxiliary safely or without restrictions), and also when practice may be resumed (i.e., notified in writing by the Board that practice may resume). The

proposal would also further specify that if the Respondent fails to have the assessment done within the 45-day requirement, Respondent “shall receive notification from the board or its designee to cease practicing dentistry within 3 calendar days after being notified period.”

Rationale: The references to dental auxiliaries are necessary because dental auxiliaries are also licensees who might be subject to this type of practice restriction due to a physical condition affecting competency. The proposed amendments to the existing term would add the requirement for when a respondent must cease practice or resume practice after being determined by a physician to unable to practice safely or without restrictions. These qualifiers are necessary so that there is no confusion among respondents as to the exact time when compliance with cease practice requirements must occur or when practice may resume. The Board adds the terms “or designee” to delegate its authority to the staff of the Board who would be responsible for monitoring the respondent’s probation on behalf of the Board and would be able to most quickly implement the policy of the Board to take unsafe practitioners out of practice who have been determined by a physician to not be able to practice safely.

In addition, the Board would remove the reference to a respondent being “immediately suspended” and substitute with language that allows the Board to order a respondent to “cease practice” within three calendar days’ after notice. This would address possible legal challenges to the existing automatic suspension provisions that are implemented without notice. Three days is also sufficient time, in the Board’s experience, to make contact with a probationer, convey the Board’s order to cease practice, and allow for reasonable preparation for suspension or closure of the dental or dental auxiliary practice and notice to patients who may be affected.

- **Revise re-numbered Term (27) “Diversion Program” to include references the process for notifying when practice may resume and notice to users of when the Uniform Standards must be used in lieu of this Term.**

Purpose: In addition to grammatical and non-substantive other changes to increase comprehension, the proposed changes to this Term would add language regarding when a licensee may resume practicing dentistry after failing to participate in the time required for intake assessment by the Diversion Program (i.e., “shall not

resume practice until notified by the board that practice may be resumed”). The Board also proposes to add Note language that indicates that if Respondent is found to be a substance-abusing licensee that the “Drug or Alcohol Abuse Treatment Program” Term in the Uniform Standards document incorporated by reference at Section 1018.01 must be used in lieu of this Standard Term in the Disciplinary Guidelines.

Rationale: The proposed amendments to the existing term would add the requirement for when a respondent may resume practice after failing to participate in the time required for intake assessment by the Diversion Program. These qualifiers are necessary so that there is no confusion among respondents as to the exact time of compliance or for when practice may resume.

Finally, the added Note clarifies what to do with certain Terms when the Respondent is found to be a substance-abusing licensee. While the Board has already adopted this standard generally at Section 1018.01, the Board has found that it is necessary to remind users of the existence of these Uniform Standards and of the Board’s directive to use those standards as specified in the document entitled “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders” (Uniform Standards) in cases where the Respondent has been shown to be a substance-abusing licensee. To make implementation even easier, the Board proposes to specifically state in this Note which term (“Drug or Alcohol Abuse Treatment Program”) must be substituted from the Uniform Standards document in place of this term as these terms are the most similar in scope and purpose, which could present confusion if both were included in the same probationary order.

- **Revise re-numbered Term (29) “Abstain from Use of Alcohol, Controlled Substances, and Dangerous Drugs” to include references providing a copy of the charging documents to the Board-approved “single coordinating physician,” and notice to users of when the Uniform Standards must be used in lieu of this Term.**

Purpose: In addition to grammatical and non-substantive other changes to increase comprehension, the proposed changes to this Term would add language further describing the disclosure requirements for a respondent when they, under this

existing term's provisions, identify a single Board-approved coordinating physician who will be aware of respondents history of substance abuse and who will coordinate and monitor any prescriptions for respondent to use dangerous drugs, controlled substances, or psychotropic or mood altering drugs. the proposed language would require responded to provide a copy of their decision and order including the related Accusation, Statement of Issues, or Petition to Revoke to the physician and surgeon (which would amend the current requirement that only requires provision of the accusation and decision).

The Board also proposes to add Note language that indicates that if Respondent is found to be a substance-abusing licensee that the "Abstain from Use of Alcohol, Controlled Substances and Dangerous Drugs" Term in the Uniform Standards document incorporated by reference at Section 1018.01 must be used in lieu of this Standard Term in the Disciplinary Guidelines.

Rationale: Adding the additional documents for the physician's review provides the physician with additional information and context about the Respondent's case to help ensure more informed coordination and physician oversight of a respondent's medications to help ensure safe practice and for the protection of the public.

Finally, the added Note clarifies what to do with certain Terms when the Respondent is found to be a substance-abusing licensee. While the Board has already adopted this standard generally at Section 1018.01, the Board has found that it is necessary to remind users of the existence of these Uniform Standards and of the Board's directive to use those standards as specified in the document entitled "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders" (Uniform Standards) in cases where the Respondent has been shown to be a substance-abusing licensee. To make implementation even easier, the Board proposes to specifically state in this Note which term ("Abstain from Use of Alcohol, Controlled Substances and Dangerous Drugs") must be substituted from the Uniform Standards document in place of this term as these terms are the most similar in scope and purpose, which could present confusion if both were included in the same probationary order.

- **Revise re-numbered Term (31) “Ethics Course” to include the process for submitting a written request for approval of an ethics course to the Board.**

Purpose: The changes add the process and required information (similar to the criteria listed in Term 17 – “Remedial Education” – see purpose and rationale above) for a Respondent to submit a proposed ethics course for approval by the Board.

Rationale: Adding these requirements helps to ensure that the Board has a better understanding of the proposed Ethics course. With information on the course provider, the subject matter, duration and methods of the course help ensure that the Respondent is pursuing a course well suited to addressing the issues highlighted by the circumstances of their case.

- **Revise renumbered Term (32) “Billing Monitor” to expand the list of relationships that the Monitor and Respondent should not have (i.e., relationships perceived as creating conflicts of interest).**

Purpose: The changes would add new examples of categories for prohibiting professional or personal relationships as a qualifier for a Board-approved billing monitor, that would specify that the billing monitor should not have a contractor, friendship, intimate, or romantic relationship with Respondent, in addition to the other relationships listed in the current language. The changes also specify that the current references to monitor in the Term refer to the billing monitor. The Board would also specify that the billing monitor’s quarterly reports that find or “otherwise reports” questionable billing practices in Respondent’s billing would trigger an option for the Board to increase monitoring in compliance with this term.

Rationale: The proposed changes listing additional relationships that should disqualify someone from serving as a billing monitor provide more specificity on how to avoid the possibility or appearance of conflicts of interest and to avoid current confusion on what “personal” or “professional” relationships would disqualify a billing monitor from approval by the Board. The billing monitor needs to be an impartial individual and making additional relationships disqualifying makes it easier to select an impartial billing monitor. The changes specifying that the monitor referred to in the Term is the billing monitor provides greater specificity and further distinguishes the billing monitor from the third-party monitor (chaperone) described in re-numbered Term 21. To identify and avoid confusion regarding the specific factual trigger when monitoring may be increased, the Board adds the words “that otherwise reports” questionable billing practices in this Term.

- **Revise Rationale for Re-numbered Term (33) “Solo Practice” to make grammatical or other technical clean-up changes** as described in the “*Add “terms and” before the word “conditions” throughout the Guidelines*” section noted above.
- **Revise Rationale for Re-numbered Term (34) “Controlled Substance – Maintenance of Records and Inventories” to clarify the Term should be used only for cases involving dentists.**

Purpose: In addition to adding clarifying text to the rationale about this “term and” condition, the proposed changes add language specifying that the term should only be used for dentist license/permit cases.

Rationale: As dental auxiliaries licensed by the Board would not have the ability to order or prescribe controlled substances (see BPC sections 1625 and 4040(a)(2)), it is reasonable to suggest that this Term should be used only for dentist licensees and/or permit holders.

- **Revise Clinical Training Program to make grammatical or other technical clean-up changes to: add references to the spell out the Arabic numerals used in this existing term, add the word “Order” to Decision (so it would read “Decision and Order” to describe the precise enforcement document used in these enforcement cases), remove gendered pronouns and replace with gender neutral terms, and make grammatical changes to correct word use and syntax.**
- **Add Recommended Penalties, minimum and maximum ranges, and new grounds for discipline or enforcement action for violations of Business and Professions Code (BPC) sections 480(a)(1), 480(a)(2), 490, 650.2, 1628.5, 1638.1(j), 1638.5, 1646.1(b), 1646.1(d), 1646.7, 1647.9, 1647.17, 1647.25, 1647.31, 1647.31(b), 1647.31(c), 1647.34, 1658.6, 1670.1, 1680, 1680(g), 1680(n), 1680(af), 1680(ag), 1680(ah), 1683.1, 1683.2 1684.1 and 1687.**

Purpose: These changes add recommended penalties (minimum and maximum penalties as well as suggested Terms and Conditions) for violations of several sections of the Code, including portions of the Dental Practice Act, that were not previously included in the Guidelines. The revisions add new language to the introductory paragraph stating “unless otherwise noted, all sections listed in this

section” refer to the Business and Professions Code (BPC) and strike the acronym “B&P” throughout this section. The proposal would make grammatical, syntax and other non-substantive changes (referencing “terms” and conditions, changing licensee to Respondent for consistency and changing Statement of Issues to “denial”) to this section for greater comprehension and notice of the intent and purpose of each section.

Rationale: As the BPC and the Dental Practice Act have been amended and updated since the last edition of the Disciplinary Guidelines were issued, the proposed changes would incorporate those updates. It’s important that applicants, licensees and Board enforcement staff have the most up-to-date guidance on suggested penalties related to violations of the BPC. The Board proposes to strike references to the “B&P” as it has determined that it is not useful to use that acronym and believes that the simpler approach of noting that all references, unless otherwise noted, are to the BPC would avoid persistent questions about the meaning of the acronym. The Board would re-number and re-title all penalty section references to Standard Terms and Conditions and any recommended Optional Terms and Conditions to make the cross-references within the Guidelines consistent with any proposed revisions to content that are being proposed in this rulemaking.

- **Add New Penalty Section 480(a)(1) and 1628.5 “Conviction of a Crime” that sets new maximum and minimum penalties, adds a guidance note for use with the Uniform Standards document, and cross-reference to BPC section 1687 (conviction with sex offender registry)**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for implementing BPC sections 480(a)(1) and 1628.5 for denials based upon substantially related criminal convictions as specified in those sections. The proposal would also add a note to remind users that if the conviction involves an individual determined to be substance-abusing, the Board shall use all of the Uniform Standards terms and conditions listed in the document entitled “Uniform Standards Related To Substance Abusing Licensees With Standard Language For Probationary Orders” (Uniform Standards) as specified in 16 CCR section 1018.01. The Board would also add a note to this section to remind users to refer to the penalty section for BPC 1687 for convictions with sex offender registry, as that section of the law has mandated penalties that must be imposed in every case for those types of violations.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC sections 480(a)(1) or 1628.5 This proposal would establish such standards and provide notice to the regulated community of the Board's authority to deny for this type of violation. To implement the Board's authority and standards for enforcement, the proposal would specify a maximum penalty of denial with the recommendation for denial for criminal convictions involving physical abuse or sexual offenses, and minimum penalties of stayed revocation, three to five years' probation on standard conditions and optional conditions of Community Service for 40 hours per week, and an Ethics course.

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board's experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of denial for those cases where the facts of the case demonstrate that a more severe penalty is warranted (since physical abuse or sexual offenses involve direct physical harm to a consumer, the Board recommends denial in every case). The Board considers violations based upon criminal convictions serious, as these violations show a history of violating the law, failure to exercise good judgment and, in the case of physical abuse or sexual offenses, demonstrates risk of direct physical patient harm. However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the criminal offense that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of license issued, revocation stayed, and 3 to 5 years' probation with standard terms (Nos. 1-13 since cost recovery is only applicable against existing licensees (see BPC 125.3)) and optional terms and conditions. The direction to the user would be to include Standard Term No. 14 if the disclosure requirements are met (see discussion above regarding Standard Term No. 14). This minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to applicants and to monitor

respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than denial of the application.

The Board adds a community service optional term to this penalty proposal, which is often an important aspect of rehabilitation. A community service term and condition allows a respondent to provide unpaid services to a community that may have been damaged by the respondent's misconduct, often resulting in greater appreciation for the profession and the services they provide to their community. The Board also proposes to add an "ethics course", to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., showing a willful or deliberate disregard for the law) in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

This section would include a note to users and additional clarifying direction to help assist the users of the Guidelines in understanding how and when to use the Uniform Standards. This will help ensure more consistent application of the Uniform Standards when the case involves a substance abuser. Finally, the Board proposes to add a cross-reference to the 1687 penalty section for cases where a criminal conviction includes registration as a sex offender. This is to provide notice to users and to help ensure consistent application of the law in accordance with other provisions of the Act, since BPC section 1687 provides, in part:

"(a) Notwithstanding any other provision of law, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board **shall deny an application** by the individual for licensure pursuant to this chapter...." (Emphasis added.)

This change therefore makes it clear that the penalty proposed in this section would need to be referenced, therefore helping users to be more aware of the requirements in BPC 1687 noted above.

- **Add New Penalty Section 480(a)(2) “Formal Discipline by a Licensing Board for Professional Misconduct” that sets new maximum and minimum penalties**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for implementing BPC section 480(a)(2) denials based upon professional misconduct imposed by another state board. Operative on July 1, 2020, BPC section 480, subdivisions (a) and (e), authorize the Board to deny a license application on the basis of a substantially related criminal conviction, professional misconduct that results in formal discipline by a licensing board in or outside of California; or, knowingly making a false statement of fact required to be revealed in the application for licensure. (BPC, § 480, subd. (a), (e), as added by AB 2138, § 4.).

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC sections 480(a)(2). To implement the enactment of amendments pursuant to AB 2138, this proposal would establish such standards and provide notice to the regulated community of the Board’s authority to deny for this type of violation. To implement the Board’s authority and standards for enforcement, the proposal would specify a maximum penalty of denial and minimum penalties of stayed revocation, three to five years’ probation on standard conditions (1-13 and possibly 14 if BPC section 1673 applies) and optional conditions of “similar conditions as indicated by other licensing board” guidance to the users of the Guidelines.

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board’s experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of denial for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon discipline in

another state to be serious, as these violations show a history of violating the law, failure to exercise good judgment and, increased risk of harm to consumers from an individual found to have not met the minimum standards of the profession in another state. However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of license issued, revoked, revocation stayed, and 3 to 5 years' probation with standard (Nos. 1-13 since cost recovery is only applicable against existing licensees in a "disciplinary proceeding" (see BPC 125.3) and specified optional terms and conditions. The direction to the user would need to include Standard Term No. 14 if the disclosure requirements are met (see discussion above regarding Standard Term No. 14). This minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to applicants and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than denial of the application.

The Board adds direction to the users to consider optional conditions (in the Guidelines) that are "similar conditions as indicated by other licensing board" to help coordinate and enforce remedial conditions (based upon the user's review of the disciplinary action from the other jurisdiction) connected to the circumstances of the original case. This helps ensure that the disciplinary order is substantially related to addressing the professional misconduct alleged in the prior action that may still be a problem.

- **Strike (i) as outdated and superseded by other revisions to this statute relating to dental group advertising and referral services from the Penalty section for Code section 650.2 "Patient Referral Service-Failure to Disclose".**

Purpose: The change would remove the reference to subdivision (i) of BPC section 650.2.

Rationale: Since the last edition of the Disciplinary Guidelines, BPC section 650.2 was amended by SB 800 (Chapter 426 Statutes of 2015) to, among other things, reorganize section 650.2, moving the language from subdivision (i) to new

subdivision (a)(9). As a result, it is appropriate to remove the reference to subdivision (i) as it no longer exists.

- **Move “or Administration” into the Penalty title for Violations of BPC section 725 “Excessive Prescribing or Treatment or Administration of Drugs” to “Excessive Prescribing or Administration of Drugs or Treatment”.**

Purpose: The change would rearrange the title of the penalty to read “Excessive Prescribing or Administration of Drugs or Treatment.”

Rationale: The current title of the penalty is Excessive Prescribing or Treatment or Administration of Drugs. This word order is confusing, and the proposed change would clarify the title and ensure it is consistent with the statute (BPC section 725).

- **Add New Penalty Section 1638.1(j) “Violation of Elective Facial Cosmetic Surgery (EFCS) Requirements” that sets new maximum and minimum penalties**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for violating BPC section 1638.1(j), which makes it unprofessional conduct to violate the provisions of Section 1638.1 related to requirements for obtaining and maintaining an elective facial cosmetic surgery permit from the Board (“EFCS” permit).

Rationale: BPC section 1638.1 authorizes Oral and Maxillofacial Surgeons (dentists who have completed an oral and maxillofacial surgery residency program and met other requirements per BPC section 1638.1(c)) licensed by the Board to perform elective facial cosmetic surgery under an EFCS permit and provides for authority to discipline for violations of Section 1638.1. Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 1638.1. To implement the disciplinary provisions of Section 1638.1, this proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for these types of violations. To implement the Board’s authority and standards for enforcement, the proposal would specify a maximum penalty of revocation of the license or permit or denial of the permit (for an EFCS permit by a dentist licensee)

and minimum penalties of stayed revocation, and five years' probation on standard conditions (1-13), optional suspension term (30 days if practicing without ever having been issued a permit) and optional term of ethics course.

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board's experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation or denial of permit for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon failure to comply with Section 1638.1 to be serious, in that the requirement in Section 1638.1 have been enacted to ensure proper credentialing and oversight occurs to help ensure safe practice in an area where risk of patient harm is high if an adverse event occurs during or after surgery (e.g., permanent disfigurement, infection or death).

However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-13) and specified optional terms and conditions. The Board proposes to add an optional "Suspension (16)" term for 30 days if respondent was practicing without ever having been issued a permit. Unlicensed activity presents a significant risk of harm to the consumer as licensure helps ensure that minimum standards are continuously met through the Board's regulatory oversight and provides some assurances that the work performed is done competently. Therefore, a suspension period would be warranted to prevent further practice and allow for further rehabilitative training and education prior to resumption of practice.

Addition of optional term ethics course: The Board proposes to add "Ethics Course (#31)" to provide notice to the users of the Guidelines that this is an optional term

that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

The proposed minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to an EFCS permit applicant and permit holder and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation or denial of the EFCS permit.

- **Add New Penalty Section 1638.5 “Oral and Maxillofacial Surgery (OMS) Permit-Failure to Possess Current Valid License to Practice Medicine” that sets new maximum and minimum penalties**

Purpose: The purpose of this proposal is to assign a new heading and provide notice of the penalty for violating BPC section 1638.5, which requires automatic suspension for any period of time during which the OMS permit holder does not possess a current valid license to practice medicine in this state.

Rationale: Current Guidelines do not provide notice of this penalty as provided by law in Section 1638.5 of the Act. To avoid questions and confusion about the Board's authority in this regard, the Board places notice and recitation of the automatic suspension penalty in this new section. There are no minimum or maximum options for this new section as the Board has no discretion to impose anything more or less than suspension for this particular violation.

- **Add New Penalty Section BPC references to the “Continuing Education Violations” and “Administration of General Anesthesia Without a Permit/Failure to Renew a Permit” sections**

Purpose and Rationale: The purpose of these proposed changes is to add new laws that support the Board's authority to impose discipline for these types of violations. These include BPC section 1680(n), which authorizes discipline for unprofessional conduct that includes "the violation of any provisions of this chapter." Adding this would ensure that any Accusation or Petition to Revoke Probation properly charged this type of violation to establish the Board's authority to take the purported actions. The Board also proposes to add reference to BPC section 1646.7, which states that "violation of this article (applicable to General Anesthesia and Deep Sedation) constitutes unprofessional conduct and grounds for revocation or suspension of the dentist's permit or license, or both." Since BPC section 1646.1 does not specify that a violation of its provisions is grounds for discipline or unprofessional conduct, it is necessary to add this reference to this section to help ensure any Accusation or Petition to Revoke Probation properly charges this type of violation and to establish the Board's authority to take the purported actions.

- **Add New Penalty Section 1646.1(b), 1646.7 "Administration of General Anesthesia to Patients Under 7 Years of Age Without A Pediatric Endorsement/Failure To Renew A Pediatric Endorsement" that sets new maximum and minimum penalties**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for violating BPC sections 1646.1(b) in conjunction with 1646.7, which makes it unprofessional conduct and grounds for discipline to violate the provisions of Article 2.75, including this provision in BPC section 1646.1(b) (requirement to possess a pediatric endorsement on the general anesthesia permit to administer or order the administration of deep sedation or general anesthesia to patients under 7 years of age ("GA" permit pediatric endorsement)).

Rationale: The Act requires dentists to possess a pediatric endorsement of their general anesthesia permit to administer or order the administration of deep sedation or general anesthesia to patients under 7 years of age and will require dentists to be present in the dental office during the ordering and administration of general anesthesia or deep sedation. (Bus. & Prof. Code, § 1646.1, subd. (b).) Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 1646.1 as authorized by

BPC section 1646.7. To implement the provisions of Section 1646.1(b), this proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for these types of violations. To implement the Board's authority and standards for enforcement, the proposal would specify a maximum penalty of revocation of the license or GA permit and/or denial of the GA permit pediatric endorsement and minimum penalties of stayed revocation, and five years' probation on standard conditions (1-13), optional suspension term (30 days if practicing without ever having been issued a permit) (16) and optional term of ethics course (31).

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board's experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation or denial of permit for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon failure to comply with Section 1646.1 to be serious, in that the requirements to have pediatric endorsement and proper administration in Section 1646.1 have been enacted to ensure proper credentialing and oversight occurs to help ensure safe practice in an area where risk of patient harm is high if an adverse event occurs during or after administration of anesthesia (e.g., brain damage, heart attack or death).

However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-13) and specified optional terms and conditions. The Board proposes to add an optional "Suspension" term for 30 days (16) if respondent was practicing without ever having been issued a permit. Unlicensed activity presents a significant risk of harm to the consumer as licensure helps ensure that minimum standards are continuously met

through the Board's regulatory oversight and provides some assurances that the work performed is done competently. Therefore, a suspension period would be warranted to prevent further practice and allow for further rehabilitative training and education prior to resumption of practice.

Addition of optional term ethics course: The Board proposes to add "ethics course (#31)" to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

The proposed minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a GA permit applicant and permit holder and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation or denial of the GA permit and/or pediatric endorsement.

- **Add New Penalty Section 1646.1(d), 1646.7 "Violation of Requirements for Administration of General Anesthesia or Deep Sedation to Patients Under 13 Years of Age" that sets new maximum and minimum penalties**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for violating BPC sections 1646.1(d) in conjunction with 1646.7, which makes it unprofessional conduct and grounds for discipline to violate the provisions of Article 2.75, including this provision in BPC section 1646.1(d) (requirements to administer general anesthesia or deep sedation to patients under 13 years of age).

Rationale: The Act requires the presence of the operating dentist and at least 2 additional personnel for patients under 13 years of age for procedures involving deep sedation or general anesthesia and requires that certain personnel be present

throughout the procedure and to maintain current certification in pediatric life support and airway management, as specified. (Bus. & Prof. Code, § 1646.1, subd. (d).) Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 1646.1(d) as authorized by BPC section 1646.7. To implement the provisions of Section 1646.1(d), this proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for these types of violations. To implement the Board's authority and standards for enforcement, the proposal would specify a maximum penalty of revocation of the license, GA permit and/or pediatric endorsement of the GA permit (authorized under BPC 1646.1(b)) and minimum penalties of revocation stayed, and five years' probation on standard conditions (1-13), and the following optional terms: suspension term (30 days) (16), remedial education (17), supervised practice (19), restricted practice (20), and ethics course (31).

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board's experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation or denial of license and permit and/or pediatric endorsement for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon failure to comply with BPC Section 1646.1 to be serious, in that the requirements to administer sedation to pediatric patients in Section 1646.1 have been enacted to help ensure safe practice in an area where risk of patient harm is high if an adverse event occurs during or after administration of anesthesia (e.g., brain damage, heart attack or death).

However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-13)

and specified optional terms and conditions. The Board proposes to add an optional “Suspension” term for 30 days (16). In the Board’s experience, 30 days is sufficient time for the suspension to be monitored and enforced, to impress upon the regulated community the seriousness of the offense, and for self-reflection, education and preparation during the suspension period for the licensee’s compliance with the other terms and conditions of probation.

The Board proposes to add an optional “remedial education (17)” term for consideration for this type of violation. The optional use of remedial education is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area. In the Board’s experience, this term would help educate and remediate those knowledge or competency area deficiencies, therefore aiding in the rehabilitation of the licensee for the protection of the public. The Board proposes to add an optional term “supervised practice (19)”, which allows the Board to monitor the competency of the Respondent by use of a fellow practitioner. Since these types of violations typically include other failures involving incompetence and negligence, the Board believes this optional term would help assist in monitoring these failures through supervision by a Board-approved supervisor for the protection of the public (see Optional Term 17 and the accompanying rationale in the Guidelines).

Addition of restricted practice term: The Board proposes to add “restricted practice (#20)” to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. This term is used when the violation shows an inability to meet minimum standards for the specific practice area involved in the violation and permits the Board to restrict the respondent from performing specified dental procedures or from performing procedures without another party present for a specified period of time with notice to affected patients. As indicated in the rationale for Term No. 20, this optional term would be necessary for those situations where the circumstances of the case indicate that a respondent would not be closely supervised or where the Respondent could have undue authority over others and access to controlled substances.

Addition of optional term ethics course: The Board proposes to add “ethics course (#31)” to provide notice to the users of the Guidelines that this is an optional term

that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

The proposed minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a licensee holding a general anesthesia permit and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation.

The Board proposes to add guidance to the users that they should "See also section 1682 for additional grounds for discipline and corresponding penalties." This note is necessary to ensure that users consider other grounds for discipline that may overlap with this section to ensure that all grounds for discipline are considered and evaluated in accordance with the Guidelines. This will help ensure greater consistency in the implementation of these various laws.

- **Add references to changes in sedation laws involving conscious sedation that include the addition of BPC section 1647.9 (along with the word "moderate" before sedation), to current section for "Administration of Conscious Sedation Without a Permit/ Failure to Renew a Permit," and add Section 1647.25 to "Administration of Oral Conscious Sedation Without A Permit – Adults"**

Purpose: Effective January 1, 2022, changes to the Act under SB 501 repeals existing provisions relating to the use of conscious sedation for minors (provisions relating to oral conscious sedation for adults was retained at Article 2.86 (commencing with BPC section 1647.18). The term "conscious sedation" was replaced with "moderate sedation" in the Act, meaning a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands and meets other criteria. (BPC, § 1647.1.), so the Board proposes to add the word "moderate" in place of "conscious" so that the new title

would read “Administration of Moderate Sedation Without a Permit/Failure to Renew A Permit.” The Board would also add a reference to BPC section 1647.9, the new law implementing this moderate sedation permit requirement. In addition, the Board proposes to add a reference to BPC section 1647.25 to the authority section of the penalty section entitled “Administration of Oral Conscious Sedation Without a Permit - Adults.” BPC section 1647.25 describes the Board’s authority to discipline for violation of any provision of Article 2.85 (requirements relating to oral conscious sedation for adults). Currently, BPC section 1647.17 and the existing text cited in this penalty section does not mention this authority and therefore it is unclear the Board’s authority to take disciplinary action in this regard.

Rationale: These changes are necessary to conform the Board’s Guidelines to recent changes in the Act and would address the foregoing clarity issues. This would enable users to understand and process enforcement actions, and for the Board to communicate its authority to take disciplinary action for these types of violations more easily. For the moderate sedation without a permit penalty section, the Board proposes to retain the existing penalties and recommendations for the prior oral conscious sedation without a permit violation as it is currently written with some minor typographical changes. These penalties are sufficient in the Board’s experience to convey the seriousness of the offense to a licensee holding these permits and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation.

- **Add New Penalty Section 1647.2(b), 1647.9 “Administration of Moderate Sedation to Patients Under 13 Years of Age Without a Pediatric Endorsement/Failure to Renew a Pediatric Endorsement” that sets new maximum and minimum penalties**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for violating BPC sections 1647.2(b) and 1647.9, which makes it unprofessional conduct and grounds for discipline to violate the provisions of Article 2.84, including this provision in BPC section 1647.2 (requirement to possess a pediatric endorsement on the moderate sedation permit

prior to administering moderate sedation to a patient under 13 years of age (“moderate sedation permit pediatric endorsement”).

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 1647.2, as authorized by BPC section 1647.9. To implement the provisions of Section 1647.2, this proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for these types of violations. To implement the Board’s authority and standards for enforcement, the proposal would specify a maximum penalty of revocation of the dental license and/or GA permit (for those qualifying by way of GA permit per BPC section 1647.2(a)(1)) and/or moderate sedation permit (as applicable), and/or denial of the pediatric endorsement, and minimum penalties of stayed revocation, and five years’ probation on standard conditions (1-13), optional suspension term (30 days if practicing without ever having been issued a pediatric endorsement) (16) and optional term of ethics course (31).

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board’s experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of license, GA permit and/or moderate sedation permit or pediatric endorsement, or denial of pediatric endorsement for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon failure to comply with Section 1647.2(b) to be serious, in that the requirements to have pediatric endorsement have been enacted to ensure proper credentialing and oversight occurs to help ensure safe practice in an area where patient injury can occur (e.g., changes in heart rate and blood pressure (rare), decreased rate of breathing, or allergic reaction (to medications)).

However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-13) and specified optional terms and conditions. The Board proposes to add an optional "Suspension" term for 30 days (16) if respondent was practicing without ever having been issued a pediatric endorsement. Unlicensed activity presents a significant risk of harm to the consumer as licensure helps ensure that minimum standards are continuously met through the Board's regulatory oversight and provides some assurances that the work performed is done competently. Therefore, a suspension period would be warranted to prevent further practice and allow for further rehabilitative training and education prior to resumption of practice.

Addition of optional term ethics course: The Board proposes to add "ethics course (#31)" to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

The proposed minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a moderate sedation permit holder and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation or denial of the license, GA permit, moderate sedation permit, and/or pediatric endorsement.

- **Add New Penalty Section 1647.2(c), 1647.9 "Violation of Requirements for Administration of Moderate Sedation to Patients Under 13 Years of Age" that sets new maximum and minimum penalties**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for violating BPC sections 1647.2(c) in conjunction

with 1647.9, which makes it unprofessional conduct and grounds for discipline to violate the provisions of Article 2.84, including this provision in BPC section 1647.2(c) (requirements to administer moderate sedation to patients under 13 years of age).

Rationale: The Act requires a dentist who orders the administration of moderate sedation to be physically present in the treatment facility while the patient is sedated and would require the presence of additional specified personnel for sedation of patients 13 years of age or younger. (BPC, § 1647.2, subd. (c)(1)-(2).) Existing Guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 1647.2(c) as authorized by BPC section 1647.9. To implement the provisions of Section 1647.2(c), this proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for these types of violations. To implement the Board's authority and standards for enforcement, the proposal would specify a maximum penalty of revocation of the license, GA permit and/or pediatric endorsement and minimum penalties of revocation stayed, and five years' probation on standard conditions (1-13), and the following optional terms: suspension term (30 days) (16), remedial education (17), supervised practice (19), restricted practice (20), and ethics course (31).

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board's experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation or denial of license and permit and/or pediatric endorsement for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon failure to comply with BPC Section 1647.2 to be serious, in that the requirements to administer moderate sedation to pediatric patients in Section 1647.2 have been enacted proper credentialing and oversight occurs to help ensure safe practice in an area where

patient injury can occur (e.g., changes in heart rate and blood pressure (rare), decreased rate of breathing, or allergic reaction (to medications)).

However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-13) and specified optional terms and conditions. The Board proposes to add an optional "Suspension" term for 30 days (16). In the Board's experience, 30 days is sufficient time for the suspension to be monitored and enforced, to impress upon the regulated community the seriousness of the offense, and for self-reflection, education and preparation during the suspension period for the licensee's compliance with the other terms and conditions of probation.

The Board proposes to add an optional "remedial education (17)" term for consideration for this type of violation. The optional use of remedial education is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area. In the Board's experience, this term would help educate and remediate those knowledge or competency area deficiencies, therefore aiding in the rehabilitation of the licensee for the protection of the public. The Board proposes to add an optional term "supervised practice (19)", which allows the Board to monitor the competency of the Respondent by use of a fellow practitioner. Since these types of violations typically include other failures involving incompetence and negligence, the Board believes this optional term would help assist in monitoring these failures through supervision by a Board-approved supervisor for the protection of the public (see Optional Term 17 and the accompanying rationale in the Guidelines).

Addition of restricted practice term: The Board proposes to add "restricted practice (#20)" to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. This term is used when the violation shows an inability to meet minimum standards for the specific practice area involved in the violation and permits the Board to restrict the respondent from performing specified dental procedures or from performing procedures without another party present for a specified period of time with notice to affected patients. As indicated in the rationale for Term No. 20, this

optional term would be necessary for those situations where the circumstances of the case indicate that a respondent would not be closely supervised or where the Respondent could have undue authority over others and access to controlled substances.

Addition of optional term ethics course: The Board proposes to add “ethics course (#31)” to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

The proposed minimum penalty should be sufficient in the Board’s experience to convey the seriousness of the offense to a licensee holding a general anesthesia permit and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation.

The Board proposes to add guidance to the users that they should “See also section 1682 for additional grounds for discipline and corresponding penalties.” This note is necessary to ensure that users consider other grounds for discipline that may overlap with this section to ensure that all grounds for discipline are considered and evaluated in accordance with the Guidelines. This will help ensure greater consistency in the implementation of these various laws.

- **Add New Penalty Section 1647.31, 1647.34 “Administration of Pediatric Minimal Sedation Without a Permit and/or Pediatric Endorsement” with minimum and maximum penalty guidelines**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for violating BPC sections 1647.31 and 1647.34, which makes it unprofessional conduct and grounds for discipline to violate the provisions of Article 2.87, including this provision in BPC section 1647.31

(requirements to possess a GA permit, Moderate Sedation permit with a pediatric endorsement, pediatric minimal sedation permit to administer or order administration of pediatric minimal sedation).

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 1647.31, as authorized by BPC section 1647.34. To implement the provisions of Section 1647.31, this proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for these types of violations. To implement the Board's authority and standards for enforcement, the proposal would specify a maximum penalty of revocation of the dental license and/or GA permit (for those qualifying by way of GA permit per BPC section 1647.31(a)(1)), moderate sedation permit (for those qualifying by way of moderate sedation permit with pediatric endorsement per BPC section 1647.31(a)(1)), and/or pediatric endorsement, and/or denial of pediatric minimal sedation permit (as applicable), and minimum penalties of stayed revocation, and five years' probation on standard conditions (1-13), optional suspension term (30 days if practicing without ever having been issued a pediatric endorsement) and optional term of ethics course.

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board's experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of license, GA permit and/or moderate sedation permit or pediatric endorsement, or denial of pediatric endorsement for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon failure to comply with Section 1647.31 to be serious, in that the requirements to have a required permit or permit with pediatric endorsement have been enacted to ensure proper credentialing and oversight occurs to help ensure safe practice in an area where patient injury can occur (e.g.,

changes in heart rate and blood pressure (rare), decreased rate of breathing, or allergic reaction (to medications)).

However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-13) and specified optional terms and conditions. The Board proposes to add an optional "Suspension" term for 30 days if respondent was practicing without ever having been issued a pediatric endorsement. Unlicensed activity presents a significant risk of harm to the consumer as licensure helps ensure that minimum standards are continuously met through the Board's regulatory oversight and provides some assurances that the work performed is done competently. Therefore, a suspension period would be warranted to prevent further practice and allow for further rehabilitative training and education prior to resumption of practice.

Addition of optional term ethics course: The Board proposes to add "ethics course (#31)" to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

The proposed minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a permit holder and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation or denial of the license, GA permit, moderate sedation permit, minimal sedation permit and/or pediatric endorsement (for moderate sedation permit holders for administration to children under the age of 13).

- **Add New Penalty Section 1647.31(b), (c), 1647.34 “Violation of Requirements for Administration of Pediatric Minimal Sedation” minimum and maximum penalty recommendations**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for violating BPC sections 1647.31(b), (c) in conjunction with 1647.34, which makes it unprofessional conduct and grounds for discipline to violate the provisions of Article 2.84, including this provision in BPC section 1647.31(b), (c) (requirements to administer minimal sedation to pediatric patients under 13 years of age).

Rationale: Dentists may administer or order the administration of minimal sedation on pediatric patients under 13 years of age if the dentist possesses specified licensing credentials and follows certain procedures. (BPC, § 1647.31.) Existing Guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 1647.31(b), (c) as authorized by BPC section 1647.34. To implement the provisions of Section 1647.31(b) and (c), this proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for these types of violations. To implement the Board’s authority and standards for enforcement, the proposal would specify a maximum penalty of revocation of the license, GA permit and/or pediatric endorsement and minimum penalties of revocation stayed, and five years’ probation on standard conditions (1-13), and the following optional terms: suspension term (30 days), remedial education, supervised practice, restricted practice, and ethics course.

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board’s experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation or denial of license and permit and/or pediatric endorsement for those

cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon failure to comply with BPC Section 1647.31(b), (c) to be serious, in that the requirements to administer minimal sedation to pediatric patients in Section 1647.31 have been enacted to ensure proper credentialing and oversight occurs and to help ensure safe practice in an area where patient injury can occur (e.g., changes in heart rate and blood pressure (rare), decreased rate of breathing, or allergic reaction (to medications)).

However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the professional misconduct that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-13) and specified optional terms and conditions. The Board proposes to add an optional "Suspension" (16) term for 30 days. In the Board's experience, 30 days is sufficient time for the suspension to be monitored and enforced for this type of violation, to impress upon the regulated community the seriousness of the offense, and for self-reflection, education and preparation during the suspension period for the licensee's compliance with the other terms and conditions of probation.

The Board proposes to add an optional "remedial education (17)" term for consideration for this type of violation. The optional use of remedial education is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area. In the Board's experience, this term would help educate and remediate those knowledge or competency area deficiencies, therefore aiding in the rehabilitation of the licensee for the protection of the public. The Board proposes to add an optional term "supervised practice (19)", which allows the Board to monitor the competency of the Respondent by use of a fellow practitioner. Since these types of violations typically include other failures involving incompetence and negligence, the Board believes this optional term would help assist in monitoring these failures through supervision by a Board-approved supervisor for the protection of the public (see Optional Term 17 and the accompanying rationale in the Guidelines).

Addition of restricted practice term: The Board proposes to add "restricted practice (#20)" to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation.

This term is used when the violation shows an inability to meet minimum standards for the specific practice area involved in the violation and permits the Board to restrict the respondent from performing specified dental procedures or from performing procedures without another party present for a specified period of time with notice to affected patients. As indicated in the rationale for Term No. 20, this optional term would be necessary for those situations where the circumstances of the case indicate that a respondent would not be closely supervised or where the Respondent could have undue authority over others and access to controlled substances.

Addition of optional term ethics course: The Board proposes to add “ethics course (#31)” to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

The proposed minimum penalty should be sufficient in the Board’s experience to convey the seriousness of the offense to a licensee holding a general anesthesia permit and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation.

The Board proposes to add guidance to the users that they should “See also section 1682 for additional grounds for discipline and corresponding penalties.” This note is necessary to ensure that users consider other grounds for discipline that may overlap with this section to ensure that all grounds for discipline are considered and evaluated in accordance with the Guidelines. This will help ensure greater consistency in the implementation of these various laws.

- **Add New Penalty Section 1658.6 “Failure to Comply with Additional Office Requirements” that sets new minimum and maximum penalties.**

Purpose: The purpose of this proposal is to assign a new heading and establish maximum and minimum penalties for violating BPC section 1658.6 (relating to failure to comply with the provisions of Article 3.5 (BPC section 1658 et seq.) requiring prior approval and establishing requirements for a dentist to have more than one place of practice).

Rationale: Article 3.5 establishes requirements for a dentist to have additional places of practice as defined in BPC section 1658, including “applying to the board, paying the fee required, and receiving permission in writing from the board to have the additional place of practice (see BPC section 1658(a)(1)). BPC section 1658.6 makes it a violation and grounds for there's the revocation of the permission granted by the board to operate such additional offices (“additional office permit” as provided in the Board’s additional office regulations commencing at CCR section 1045). Existing Guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 1658. To implement the provisions of Section 1658.6, this proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for these types of violations. To implement the Board’s authority and standards for enforcement, the proposal would specify a maximum penalty of revocation of the additional office permit, and minimum penalties of revocation stayed, and three years’ probation on standard conditions (1-13), and the following optional terms: remedial education (17) and ethics course (31).

The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In the Board’s experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the permit for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon failure to comply with additional office requirements per BPC Section 1658.6 to

be potentially serious, in that the lack of notice of additional practice locations means the Board is unaware of or unable to inspect or monitor compliance with the Act at all locations where dentistry is being practiced. As such, the Board cannot ensure that minimum standards for the practice of the profession are being met and enforce those minimum standards when necessary for the protection of the public.

However, the Board recognizes that there may be extenuating circumstances and, depending on the nature of the professional misconduct, may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 3 years' probation with standard terms (Nos. 1-13) and specified optional terms and conditions. The Board proposes to add an optional "Remedial Education (17)" term for consideration for this type of violation. The optional use of remedial education is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area. In the Board's experience, this term would help educate and remediate those knowledge or competency area deficiencies, therefore aiding in the rehabilitation of the licensee for the protection of the public.

Addition of optional term ethics course: The Board proposes to add "ethics course(#31)" to provide notice to the users of the Guidelines that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

The proposed minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a licensee holding an additional office permit and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation.

- **Amend “Conviction of a Crime” penalty section to add a reference to BPC section 490, include additional guidance when outright revocation would be ordered, add a reference to consider Standard Term No. 14, indicate when the Uniform Standards would be used, and a cross-reference to related sex offender penalty provisions.**

Purpose: This existing penalty section would be revised to include notes guiding users of these Guidelines on when and how to implement penalties when a criminal conviction, substantially related to the practice of dentistry, is the basis for disciplinary action (either under BPC sections 1670.1 or 490) and adds a reference to BPC 490, which provides additional authority for discipline based upon substantially related convictions. The first note would be added to the maximum penalty of outright revocation that “revocation is recommended for criminal convictions involving physical abuse or sexual offenses.” To help implement the disclosure requirements of BPC section 1673 and remind users of the applicable law in a given case, the Board adds additional direction to consider adding Term 14 (Disclosure of Probation Status to Patients) if BPC section 1673 applies. The Board proposes to add a Note that directs users that for individuals determined to be substance abusing, they must also use the Uniform Standard terms and conditions listed in the document adopted by the Board at CR section 1018.01. Finally, the Board adds a note to refer users to the penalty section involving convictions with sex offender registry, per BPC section 1687.

Rationale: Consistent with guidance provided in the penalty for denials based upon criminal convictions per BPC section 480 (see rationale in the above 480(a)(1) penalty section discussion), the Board proposes to add a note as specified above regarding the maximum penalty of revocation. Since physical abuse or sexual offenses involve direct physical harm to a consumer, the Board recommends revocation in every case. The Board considers violations based upon criminal convictions serious, as these violations show a history of violating the law, failure to exercise good judgment and, in the case of physical abuse or sexual offenses, demonstrates risk of direct physical patient harm. This section would include a note to users and additional clarifying direction to help assist the users of the Guidelines in understanding how and when to use the Uniform

Standards. This will help ensure more consistent application of the Uniform Standards when the case involves a substance abuser.

This section would include a note to users and additional clarifying direction to help assist the users of the Guidelines in understanding how and when to use the Uniform Standards. This will help ensure more consistent application of the Uniform Standards when the case involves a substance abuser. Finally, the Board proposes to add a cross-reference to the 1687 penalty section for cases where a criminal conviction includes registration as a sex offender. This is to provide notice to users and to help ensure consistent application of the law in accordance with other provisions of the Act, since BPC section 1687 provides, in part:

“(a) Notwithstanding any other provision of law, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(2) If the individual is licensed under this chapter, the board **shall revoke** the license of the individual. The board **shall not stay the revocation** and place the license on probation.....” (Emphasis added.)

This change therefore makes it clear that the penalty proposed in this section would need to be referenced before considering which penalty should be imposed, therefore helping users to be more aware of the requirements in BPC 1687 noted above.

- **Add new penalty section for “Unprofessional Conduct –Failure to Provide Records to the Board” that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for a licensee’s failure to provide records in accordance with CCR section 1018.05(a), which is considered by the Board to be unprofessional conduct.

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements. This proposal is necessary to add maximum and minimum penalties for violations of CCR section 1018.05(a).

BPC section 1670 provides, in part, that any licensee may have their license revoked or suspended or be reprimanded or placed on probation by the Board for unprofessional conduct. The Board's regulation at CCR section 1018.05(a) specifies that unprofessional conduct includes a licensee's "[f]ailure to provide records requested by the Board within 15 days of the date of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause."

Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of this regulation. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation. In the Board's experience, the minimum proposed penalty of revocation stayed, 2 years' probation with standard terms (1-13) is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

The Board proposes to add an optional "remedial education (17)" term for consideration for this type of violation. The optional use of remedial education is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge in a particular area. In the Board's experience, this term would help educate and remediate those knowledge deficiencies, therefore aiding in the rehabilitation of the licensee for the protection of the public.

The Board adds a community service (23) optional term to this penalty proposal, which is often an important aspect of rehabilitation. A community service term and condition allows a respondent to provide unpaid services to a community that may have been damaged by the respondent's misconduct, often resulting in greater appreciation for the profession and the services they provide to their community. Recordkeeping is an important aspect of practice, given that accumulated data contributes to accurate diagnoses and treatment. Since inaccurate or missing records can contribute to poor quality of care and treatment, the Board proposes to add an optional 50-hour community service requirement for this section. The Board also proposes to add an "ethics course (31)", to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., showing a willful or deliberate disregard for the law) in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

- **Add new penalty section for "Unprofessional Conduct –Failure to Report" that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for a licensee's failure to report in accordance with CCR section 1018.05(b), which is considered by the Board to be unprofessional conduct.

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements. This proposal is necessary to add maximum and minimum penalties for violations of CCR section 1018.05(b).

BPC section 1670 provides, in part, that any licensee may have their license revoked or suspended or be reprimanded or placed on probation by the Board for

unprofessional conduct. The Board's regulation at CCR section 1018.05(b) specifies that unprofessional conduct includes a licensee's "[f]ailure to report to the Board, within 30 days, any of the following:

- (1) The bringing of an indictment or information charging a felony against the licensee.
- (2) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.
- (3) Any disciplinary action taken by another professional licensing entity or authority of this state or of another state or an agency of the federal government or the United States military."

Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of this regulation. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation. In the Board's experience, the minimum proposed penalty of revocation stayed, 2 years' probation with standard terms (1-13) is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

The Board proposes to add an optional "remedial education (17)" term for consideration for this type of violation. The optional use of remedial education is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge in a particular area. In the Board's experience, this term would help educate and remediate those knowledge deficiencies, therefore aiding in the rehabilitation of the licensee for the protection of the public.

The Board adds a community service optional term to this penalty proposal, which is often an important aspect of rehabilitation. A community service (23) term and condition allows a respondent to provide unpaid services to a community that may have been damaged by the respondent's misconduct, often

resulting in greater appreciation for the profession and the services they provide to their community. Reporting to the Board is an important tool for the Board to monitor possible violations of the Act and enforce the laws under its jurisdiction for the protection of the public. Since a failure to report can impact the Board's ability to protect the public, the Board proposes to add an optional 50-hour community service requirement for this section. The Board also proposes to add an "ethics course (31)", to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., showing a willful or deliberate disregard for the law or the Board's authority) in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

- **Add new penalty section for "Unprofessional Conduct –Failure to Provide Records to Patient" that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for a licensee's failure to provide records in accordance with Health and Safety Code section 123110(h), which is considered to be unprofessional conduct under that section.

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements. This proposal is necessary to add maximum and minimum penalties for violations of Health and Safety Code section 123110(h).

Health and Safety Code section 123110(b)(1) provides, in part, that "any patient or patient's personal representative shall be entitled to a paper or electronic copy of all or any portion of the patient records that they have a right to inspect, upon presenting a request to the health care provider specifying the records to be copied, together with a fee to defray the costs of producing the copy or summary... The health care provider shall ensure that the copies are transmitted

within 15 days after receiving the request.” In addition, Section 123110(h) permits the Board to discipline for willful violation of this section as unprofessional conduct.

Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of records provision requirements in Section 123110 of the Health and Safety Code . This proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for this type of violation. In the Board’s experience, the minimum proposed penalty of revocation stayed, 2 years’ probation with standard terms (1-13) is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

The Board proposes to add an optional “suspension, 60 days (16)” Term for consideration for this type of violation. In the Board’s experience, 60 days is sufficient time for the suspension to be monitored and enforced for this type of violation, to impress upon the regulated community the seriousness of the offense, and for self-reflection, education and preparation during the suspension period for the licensee’s compliance with the other terms and conditions of probation.

The Board adds a community service (23) optional term to this penalty proposal, which is often an important aspect of rehabilitation. .A community service term and condition allows a respondent to provide unpaid services to a community that may have been damaged by the respondent’s misconduct, often resulting in greater appreciation for the profession and the services they provide to their community. Recordkeeping is an important aspect of practice, given that accumulated data contributes to accurate diagnoses and treatment, and patients need them for their general healthcare and treatment. Since inaccurate or missing records can contribute to poor quality of care and treatment, the Board proposes to add an optional 50-hour community service requirement for this section. The Board also proposes to add an “ethics course (31)”, to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., showing a willful or deliberate disregard for the law and

the patient's needs) in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

- **Amend Penalty Section 1680(e) to include reference to sex offender registry penalty recommendations section**

Purpose: The Board would also add a note to this section to remind users to refer to the penalty section for BPC 1687 for convictions with sex offender registry, as that section of the law has mandated penalties that must be imposed in every case for those types of violations.

Rationale: The Board proposes to add a cross-reference to the 1687 penalty section for cases where a criminal conviction includes registration as a sex offender. This is to provide notice to users and to help ensure consistent application of the law in accordance with other provisions of the Act, since BPC section 1687 provides, in part:

“(a) Notwithstanding any other provision of law, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(2) If the individual is licensed under this chapter, the board **shall revoke** the license of the individual. The board **shall not stay the revocation** and place the license on probation.....” (Emphasis added.)

This change therefore makes it clear that the penalty proposed in this section would need to be referenced before considering which penalty should be imposed, therefore helping users to be more aware of the requirements in BPC 1687 noted above.

- **Amend Penalty Section 1680(m) “Violation of Any Law Regulating the Dispensing or Administration of Dangerous Drugs and Controlled Substances” to include new cross-references to potential application of BPC section 1673 and Uniform Standards**

Purpose and Rationale: To help implement the disclosure requirements of BPC section 1673 and remind users of the applicable law in a given case, the Board adds additional direction to consider adding Term 14 (Disclosure of Probation Status to Patients) if BPC section 1673 applies. The Board proposes to add a Note that directs users that for individuals determined to be substance abusing, they must also use the Uniform Standard terms and conditions listed in the document adopted by the Board at CR section 1018.01. This will help ensure consistent application of the foregoing laws in the Board’s disciplinary cases.

- **Add “or Administering Drugs” into the Penalty title for Violations of BPC section 1680(p) “Clearly Excessive Prescribing or Treatment” to “Clearly Excessive Prescribing or Administering Drugs or Treatment”.**

Purpose: The change would rearrange the title of the penalty to read “Excessive Prescribing or Administration of Drugs or Treatment.”

Rationale: The current title of the penalty is “Clearly Excessive Prescribing or Treatment”. However, this descriptive title does not cover all aspects of the violations listed in BPC section 725, which includes clearly excessive “administering” as well as other acts. The proposed change would clarify the title for the most common violations of this section by Board licensees and ensures it is consistent with the statute (BPC section 725). The Board adds a note to “See Section 725” so that users are given a complete understanding of the scope of the violations that may be charged under this provision of the law.

- **Add notice language to Penalty for Code section 1680(r) – “Suspension or Revocation by Another State” to link the proposed penalty to the Uniform Standards for substance abusing licensees.**

Purpose: The change adds language to the Penalty indicating that if the Respondent is found to be a substance-abusing licensee that the terms and conditions of the Uniform Standards must also be used.

Rationale: To best utilize the Uniform Standards in determining discipline for substance-abusing licensees, it is important to link the Uniform Standards to the relevant portions of the Disciplinary Guidelines. This change would remind staff and

other users to use the Uniform Standards for violations of this section of the BPC if the Respondent is found to be a substance-abusing licensee.

- **Revise Penalty title for Code section 1680(ad) from “Unsafe and Sanitary Conditions” to “Failure to Follow Infection Control Guidelines”.**

Purpose: The changes replace the current title of the Penalty for violating BPC section 1680(ad) with “Failure to Follow Infection Control Guidelines.”

Rationale: The change reflects the usage of the phrases infection control and infection control guidelines throughout BPC section 1680(ad). Having the title in the Disciplinary Guidelines reflect this usage promotes consistency between the Disciplinary Guidelines and the Code.

- **Add the word “Dental” before “Auxiliaries” in the Penalty title for BPC section 1680(ae).**

Purpose: The change inserts the word “Dental” in the Penalty title between “of” and “Auxiliaries” in the current penalty section.

Rationale: The text of BPC section 1680(ae) lists several different categories of dental auxiliaries, that, if utilized by a dentist without that auxiliary having the associated license and/or permit, would constitute a violation of this section by the dentist. As the BPC refers to dental auxiliaries, it would provide consistency and greater specificity to indicate in the Disciplinary Guidelines that the auxiliaries at issue are dental auxiliaries.

- **Add new penalty section for “Prescribing, Dispensing, or Furnishing Dangerous Drugs or Devices Through the Internet Without Examination and Medical Indication” that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for a licensee’s prescribing, dispensing or furnishing of dangerous drugs or devices, as defined in section 4022 of the BPC in violation of BPC section 2242.1.

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a

stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 1680(af) as existing guidelines do not establish this title, section or the recommended minimum and maximum penalties for violation of this section. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation. In the Board's experience, the minimum proposed penalty of revocation stayed, 5 years' probation with standard terms (1-13) and optional terms of remedial education (17), community service (23) (40 hours per year), Surrender/Partial Surrender of DEA permit (30), and an Ethics Course (31) is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted. In addition, a community service term and condition allows a respondent to provide unpaid services to a community that may have been damaged by the respondent's misconduct, often resulting in greater appreciation for the profession and the services they provide to their community. Given the potential harm to the community, the Board believes that a minimum of 40 hours per year will help to remediate a respondent with regard to their understanding of their professional obligations to the community.

- **Add new penalty section for “Use of Non-Sterile Irrigation on Exposed Dental Pulp” that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for a licensee's use of non sterile irrigation on exposed dental pulp in violation of BPC section 1680(ag).

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 1680(ag) as existing guidelines do not establish this title, section or the recommended minimum and maximum penalties for violation of this section. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation. In the Board's experience, the minimum proposed penalty of revocation stayed, 3 years' probation with standard terms (1-13) and optional terms of Suspension (16) (30 days), Remedial Education (17) (in infection control), and Proof of Correction of the condition is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

- **Add new penalty section for BPC 1680(ah)“Failure to Perform Examination” that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for a licensee's failure (as the treating dentist) to perform an examination in violation of BPC section 1680(ah).

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 1680(ah) as existing guidelines do not establish this title, section or the recommended minimum and maximum penalties for violation of this section. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation. In the Board's experience, the minimum proposed penalty of revocation stayed, 3 years' probation with standard terms (1-13) and optional terms of Remedial Education (17), Community Service (23) (40 hours per year), and Ethics Course (31) is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted. In addition, a community service term and condition allows a respondent to provide unpaid services to a community that may have been damaged by the respondent's misconduct, often

resulting in greater appreciation for the profession and the services they provide to their community. Given the potential harm to the community, the Board believes that a minimum of 40 hours per year will help to remediate a respondent with regard to their understanding of their professional obligations to the community.

- **Revise Penalty title for Code section 1681(a) from “Substance Abuse, Possession or Control, Alcohol Abuse, or Conviction related to Controlled Substances” (sic) to “Unlawfully Obtain or Possess Controlled Substance or Dangerous Drug”.**

Purpose: The change would revise the current Penalty title to “Unlawfully Obtain or Possess Controlled Substance or Dangerous Drug”, and add notes to refer to BPC sections 1673 and the Uniform Standards, as applicable.

Rationale: The current Penalty title is worded awkwardly, and the proposed revised text reads more easily. Additionally, the current Penalty title refers to alcohol abuse, which is not covered in Code section 1681(a) but section 1681(b). Since this Penalty title is specific to Code section 1681(a), any reference to alcohol and/or alcohol abuse should be removed to better reflect the associated Code section. To help implement the disclosure requirements of BPC section 1673 and remind users of the applicable law in a given case, the Board adds additional direction to consider adding Term 14 (Disclosure of Probation Status to Patients) if BPC section 1673 applies. To remind users of the need to comply BPC section 315 and the Board’s regulations adopting the Uniform Standards, the Board proposes to add a Note that directs users that for individuals determined to be substance abusing, they must also use the Uniform Standard terms and conditions listed in the document adopted by the Board at CR section 1018.01.

- **Add language to Penalty language for BPC section 1681(b) “Use of Drugs/Alcohol Causing Danger to Patient” and BPC section 1681(c) “Drug or Alcohol Criminal Conviction” to link penalties for substance abusing licensees to the Uniform Standards, and add another note to Section 1681(b) regarding potential application of BPC section 1673.**

Purpose: The changes would add language referring to the Uniform Standards and indicating that if Respondent is found to be a substance abusing licensee that the Uniform Standards would apply in Respondent’s case.

Rationale: To remind users of the need to comply BPC section 315 and the Board’s regulations adopting the Uniform Standards, the Board proposes to add a Note that

directs users that for individuals determined to be substance abusing, they must also use the Uniform Standard terms and conditions listed in the document adopted by the Board at CR section 1018.01. For proposed amendments to BPC section 1681(b)'s penalty section, the Board would also add another guidance note to help implement the disclosure requirements of BPC section 1673 and remind users of the applicable law in a given case, the Board adds additional direction to consider adding Term 14 (Disclosure of Probation Status to Patients) if BPC section 1673 applies. The term would apply if drug or alcohol abuse directly resulted in harm to patients or to the extent that such use impaired the ability of respondent to practice safely.

- **Amend Section 1682 “Violation of Requirements re Patients Undergoing Conscious Sedation or General Anesthesia” penalty section to include removal of reference to “Conscious” and updated references to the new BPC sections relating to general anesthesia and sedation enacted per SB 501**

Purpose: This proposal would strike the reference to “conscious” before the word “sedation” in the title. The revisions would also add updated references to new types of sedation authorized by amendments enacted by SB 501 to add references to BPC 1646.1(d), 1646.7 (general anesthesia and deep sedation); 1647.2(c), and 1646.7 (moderate sedation). The Board would add “or pediatric endorsement” to reflect consideration of revocation of the pediatric endorsements required for general anesthesia or moderate sedation permit holders in accordance with BPC sections 1646.1 and 1647.2.

Rationale: Effective January 1, 2022, changes to the Act under SB 501 repealed existing provisions relating to the use of conscious sedation for minors and replaced it with “moderate sedation.” In addition, the Act currently provides for administration of deep sedation (general anesthesia), moderate sedation, minimal sedation and oral conscious sedation for adults. Striking the term “conscious” would therefore make the heading more accurate of the types of sedation that may be subject to discipline per BPC section 1682. The Board proposes to retain the existing minimum and maximum penalties for this section as the Board, in its experience, has found that effective administration of penalties for these types of violations remains consistent though the the various titles and types of sedation that may be administered by permit have changed.

- **Add new penalty section for BPC 1683.1 “Telehealth Information Disclosure” that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for a licensee’s failure to provide identifying information (name, telephone number, practice address, and California state license number of any dentist who will be involved in the provision of telehealth services) prior to rendering services and when requested by a patient in violation of BPC section 1683.1.

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 1683.1 as existing guidelines do not establish this title, section or the recommended minimum and maximum penalties for violation of this section. This proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for this type of violation. In the Board’s experience, the minimum proposed penalty of revocation stayed, 3 years’ probation with standard terms (1-13) and optional term of Ethics Course (31) is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

- **Add new penalty section for BPC section 1683.2 “Agreement Limiting Patient Ability to File Board Complaint” that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for the prohibition on a provider of dental services requiring a patient to sign an agreement that limits the patient’s ability to file a complaint with the Board in violation of BPC section 1683.2.

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 1683.2 as existing guidelines do not establish this title, section or the recommended minimum and maximum penalties for violation of this section. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation. In the Board's experience, the minimum proposed penalty of revocation stayed, 3 years' probation with standard terms (1-13) and optional term of Ethics Course (31) is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

- **Amend BPC Sections 1684 “Service Beyond the Scope Of License” and 1685 “Permitting Dental Care That Discourages Necessary Or Encourages Excessive Or Improper Treatment” penalty sections to include guidance on what to consider when adding Optional Conditions for those terms.**

Purpose and Rationale: This proposal would delete “Options and additions where appropriate” when referring to the application of Optional Conditions for both sections and replace that phrase with “Additional terms and conditions, if warranted based upon the nature and extent of violations.” This would give users more specific guidance as to how and when to use the Optional conditions listed in BPC sections 1684 and 1685. This guidance will help ensure more thoughtful and fact-based application of the terms and conditions in the Board's probationary orders.

- **Add new penalty section for BPC section 1684.1 “Refusal to Release Patient Dental Records to the Board” that cites authority and sets minimum and maximum penalties for these violations.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for the licensees who refuse to provide dental records to the Board in violation of BPC section 1684.1.

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 1684.1 as the existing Guidelines do not establish this title, section or the recommended minimum and maximum penalties for violation of this section. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation. In the Board's experience, the minimum proposed penalty of revocation stayed, 3 years' probation with standard terms (1-13 and 15) and optional terms of Remedial Education (17) and Ethics Course (31) is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted..

The Board would direct users to impose Standard Term No. 15 (Civil Penalty) for this violation since the civil penalty authority in Section 1684.1 specifically mandates that licensees "shall" pay the monetary penalty for this type of violation in failing or refusing to comply with records requests. However, BPC section 1684.1 also does not limit the Board's authority to impose other forms of discipline in addition to the imposition of that penalty (see, subdivisions (b) and (d) referencing the filing of Accusations and that noncompliance with a Board subpoena mandating the release of records constitutes unprofessional conduct and grounds for suspension or revocation of the license).

- **Add new penalty section for BPC section 1687 "Registered Sex Offender" that cites authority and sets minimum and maximum penalty according to Section 1687.**

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for applicants and licensees who receive a criminal conviction and are required to register as a sex offender pursuant to Penal Code section 290 or

the equivalent in another state or territory, under military law, or under federal law (“registered sex offender”).

Rationale: The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

BPC section 1687 mandates that the Board deny an application, revoke the license of any licensee and not reinstate or re-issue the license of an individual who qualifies as a registered sex offender as described above. This proposal is necessary provider notice to users of these statutorily mandated penalties as existing guidelines do not establish this title, section or restate these statutory mandates for violation of this section. This proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline or deny for this type of violation.

Underlying Data

1. Agenda, Relevant Meeting Materials, and Minutes from the Board’s February 9-10, 2023 Board meeting
2. “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders,” New February 28, 2013
3. California State Board of Pharmacy AG Opinion No. 13-202 dated April 8, 2015
4. CDCA-WREB announcement regarding intent to merge organizations as of June 15, 2021 and future administration of the WREB and ADEX examinations

Business Impact

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the following facts.

The Board does not believe this regulation will have a significant adverse economic impact on businesses. Adopting this regulation updates the guidance to the Board and its enforcement staff on how to handle existing and future disciplinary matters. The proposed regulatory action only adversely affects a negligible number dental and dental

auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction.

Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the existing laws and regulations governing the practice of dentistry in California.

Economic Impact Assessment:

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

These regulations would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because the proposed regulation sets out standard guidance for disciplinary and denial cases. Individuals in compliance with the Dental Practice Act and associated regulations will not be affected by the proposed regulations.

This regulatory proposal affects the health and welfare of California residents because the proposed regulation will enhance the Board's ability to take appropriate action against dental and dental auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action by violating the laws and/or regulations. Additionally, this proposal will benefit Deputy Attorneys General (DAG), Administrative Law Judges, and others involved in the disciplinary process by ensuring consistency in the interpretation and application of penalties in administrative disciplinary actions.

This regulatory proposal does not affect worker safety because the proposal does not address worker safety.

This regulatory proposal does not affect the state's environment because the proposed regulations are not focused on the state's environment.

Specific Technologies or Equipment:

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

Consideration of Alternatives:

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

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

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

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