

Governor Edmund G. Brown Jr.
State of California

Brian Stiger, Acting Director
Department of Consumer Affairs



Larry L. Renner, BS, RCP
President

Barbara M. Stenson, RCP, RRT
Vice President

Lupe Aguilera
Member

Sandra Magaña
Member

Murray Olson, RCP, RRT
Member

Richard L. Sheldon, MD, FACP
Member

Charles B. Spearman, MEd, RCP
Member

Stephanie Nunez
Executive Officer



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Respiratory Care Board of California

444 North 3rd Street, Suite 270, Sacramento, CA 95811

Board Meeting Agenda

Friday, February 25, 2011

Department of Consumer Affairs
1625 North Market Blvd.
South Building, Room S-102
(First Floor Hearing Room)
Sacramento, CA 95834
(800) 952-5210

9:30 AM Call to Order

1. Approval of May 11, 2010 Minutes (Larry Renner)

2. Public Comment (Larry Renner)

Public comment will be accepted after any agenda item or toward the end of the agenda for public comment not related to any particular agenda item. The President may set a time limit for public comment as needed.

3. DCA Director Comment (Department of Consumer Affairs Representative)

4. Executive Officer's Report (Stephanie Nunez)

- Bagley-Keene Open Meeting Act Update
- Form 700, Statement of Economic Interests
- Staffing
- Travel Directive
- Office Space/Lease
- Appreciation for Kenneth R. Bryson, MEd, RRT, Crafton Hills College
- Respiratory Education Programs Pass/Fail Data on Website
- Licensing for Job Creation Statistics
- On-Line License Renewal Update
- Polysomnography

5. Record Retention Policy (Stephanie Nunez)

6. Fiscal Review (Larry Renner)

7. Enforcement Update

- Enforcement Statistics (Charles Spearman)
- Enforcement Performance Measures (Stephanie Nunez)

8. Proposed Regulatory Language

- New and Amended Language Related to: Disciplinary Guidelines, Uniform Standards, Citations and Fines, Education Waiver, Application Processing Time and Clean Up (Stephanie Nunez)
- Probation Term, Restriction of Practice: Transport (Murray Olson)

The Respiratory Care Board of California's mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, increasing public awareness of respiratory care as a profession and supporting the development and education of all respiratory care practitioners.

9. Probation Monitoring Drug Testing Frequency *(Stephanie Nunez)*

10. Discipline & Probation Monitoring Cost Recovery- Discussion *(Sandra Magaña)*

11. California College, San Diego Progress Report

· Closed Session ·

The Board will convene into Closed Session, as authorized by Government Code Section 11126(c), subdivision (3), for approximately 30 minutes to deliberate:

- I. Proposed Stipulated Decision to Withdraw Application: Stanley Anthony Agbulos, Applicant
- II. Non Adoption of Proposed Decision: Sergio Betancourt Jr., Applicant
- III. Proposed Stipulation to Issue License and Public Reprimand: Jose Cunanan Franco, Applicant
- IV. Deliberation on Any Other Matters

**12. “Transitioning the Respiratory Therapist Workforce for 2015 and Beyond”
Recommendations - Discussion** *(Bud Spearman)*

13. Consideration to Require RRT Credential as Part of State Licensure

14. Consideration to Contract Services to Establish Board Recommended Benchmarks

15. Legislation of Interest *(Larry Renner)*

At the time of the preparation of this agenda, there were no bills of interest. Any bills introduced prior to February 25, 2011, that are relevant to the Board’s activities will be presented at the meeting.

16. 2011 Meeting Calendar - Schedule Meeting Dates

- a. Consider presentation at CSRC meeting Tuesday, May 10, 2011 to honor licensee

17. Election of Officers

18. Public Comment on Items Not on the Agenda

19. Future Agenda Items

2:30 p.m. 20. Adjournment

NOTICE

This meeting will be Webcast. To view the Webcast, please visit
http://www.dca.ca.gov/publications/multimedia/webcast_current.shtml.

Action may be taken on any item on the agenda. Time and order of agenda items are subject to change at the discretion of the President. Meetings of the Respiratory Care Board are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. In addition to the agenda item which addresses public comment, the audience will be given appropriate opportunities to comment on any issue before the Board, but the President may, at his discretion, apportion available time among those who wish to speak. Contact person: Paula Velasquez, telephone: (916) 323-9983.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Paula Velasquez at (916) 323-9983 or sending a written request to: Paula Velasquez, Respiratory Care Board, 444 North 3rd Street, Suite 270, Sacramento, CA 95811. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.



PUBLIC SESSION MINUTES

Tuesday, May 11, 2010

**Dolce Hayes Mansion
Monterey Room
200 Edenvale Avenue
San Jose, CA 95136**

Members Present: Larry L. Renner, BS, RCP, RRT, RPFT, President
Barbara M. Stenson, RCP, RRT
Lupe V. Aguilera
Murray Olson, RCP
Richard L. Sheldon, M.D.
Charles B. Spearman, MEd, RCP, RRT

Staff Present: Dianne Dobbs, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager
Liane Freels, Staff Services Manager

CALL TO ORDER

The Public Session was called to order at 9:07 a.m. by President Renner. A quorum was present.

ADMINISTER OATH OF OFFICE

President Renner administered the Oath of Office to Murray Olson.

APPROVAL OF FEBRUARY 5, 2010 PUBLIC SESSION MINUTES

Dr. Sheldon moved to approve the February 5, 2010 Public Session minutes as written.

Dr. Sheldon commented he had not received the list of signatures from Mr. Roth as agreed upon at the February 5th board meeting. He asked that staff contact Mr. Roth to follow up.

1
2 M/ Sheldon /S/Spearman
3 Unanimous: Aguilera, Olson, Sheldon, Spearman, Stenson
4 MOTION PASSED
5
6

7 **EXECUTIVE OFFICER'S REPORT**
8 *(Stephanie Nunez)*
9

10 JOB CREATION AND LICENSING BACKLOG REDUCTION PROJECT
11

12 Ms. Nunez explained that as part of the Job Creation and Licensing Backlog Reduction Project, the
13 Governor has made the processing of applications and licensing backlog a priority. In support of the
14 project, the Governor has authorized overtime and temporary help to provide necessary resources to
15 ensure timely processing of applications and renewals through the end of the fiscal year. Ms. Nunez
16 stated that these resources will help tremendously as the busiest application period occurs during the
17 last few months of the fiscal year.
18

19 CALIFORNIA COLLEGE SAN DIEGO TRANSCRIPT REVIEW UPDATE
20

21 Ms. Nunez provided the Board with an update and explained that a more detailed report will be given
22 in November. She stated out of the 19 initial transcripts staff reviewed, 18 were correct while 1
23 required 3 submissions. Since then, of the new transcripts submitted to the Board, 29 were correct
24 and 4 required a second submission. Ms. Nunez stated the transcripts are now being submitted along
25 with the corresponding catalog making it much easier to identify what is missing and overall she sees
26 an improvement.
27

28 Ms. Stenson inquired if there are any other schools having this sort of problem. Ms. Nunez responded
29 that no other school has these issues.
30

31 Ms. Nunez was asked by the Board if she felt satisfied with the response of CCSD's program, or if
32 more action needs to be taken. Ms. Nunez responded she is satisfied in the fact that they are giving
33 the Board the information needed to review the transcripts, and that fewer resources are required to
34 identify problems. However, she felt it is still premature to fully respond.
35

36 Ms. Stenson inquired if there is a mechanism to report issues to the Bureaus for Private
37 Postsecondary Education (BPPE). Ms. Nunez stated that she will verify what jurisdiction BPPE has as
38 it relates to CCSD, and what the process would be to file a complaint if the Board had future
39 concerns.
40

41 UNIFORM STANDARD #4 SUBCOMMITTEE (SB 1441)
42

43 Ms. Nunez followed up on the concerns from the last meeting regarding the number of drug tests for
44 probationers per year as established by the SB 1441 guidelines (104 times for the first year and 52 for
45 subsequent years) stating a meeting was held with the Substance Abuse Coordination Committee.
46 She stated that while that standard is in place and has already been adopted, the Director has asked
47 Ms. Nunez to chair a subcommittee to look at this particular standard to see if it warrants being
48 modified or adjusted.
49

50 UNLICENSED/UNAUTHORIZED PRACTICE, RECENT ALJ DECISION
51

52 Ms. Nunez shared the final outcome in the matter of the Citation and Find against A Grace Sub Acute
53 and Skilled Care Facility. However, she advised the Board that the facility has indicated it would be

1 filing a Writ of Mandate to appeal the decision. She also stated that it should take somewhere around
2 60 to 90 days for a final outcome. The Board Members commended staff for their exceptional work
3 on this case. Ms. Nunez also commented that Michael Werner, the Board's Expert Witness in the
4 matter also did an outstanding job.
5

6 AARC'S 2015 AND BEYOND PROJECT 7

8 Ms. Nunez stated Mr. Spearman will be attending the third and final meeting for the Creating a Vision
9 for Respiratory Care in 2015 and Beyond, hosted by the American Association for Respiratory Care.
10

11 BUDGET CHANGE PROPOSALS 12

13 Ms. Nunez explained that because existing staff is no longer able to absorb the increase in
14 applications and enforcement workload, additional staffing for the Licensing and Enforcement
15 Programs is being requested as part of the Budget Change Proposal process
16
17

18 **PUBLICATION OF PROGRAM PASS/FAIL RATES**

19 *(Christine Molina)*
20

21 Ms. Molina reviewed an e-mail received from a program director expressing concerns with the existing
22 Program Pass/Fail Information posted on the Board's website. Following receipt of the e-mail, staff
23 reviewed the existing format of the report to determine what revisions could be made to address the
24 issues raised. Ms. Molina explained that recommendations had been listed for consideration by the
25 Board.
26

27 Mr. Spearman suggested making it less confusing by removing the "All Candidate Summary" as that
28 percentage can easily be figured out using the "New" and "Repeat Candidate" information.
29

30 Dr. Sheldon questioned the numbers for Crafton Hills College. Ms Nunez agreed they didn't seem
31 correct and stated Staff would follow up on the data for both Crafton Hills and Orange Coast College.
32

33 Ms. Molina further explained pursuant to its contract agreement, the NBRC is only required to provide
34 overall program data, not data by graduating class.
35

36 Ms. Molina questioned whether changing the reporting period might allow the report to capture more
37 of the specific graduating classes.
38

39 Dr. Sheldon moved to change the report to represent the calendar year, remove the "All Candidate
40 Summary" and report only "New Candidate Summary" and "Repeat Candidate Summary"
41 percentages. Also, add a brief description of each summary and run for two years, re-evaluating at
42 the end of that period.
43

44 M/ Sheldon /S/Spearman

45 Unanimous: Aguilera, Olson, Sheldon, Spearman, Stenson

46 MOTION PASSED
47
48
49

50 **PROPOSED REGULATORY LANGUAGE**

51 *(Stephanie Nunez)*
52

52 Ms. Nunez reviewed amended language related to: Disciplinary Guidelines, Uniform Standards,
53 Citations and Fines, Education Waiver, application processing time and clean up. She explained this

1 is draft language and will change as SB 1111 and SB 1172 are amended, but asked for any
2 comments or concerns based on the current proposal.

3
4 Ms. Nunez reviewed the following:

5
6 §1399.303 Delegation of Authority: Gives the Executive Officer the authority to approve any
7 stipulated settlements where the person surrenders their license as a result of an accusation being
8 filed to revoke it.

9
10 §1399.320 Applications: In an effort to get applications processed faster, changes the submission
11 time for documentation to 90 days prior to the receipt of an initial application versus 30.

12
13 §1339.30 Education Waiver Criteria: Recognizes military service when determining educational
14 experience. This section also does not require the board to waive requirements for poor work
15 performance or to determine if waiver criteria has been met with staffing agencies and registries.

16
17 § 1399.335 Notice to Disapprove Respiratory Therapy School: The current process under this article
18 provides respiratory therapy programs a 30-day notice prior to the matter being heard by the board
19 however, Ms. Nunez asked the board to consider changing this to send a complaint or request to
20 BPPE to investigate the issue. If for some reason this bureau disbands again, the board can use the
21 current process.

22
23 §1399.352.7. Law and Professional Ethics Course Criteria: Clean up and amend subdivision (a) to
24 include the board as an Ethics course provider along with AARC and CSRC.

25
26 § 1399.360. Unlicensed Personnel Services; Home Care: Dr. Sheldon suggested including
27 "Connection to an adequate dependable and safe hook up to a power source" (viii) to subdivision (C)
28 Instruct patient in the proper and safe operation of oxygen equipment. He further stated that apply to
29 all home care equipment: apnea, monitors and ventilators.

30
31 § 1399.370. Substantial Relationship Criteria: Added various crimes or acts to be considered for the
32 purpose of denial, suspension or revocation of a license to include the possession of drug
33 paraphernalia.

34
35 §1399.377 Records from Employers: Asks that records from employer be provided within 10
36 business days

37
38 §1399.378. Licensee Reporting: Change section numbers and obtain consistency with the number of
39 days information is required to be reported.

40
41 §1399.379. Employer Reporting: Change section numbers and obtain consistency with the number of
42 days information is required to be reported.

43
44 §1399.380 Citations: Rework into one section applying to all and clearly defines process.

45
46 § 1399.381 Fines: Fines clarified and can exceed \$2,500 (changed in B& P code to \$5000 last year)

47
48 Discussion ensued

49
50 Ms. Nunez explained all these citation and fines are based on four different factors as listed in
51 §1399.380 (g):

52
53 (1) The gravity of the violation

- 1 (2) The good or bad faith exhibited by the cited person
- 2 (3) The history of previous violations
- 3 (4) The extent to which the cited person has cooperated with the board's investigation

4
5 Ms. Nunez stated first time violators (unless it was an exceptionally heinous act) would not get the
6 maximum fine. She explained these are maximum limits listed and would change the language for
7 clarification.

8
9 § 1399.395. Fee Schedule: Proposed to raise Application Fee to a flat \$300 for every kind of
10 application. Currently there is a different fee for out-of-state and eliminate the initial licensing fee,
11 which is currently \$200 (prorated between \$48 to \$188). This would speed up the licensing process
12 from two to four weeks.

13
14 Discussion ensued.

15
16 Mr. Olson summarized for clarification that this would mean a possible \$12 increase (in the worse
17 case scenario) to a \$65 decrease (in the best case) and that most would pay less.

18
19 Ms. Nunez stated there would no longer be a 6 to 17 month time frame; it would be 11 to 24 months.
20 She stated the benefits would be that initial licenses would be for a longer period of time and the time
21 it took to obtain a license would be much quicker.

22
23 Ms. Nunez suggested adding this information in a letter to the program directors explaining how this
24 will affect the applicants.

25
26 President Renner moved that the staff work with legal counsel to amend the language as needed to
27 coincide with SB 1111 and SB 1172 and move forward with the regulation process once these bills
28 are on the Governor's desk.

29
30 M/ Renner /S/Sheldon
31 Unanimous: Aguilera, Olson, Sheldon, Spearman, Stenson
32 MOTION PASSED

33
34 Ms. Nunez outlined the changes to the Disciplinary Guidelines to include:

- 35
- 36 • Adding, under Evidence in Aggravation of Penalty, #10 "Commission of any crime against a minor,
37 or while knowingly in the presence of, or while caring for, a minor"
- 38 • Suspension is required for anyone using or possessing drugs or alcohol at work
- 39 • Under the Probation Monitoring Program, add language that loosens the ability to discuss work
40 status, performance and monitoring with the probationer's employers, supervisors or managers
- 41 • Clarification on biological fluid testing
- 42 • Adding a standard for suspension
- 43 • New Violations & Consequences Standards
- 44

45 Discussion ensued on biological fluid testing.

46
47 Since the Board will review the amended Disciplinary Guidelines again in October, Ms Nunez asked
48 the Board Members to provide her with any additional considerations and/or changes by mid June.

1 **TWENTY FIVE YEARS OF RCP LICENSURE RECOGNITION**

2
3 At 10:30 a.m., the Board convened to the Edenvale Room for a presentation by Brian Stiger, Director
4 of the Department of Consumer Affairs, recognizing twenty five years of respiratory care practitioner
5 licensure, and reconvened at 11:10 a.m.
6

7
8 **DCA DIRECTOR’S REPORT**
9 *(Director Stiger)*

10 Director Stiger gave updates on the following topics:

11
12
13 **CONSUMER PROTECTION ENFORCEMENT INITIATIVE (CPEI):** Director Stiger stated it is an
14 ongoing process of developing administrative improvements to the enforcement process and the
15 Department is about two- thirds compete. A Budget Change Proposal has been submitted. The
16 Enforcement Academy has been launched to make sure all Investigators and enforcement staff
17 members understand all aspects of their job duties. Starting in July, DCA will ask all boards, bureaus
18 and programs to develop performance measures which will be posted on their respective websites.
19

20 **CONTINUING COMPETENCY:** Director Stiger indicated that “continuing competency” is used as a
21 form of proactive enforcement The Board of Podiatry established a continuing competency program
22 in 1999 which reduced their intake of consumer complaints by about 50%.
23

24 **REGULATORY NEXT PRACTICES:** A Working Conference Meeting will be held July 27, 2010. Its
25 purpose is to provide critical training to board members. He indicated that more information is posted
26 on the Department’s website.
27

28 **WEBCASTING:** As a form of transparency, webcasting is available to use for board meetings and
29 can be used both on the road and at DCA.
30

31 **MEETING SITES:** As a cost savings measure, Director Stiger asked that the Board try to choose low
32 cost or no cost locations for its meetings.
33

34
35 **PETITION TO TERMINATE PROBATION HEARING: KIERAN COX, RCP**

36
37 The Board heard the Petition for Termination of Probation for Respiratory Care Practitioner, Kieran
38 Cox.
39

40 The Board convened into Closed Session, as authorized by Government Code Section 11126c,
41 subdivision (3) at 12:40 p.m. and reconvened into Public Session at 12:50 p.m.
42

43
44 **LEGISLATION OF INTEREST**
45 *(Larry Renner)*

46
47 President Renner praised the California Society for Respiratory Care stating they played a significant
48 role in stopping AB 2174 which would have required the California Department of Health Care
49 Services to reduce its respiratory therapy hours by one hour per patient day in the sub acute setting.
50

51 Mr. Olson moved to:

52 Support - AB 978
53

- 1 Watch - AB 1659
- 2 Watch - AB2130
- 3 Watch - AB 2699
- 4 Watch - SB 1171
- 5 Watch - SB 1172

6
7 M/ Olson /S/Aguilera
8 Unanimous: Aguilera, Olson, Sheldon, Spearman, Stenson
9 MOTION PASSED

10
11
12 **DISCUSSION: DISCIPLINE IMPOSED ON CASES INVOLVING MARIJUANA USE/POSSESSION**
13 *(Stephanie Nunez)*

14
15 Ms. Nunez stated that following a prior disciplinary decision, this item was requested to be placed on
16 the agenda during the discussion of the new uniform standards and drug testing. Discussion ensued
17 regarding possibly modeling the discipline imposed for these types of cases after a DUI case.

18
19 Ms. Nunez stated currently the discipline imposed for licensees receiving their first DUI, would be
20 possible citation and fine. If drug use or possession is involved, the discipline imposed would be
21 probation.

22
23 Discussion ensued.

24
25 In summary, President Renner agreed while it is still an illegal substance, the case reviewed would
26 have been better served by a simple cite and fine.

27
28 **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

29
30 There were no public comments.

31
32
33 **FUTURE AGENDA ITEMS**

34
35 Consideration of the Registered Respiratory Therapist (RRT) credential as part of licensure.

36
37
38 **ADJOURNMENT**

39
40 The Public Session Meeting was adjourned by President Renner at 1:25 p.m.

41
42
43
44
45
46
47
48
49 _____
50 LARRY L. RENNER
51 President

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60 _____
61 STEPHANIE A. NUNEZ
62 Executive Officer

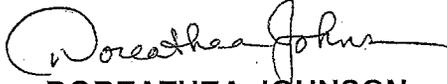


RECEIVED
2011 JAN 11 PM 3:36
RESPIRATORY CARE BOARD

MEMORANDUM

DATE: January 5, 2011

TO: Executive Officers
Executive Directors
Registrars
Bureau Chiefs
Interested Parties


FROM: DOREATHEA JOHNSON
Deputy Director
Legal Affairs

Subject: Public Meetings (Bagley-Keene Open Meeting Act)

This memorandum is to update you on the provisions of the public meetings law, officially called the Bagley-Keene Open Meeting Act (Article 9 (commencing with section 11120), Chapter 1, Part 1, Division 3, Title 2 of the Government Code). The attached guide includes all statutory amendments through January 1, 2011. Please disregard all of our previous memoranda on the subject, and our Guide to the Bagley-Keene Open Meeting Act, issued January 5, 2010.

The following changes are important:

1. Page 21: We have added a new section on the use of electronic devices by board members during an open meeting – this is very important.
2. Page 23: We have added a section on webcasting – including suggested language to be placed on your agenda when you plan to webcast a meeting.

We hope you find this document helpful in answering questions you may have about the requirements of the Open Meeting Act. If you have any suggestions for ways to improve the guide in the future, please let us know.

GUIDE TO THE

BAGLEY-KEENE OPEN MEETING ACT
(Includes Amendments through January 1, 2011)

Prepared By:

DIVISION OF LEGAL AFFAIRS
Department of Consumer Affairs
1625 N. Market Blvd., Suite S 309
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BAGLEY-KEENE OPEN MEETING ACT

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**GUIDE TO THE
BAGLEY-KEENE OPEN MEETING ACT
(Includes Amendments through January 1, 2011)**

This guide is an update on the provisions of the public meetings law governing state agencies, officially called the Bagley-Keene Open Meeting Act. (Article 9 (commencing with Section 11120), Chapter 1, Part 1, Division 3, Title 2 of the Government Code). The Open Meeting Act closely parallels the Ralph M. Brown Act, which governs meetings of local government agencies. This guide includes all statutory changes through January 1, 2011. Please disregard all earlier memoranda and the previous Guide to the Bagley-Keene Open Meeting Act (distributed January 5, 2010) on this subject.

All statutory references are to the Government Code.

I. PUBLIC POLICY TO CONDUCT PEOPLE'S BUSINESS OPENLY

Section 11120 sets forth the purpose of the law:

"It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act."

Each board has essentially three duties under the Open Meeting Act. First, to give adequate notice of meetings to be held. Second, to provide an opportunity for public comment. Third, to conduct such meetings in open session, except where a closed session is specifically authorized. We use the terms "agency" and "board" to mean not only boards, but also commissions and any examining committees or boards within the jurisdiction of the Medical Board of California.

II. BOARD, COMMITTEE, SUBCOMMITTEE, TASK FORCE MEETINGS

A. Definition of a "Meeting"

"Meeting" is defined in the Act as including "any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains." (§11122.5(a)) The law now prohibits use by a majority of the members of a state body of direct communications or a series of communications of any kind, directly or through personal intermediaries, or technological devices (such as e-mails) to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body. (§11122.5(b))

B. Exemptions from Definition of Meeting

The law recognizes that not all gatherings of a majority of members of a state body at a single location constitute a meeting. Current law provides that the provisions of the Act do not apply to the following situations, **provided that** "a majority of the members do not discuss among themselves, other than as part of a scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body." (§11122.5(c))

- Individual contacts or conversations between a member of a state body and any other person. (§11122.5(c)(1))
- Attendance by a majority of members at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body. (§11122.5(c)(2))
- Attendance by a majority of members at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body. (§11122.5(c)(3))
- Attendance by a majority of members at an open and noticed meeting of another state body or of a legislative body of a local agency. (§11122.5(c)(4))
- Attendance by a majority of members at a purely social or ceremonial occasion. (§11122.5(c)(5))
- Attendance by a majority of members at an open and noticed meeting of a standing committee of that body, provided the members of the body who are not members of the committee attend only as observers. (§11122.5(c)(6))

The law does not, however, prevent an employee or official from engaging in separate communications outside of a noticed meeting with members of the legislature to answer questions or provide information about a matter within the agency's subject

matter jurisdiction – with the limitation that the person cannot communicate the comments or position of any other member.

C. Board and Committee Meetings

There are two basic types of meetings held by agencies in the Department of Consumer Affairs. The first type is a board meeting, where a quorum of the members of the board is present. The second type is a committee meeting consisting of less than a quorum of the members of the full board. Subcommittee and task force meetings are variations of committee meetings.

Board meetings have historically been required to be noticed and open to the public, except where a closed session is authorized. Committee and subcommittee meetings, where less than a quorum of the board is present, are also required to be noticed and open to the public. The only exception is for a committee that consists of fewer than three persons. (NOTE – it is the number of persons on the committee [not the number of board members] that is determinative.)

Where a committee of fewer than three persons is to meet, and the meeting is not noticed, other members of the board should not attend the meeting, as such attendance would clearly be perceived as an Open Meeting Act violation. Board staff is not precluded from attending such a meeting.

[Restriction on Attendance at Committee Meetings] The law allows attendance by a majority of members at an open and noticed meeting of a standing committee of the board, provided the members of the board who are not members of the committee attend only as observers. (§11122.5(c)(6)) The Office of the Attorney General has addressed in a formal opinion a provision in the Brown Act relating to the attendance of "observers" at a committee meeting. The Attorney General concluded that "[m]embers of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body 'as observers.'" The opinion further concluded that such members of the legislative body may not sit in special chairs on the dais with the committee. (81 Ops.Cal.Atty.Gen. 156)

Thus, under the provisions of section 11122.5(c)(6), and the opinion of the California Attorney General, if a majority of members of the full board are present at a committee meeting, members who are not members of the committee that is meeting may attend that meeting only as observers. The board members who are not committee members may not sit on the dais with the committee, and may not participate in the meeting by making statements or asking questions.

If a board schedules its committee meetings seriatim, and other board members are typically present to ultimately be available for their own committee meeting, your notice of the committee meeting should contain a statement to the effect that "Members

of the board who are not members of this committee may be attending the meeting only as observers.”

Subcommittees may be appointed to study and report back to a committee or the board on a particular issue or issues. If the subcommittee consists of three or more persons, the same provisions apply to its meetings as apply to meetings of committees.

Board chairpersons may occasionally appoint a task force to study and report on a particular issue. One or two board members typically serve as task force members, along with a number of other non-board members. When this is the case, the same Open Meeting Act rules that apply to committee meetings apply to task force meetings. Such a formally appointed task force falls under the definition of “state body in Section 11121(c).”

III. TYPES OF MEETINGS; PURPOSE; NOTICE; OTHER REQUIREMENTS

Boards and committees may hold several types of meetings, including a regularly scheduled meeting, a “special” meeting, or an “emergency” meeting under the provisions of section 11125.5. This section of the memorandum addresses who can hold certain types of meetings, the purposes for which the meetings can be held, notice requirements, and any other special requirements or prohibitions.

A. Regularly Scheduled Meetings

1. Who May Hold a Regularly Scheduled Meeting

A board, committee, subcommittee, or task force may hold a regularly scheduled meeting. These are the business meetings that are scheduled throughout the year to conduct the usual and customary business of the board. Such meetings may generally be called by the chairperson, or by a majority of the body. However, you must refer to your particular licensing act, which may contain different provisions as to who may call a meeting.

2. Purposes for Which the Meeting May be Held

These meetings are to conduct the usual and customary business of the board, or the business of a committee, subcommittee or task force as directed by the board. The subject matter of the meetings is essentially dictated by the jurisdiction of the board as found in the board’s licensing act. There are no statutory restrictions in the Open Meeting Act on the purposes for which a regularly scheduled meeting may be held.

3. Notice Requirements for a Regularly Scheduled Meeting

a. Board Meetings

An agency is required to give at least 10 calendar days written notice of each board meeting to be held. (§11125(a).) The notice must include the name, address, and telephone number of a person who can provide further information prior to the meeting and must contain the website address where the notice can be accessed. The notice must also be posted on the Internet at least 10 calendar days before the meeting.

In addition to the website posting, effective January 1, 2003, the notice is required to be made available in appropriate alternate formats upon request by any person with a disability.

The notice of each board meeting must include an agenda that is prepared for the meeting. The agenda must include all items of business to be transacted or discussed at the meeting. " ... A brief general description of an item generally need not exceed 20 words. ... No item shall be added to the agenda subsequent to the provision of this notice." (§11125(b)) This provision does not, however, preclude amending an agenda provided the amended notice is distributed and posted on the Internet at least 10 calendar days prior to the meeting. Effective January 1, 2003, the notice must include information that would enable a person with a disability to know how, to whom, and by when a request may be made for any disability-related modification or accommodation, including auxiliary aids or services. We suggest the following as standard language:

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting _____ at (916) _____ or sending a written request to that person at the Board [Address], Sacramento, California, [zip code]. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

The definition of "action taken" in Section 11122 is of some aid in determining what the Legislature intended by use of the words "items of business to be transacted."

"11122. As used in this article 'action taken' means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action."

General agenda items such as "New Business," "Old Business," "Executive Officer's Report," "Committee Reports," "President's Report," "Miscellaneous," etc.,

without specifying the particular matters thereunder, cannot be used to circumvent this requirement. The Office of the Attorney General has opined that:

"... the purpose of subdivision (b) [of Government Code Section 11125] is to provide advance information to interested members of the public concerning the state body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate under the circumstances.

* * *

"We believe that Section 11125 was and is intended to nullify the need for . . . guesswork or further inquiry on the part of the interested public." (67 Ops.Cal.Atty.Gen. 85, 87)

Items not included on the agenda may not be discussed, even if no action is to be taken by the agency. However, we offer two suggestions so members of the public and board members may raise issues that are not on the agenda.

We strongly encourage boards to include an item on their agendas for "Public Comment on Matters Not on the Agenda." This gives persons who are attending a meeting an opportunity to raise any issues they may have, which may not be on the agenda, but which may be appropriate for future board discussion. Matters raised under this agenda item should be discussed only to the extent necessary to determine whether they should be made an agenda item at a future meeting. (§11125.7(a))

We also strongly encourage boards to include an item on their agenda for "Agenda Items for Future Meetings." This allows all board members an opportunity to request specific agenda items for a meeting. Again, these items should be discussed only to the extent necessary to determine whether they should be included as agenda items for a future meeting.

[CAVEAT: If the regularly scheduled meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.]

The notice and the agenda must be provided to any person who requests it. A member of the public may request notice for a specific meeting, for all meetings at which a particular subject will be discussed or action taken thereon, or for all meetings of the agency. Mailing lists of persons who desire to be notified of more than one meeting must be maintained pursuant to Section 14911, which provides:

"14911. Whenever any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. This shall be done by addressing an appropriate postcard or letter to each person on the mailing

list. The name of any person who does not respond to such letter or postcard, or who indicates that he does not desire to receive such publications or printed matter, shall be removed from the mailing lists. The response of those desiring to be on the mailing list shall be retained by these agencies for one year."

Effective 1/1/98, a sentence was added to subdivision (c) of Section 11125.1 to state that "Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication." (Stats. 1997, Chapt. 949; SB 95) The Legal Office interprets this provision to supersede any provisions in particular practice acts which require newspaper publication of board or committee meetings. Boards and committees, of course, retain the discretion to publish notices in newspapers if they so chose.

b. Committee, Subcommittee or Task Force Meetings

Each agency is required to give notice of committee, subcommittee or task force ("committee") meetings to be held. However, this requirement does not apply if the committee consists of less than three persons. It is the number of persons on the committee that is determinative, not how many of the persons are board members. Thus, if a committee consisted of two board members and two other interested persons, its meetings would have to meet all the requirements of the Open Meeting Act.

Notice of committee meetings must be provided and posted on the Internet at least 10 calendar days in advance of the meeting. (§11125(a)) The notice "shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice." (§11125(c)) The notice must also include the Website address where the notice can be accessed on the Internet. Although the law does not so specify, we would suggest also including in the notice the name, address, and telephone number of a contact person who can provide further information prior to the meeting. As with board meetings, there is no requirement that the notice be published in any newspaper or other periodical. However, the notice must be provided to any person or persons who have requested to be notified of the particular committee's meetings. You may elect to send such notice to those persons on your regular mailing list.

Remember you must post your notice on the Internet at least 10 calendar days in advance of the meeting and must make the notice available in appropriate alternate formats upon request by any person with a disability.

Provision is made for certain non-emergency, but sometimes necessary, committee meetings. Where, during the course of a regularly scheduled and properly noticed board meeting, the board desires that a committee presently discuss an item of business on the agenda, the committee may do so provided (a) the specific time and place of the committee meeting is announced during the public meeting of the board, and (b) the committee meeting is conducted within a reasonable time of, and nearby, the meeting of the board. (§11125(c))

4. Specific Requirements for Regularly-Scheduled Meetings

There are no specific requirements, other than those set forth above, for regularly scheduled board, committee, subcommittee or task force meetings.

5. Specific Prohibitions on Holding a Regularly-Scheduled Meeting

There are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a regularly scheduled meeting.

We again remind you that, with respect to committee meetings, members of the board who are not members of the committee that is meeting may only attend the committee meeting as observers. This means these members may not sit on the dais with the committee, make any statements, or ask any questions during the committee meeting. (81 Ops.Cal.Atty.Gen. 156)

B. "Special" Meetings

SB 95 of 1997 created a new category of meeting, that being a "special" meeting.

1. Who May Hold a Special Meeting

A board, committee, subcommittee or task force may hold a special meeting.

2. Purposes for Which a Special Meeting May be Held

The only purposes for which a special meeting may be held are set forth in section 11125.4; and are drawn from the purposes for which an emergency meeting could be held under the prior law. In essence, the Legislature recharacterized those purposes as constituting "special" circumstances rather than "emergency" circumstances. Section 11125.4 provides in part that:

"(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider 'pending litigation' as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

- (3) To consider issuance of a legal opinion.
- (4) To consider disciplinary action involving a state officer or employee.
- (5) To consider the purchase, sale, exchange, or lease of real property.
- (6) To consider license examinations and applications.
- (7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.
- (8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.
- (9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

* * *

Department of Consumer Affairs licensing boards would most likely hold a special meeting for the purposes set forth in subdivisions (1), (2), (3), (4), and (6).

3. Notice Requirements for a Special Meeting

A special meeting can be called at any time by the presiding officer or a majority of the members of the state body, provided the 10-day notice requirements of section 11125 "would impose a substantial hardship on the state body or where immediate action is required to protect the public interest." (§11125.4(a)) The only purposes for which the meeting can be held are those set forth above.

The normal 10-day advance notice is not required for special meetings. However, notice of the special meeting is required to be provided to each member of the state agency and to persons who have requested notice of the agency's meetings as soon as practicable after the decision to hold the meeting is made. Notice to members, newspapers of general circulation, and radio or television stations must be received at least 48 hours in advance of the meeting. Notice to newspapers, radio and television stations is satisfied by providing notice to all national press wire services. Notices to the general public may be given via appropriate electronic bulletin boards or other appropriate mechanisms. (§11125.4(b)) The notice must also be posted on the Internet at least 48 hours in advance of the meeting.

The notice must specify the time and place of the special meeting and the business to be transacted. In essence, an agenda would be prepared. No business other than that noticed may be transacted. Notice is required even if no action is

subsequently taken at the meeting. (§11125.4(b)) The notice must contain the Website address where the notice may be accessed on the Internet.

[CAVEAT: If the special meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.]

4. Specific Requirements During Special Meetings

At the commencement of a special meeting, the agency must make a finding in open session that providing a 10-day notice of the meeting would pose a substantial hardship on the agency, or that immediate action is required to protect the public interest. The specific facts constituting the hardship or need for immediate action must be articulated. This finding must be adopted by a two-thirds (2/3) vote of the agency members present, or if less than two thirds of the members are present, by a unanimous vote of the members present. Failure to adopt the finding terminates the meeting. The agency's finding must be made available on the Internet. (§11125.4(c))

5. Specific Prohibitions on Holding a Special Meeting

As discussed above, a special meeting may only be held for the purposes set forth in section 11125.4(b). Other than the limitation on the purposes of the meeting, there are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a special meeting.

C. "Emergency" Meetings

1. Who May Hold an Emergency Meeting

A board, committee, subcommittee or task force may hold an emergency meeting.

2. Purposes for Which an Emergency Meeting May be Held

As noted above, S.B. 95 of 1997 recharacterized a number of "emergency" situations as "special" situations. This resulted in the narrowing of situations for which an emergency meeting may be held. Section 11125.5 provides an emergency meeting may be held only in the case of an "emergency situation," defined as:

" (1) Work stoppage or other activity that severely impairs public health or safety, or both.

" (2) Crippling disaster that severely impairs public health or safety, or both." (§11125.5(b))

3. Notice Requirements for an Emergency Meeting

An emergency meeting may be held without complying with the 10-day notice requirement in Section 11125 or the 48-hour notice requirement in Section 11125.4. However, newspapers of general circulation, television and radio stations that have requested notice of meetings shall be notified of the emergency by telephone at least one hour before the meeting. If telephone services are not functioning, notice is deemed waived. The notice must be posted on the Internet as soon as practicable after the decision to call an emergency meeting has been made. However, newspapers, television and radio must be notified as soon as possible after the meeting of the fact of the meeting, its purpose, and any action taken. (§11125.5(c))

4. Specific Requirements for an Emergency Meeting

The following are required to be posted in a public place and on the Internet for a minimum of 10 days, as soon as possible after the emergency meeting:

- * Minutes of the meeting
- * A list of persons notified, or attempted to be notified, of the meeting
- * Any action taken at the meeting
- * The rollcall vote on action taken (§11125.5(d))

5. Specific Prohibitions on Holding an Emergency Meeting

As discussed above, an emergency meeting may only be held for the purposes set forth in section 11125.5(b).

IV. CLOSED SESSIONS

A. Purposes for Which Closed Session Can be Held

"Closed" sessions were formerly called "executive" sessions. Since all references in the Open Meeting Act have been changed from "executive" session to "closed" session, throughout this memorandum we will refer to such sessions as "closed" sessions.

Section 11123 states that "All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article."

Section 11126 sets forth those specific items of business which may be transacted in closed session. Only those enumerated items of business may be conducted in closed session. An agency in the Department may convene a closed session pursuant to Section 11126 for the following purposes.

1. Personnel Matters

A board may meet in closed session to " . . . consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person unless the employee requests a public hearing." In order to consider such disciplinary action or dismissal the "employee shall be given written notice of his or her right to have a public hearing . . . which notice shall be delivered to the employee personally or by mail at least 24 hours before the meeting." (§11126(a)) If such a notice is not given any action taken during a closed session for the above reason is null and void. Once the public hearing has been held, the agency may convene into closed session to deliberate on the decision to be reached. (§11126(a)(4))

Prior to January 1, 1995, section 11126(a) did not apply to employees who were appointed to their positions, such as executive officers, executive directors, and registrars (referred to as "executive officer" for convenience). For example, any decision or deliberations made in the selection or dismissal of an executive officer previously had to be conducted in open session. (68 Ops.Cal.Atty.Gen. 34.) However, with the enactment of SB 1316 (Stats. 1994, Chapt. 845) and SB 95 (Stats. 1997, Chapt. 949), a board can now meet in closed session to consider the appointment, employment, evaluation of, or dismissal of its executive officer, unless the executive officer requests a public hearing. (§11126(a)(1), (2)) SB 1316 supersedes the conclusion reached in 68 Ops.Cal.Atty.Gen. 34. As noted above, once the public hearing has been held, the state body may convene in closed session to deliberate on the decision to be reached. (§11126(a)(4))

If the executive officer does not request a public hearing, he or she must be given the opportunity for a hearing in closed session. After the hearing, the executive officer should be excused from the closed session, and the board may then continue in closed session to deliberate on the decision to be reached. (§11126(a)(4))

Section 11126(a) is not to be interpreted to mean that a board is required to handle civil service personnel matters itself. Normally, this function of an agency is administered by its executive officer in conjunction with the Director of Consumer Affairs, who shares authority with respect to civil service personnel.

2. Examination Matters

A board may meet in closed session to "prepare, approve, grade or administer examinations." (§11126(c)(1)) Essentially, this includes any discussion regarding the actual content of examinations, and their reliability and validity. If an agency is perusing examination samples in order to choose one over the others, this may be done in closed session. On the other hand, if an agency is discussing, for example, the general logistics of administering an examination, then this would not be proper subject matter for a closed session. A basic rule is that if a meeting concerns the grading, specific content, validity of an examination, or examination security, then it can and should be conducted in closed session.

Also, an agency may hear appeals from examinees or re-review examinations in closed session as this would be included in the "grading" of the examination.

3. Matters Affecting Individual Privacy

A committee, consisting of less than a quorum of the full board, may meet in closed session to:

" . . . discuss matters which the [committee] has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, . . . Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body." (§11126(c)(2))

Thus, review by a committee (or subcommittee of an examining committee) of an applicant's qualifications for licensure could properly be done in a closed session. Also, for example, an enforcement committee could convene in closed session to discuss an inquiry related to a particular licensee or licensees prior to any action being filed.

CAVEAT: This closed session provision does not authorize such a review by the full board. Nor does it generally authorize a committee of a board to review complaints, investigation reports, or other information to determine whether disciplinary or other action should be filed against a licensee.

To ensure that board members render an impartial and fair decision in considering an Administrative Law Judge's proposed decision, board members are precluded from involving themselves in the investigation or prosecution phase of an action. (§11430.10 *et seq.*) The board's role is that of judge in the case. If a particular board member has any significant involvement in the investigative or prosecution phases, he or she must disqualify himself/herself from participation in the board's action relative to the proposed decision, and not attempt to influence any other board member regarding the decision. Legal counsel should be consulted before any enforcement actions are discussed with individual licensees, as such discussions may impact participation by the member in a final decision on a case (§11430.60), and may require disclosures under the provisions of the state's Administrative Procedure Act. (§11430.50)

Even though these committee meetings may consist entirely of subject matter proper for closed session they are required to be noticed as discussed above.

4. Administrative Disciplinary Matters

A board may meet in closed session to deliberate on a decision in an administrative disciplinary proceeding under the Administrative Procedure Act.

(§11400, *et seq.*; §11126(c)(3)) In the closed session, the board may decide whether to adopt a Proposed Decision, review a transcript of a hearing and render a decision of its own, deliberate upon evidence heard by the agency itself, or consider a stipulation.

This section does not authorize an agency to convene into closed session for the purpose of assigning cases, *i.e.* deciding whether a case should be heard by a hearing officer alone or by the agency itself with a hearing officer. This section does not authorize an agency to convene into closed session to review investigation files or complaints. Members of boards that have the discretion to hear cases should not review pending complaints or investigation files for the reasons given above.

5. Board of Accountancy Matters

The enforcement advisory committee established by the State Board of Accountancy pursuant to Business and Professions Code Section 5020 may convene in a closed session to "consider disciplinary action against an individual accountant prior to the filing of an accusation." (§11126(f)(3)) And the qualifications examining committee established by that board pursuant to Business and Professions Code Section 5023 may convene in closed session to "interview an individual applicant or accountant regarding the applicant's qualifications."

As noted above, such administrative and examining committee meetings are required to be noticed as previously discussed in this memorandum.

6. Pending Litigation

A board may meet in closed session to confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation. (§11126(e)(1)) Again, please note the very specific notice requirements discussed below when a closed session is to be held to discuss "pending litigation". Litigation means an adjudicatory proceeding before a court, administrative body, hearing officer or arbitrator. Litigation is considered to be pending if, (1) it has been initiated formally (e.g. a complaint, claim or petition has been filed) or (2) based on existing facts and circumstances and on the advice of its legal counsel, the state body believes there is significant exposure to litigation against it, or it is meeting to decide whether a closed session is authorized because of significant exposure to litigation or (3) based on existing facts and circumstances, the state body has decided or is deciding whether to initiate litigation. (§11126(e)(2))

The agency's legal counsel must submit a memorandum which complies with the requirements of Section 11126(e)(2)(C)(ii) prior to the closed session if possible, but no later than one week after the closed session. This document is confidential until the pending litigation has been finally adjudicated or otherwise settled. (§6254.25)

7. Response to Confidential Final Draft Audit Report

Section 11126.2 (added effective January 1, 2005) permits an agency to meet in closed session to discuss its response to a confidential final draft audit report from the Bureau of State Audits. However, once that audit report becomes final and is released to the public, the agency may only discuss it in open session.

8. Threat of Criminal or Terrorist Activity

Effective January 1, 2006, AB 277 (Chap. 288, Stats. 2005) authorizes an agency at a regular or special meeting to meet in closed session to consider "matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body," where disclosure of those considerations could compromise or impede the safety or security of the described subjects. The law (Section 11126(c)(18)) requires the agency to authorize the closed session by a two-thirds vote of the members present at the meeting.

9. Advisory Bodies/Committees May Meet in Closed Session

To the extent a licensing board, which is defined as a "state body" in the Open Meeting Act, is authorized to meet in closed session, then committees, subcommittees, or other bodies advisory to the licensing board, which are also defined as "state bodies," may meet in closed session for the same purposes as the licensing board. (§11126((f), (4)-(6))

10. Open Session Otherwise Required

Any other business transacted by an agency must be in open session. Only for the above-mentioned reasons may a board within the Department of Consumer Affairs meet in closed session. (§11132) A board may not meet in closed session for the purpose of electing officers or to discuss the proposal or adoption of rules and regulations. Further, a board may not convene in closed session to discuss testimony received during a hearing on proposed rules and regulations. Finally, an agency may not meet in closed session because it wants to have a frank and open discussion among only members on a matter of controversy. In order for an agency to meet in closed session, the closed session must be specifically authorized by statute.

B. Notice and Reporting Requirements for Closed Sessions

1. Notice of Closed Session

When a closed session will constitute part or all of a meeting, it is important to note Government Code Section 11126.3, which requires that:

"(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. [A provision applicable to the Public Utilities Commission is not included herein.] If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126 [litigation has already commenced], the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage."

Thus, if the meeting will consist in part or in its entirety of a closed session, you must include on the notice of the meeting the above-described information. Pay particular attention to these very specific requirements if the closed session is to discuss pending litigation. Please note that to obtain legal advice in closed session concerning pending litigation, the notice must cite subdivision (e) of Section 11126 and your attorney must prepare a memorandum stating the specific reasons and legal authority for the closed session. Subdivisions of Government Code Section 11126, discussed under "Closed Sessions" above, will generally be the statutory authority cited.

If a closed session agenda to discuss pending litigation has been properly published, and an additional pending litigation issue subsequently arises, the state agency may discuss the new matter in closed session provided that postponement of the discussion would prevent the state agency from complying with any statutory, court-ordered, or other legally-imposed deadline. The state agency must publicly announce the title of, or otherwise identify, the litigation unless to do so would jeopardize the ability to effectuate service of process, or to do so would jeopardize the agency's ability to conclude existing settlement negotiations to its advantage. (§11126.3(d))

If you intend to have a closed session during your meeting, you should first contact your Legal Division attorney to ensure that a closed session is authorized and properly noticed.

2. Reporting After a Closed Session

Section 11126.3(f), requires a state body to convene in open session after a closed session and to report as required in Section 11125.2, which states that:

“ Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.”

C. Other Procedural Requirements for Closed Sessions

There are certain additional requirements that must be met when closed sessions are to be held.

1. All closed sessions must be held during a regular or special meeting (§11128); they may not be scheduled independently of a noticed meeting of the board or committee. Where, for example, a board or committee meeting is scheduled to discuss only matters appropriate for a closed session, the meeting should be opened as a public meeting with an announcement immediately following that the agency will convene into closed session.

2. As discussed under "Notice Required," above, prior to holding the closed session the agency must announce the general reason(s) for the closed session and and the specific statutory or other legal authority under which the session is held. (§11126.3 (a)) With respect to litigation that has already been initiated, it must announce the title of or otherwise identify the litigation. (§11126.3(a)) Other specific notice requirements, discussed above, also apply to notices regarding pending litigation. In the closed session, only matters covered in the statement may be discussed. (§11126.3(b))

3. The agency is required to designate a staff person to attend the closed session and to record in a minute book a record of topics discussed and decisions made. (§11126.1)

4. The minute book referenced in (3) is available only to members of the agency, or if a violation of the Open Meeting Act is alleged, to a court of general jurisdiction. (§11126.1)

5. Information received and discussions held in closed session are **confidential** and must not be disclosed to outside parties by members or staff who attended the closed session. A recent opinion of the Office of the California Attorney General concluded that:

“ A local school board member may not publicly disclose information that has been received and discussed in closed session concerning

pending litigation unless the information is authorized by law to be disclosed." (80 Ops.Cal.Atty.Gen. 231)

That opinion also cited a previous opinion, in which the Attorney General stated that "We have ... routinely observed that it would be *improper* for information received during a closed session to be publicly disclosed." (76 Ops.Cal.Atty.Gen. 289, 290-291; Emphasis in the original.)

V. MEETING BY TELECONFERENCING

Prior to January 1, 1995, the Bagley-Keene Open Meeting Act contained no provision for conducting meetings where the participating members were not physically present in one location.

Effective 1/1/95, subdivision (b) was added to Government Code section 11123 to authorize meetings by teleconference. (Stats. 1994, Chapt. 1153; AB 3467) That subdivision has been amended several times, most recently by AB 192 of 2001, and it currently provides:

"(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

"(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, 'teleconference' means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video."

A method is thus available whereby meetings may be conducted by audio or video teleconferencing provided the criteria set forth in the statute have been met. Note the restriction in subdivision (b)(1)(E) that prohibits a closed session emergency meeting. Emergency meetings in open session may be conducted by teleconference.

We emphasize that the law now requires every teleconference meeting location to be identified in the notice and agenda and to be open to the public. Most importantly, the members of the agency must attend the meeting at a public location. Members are no longer able to attend the meeting via teleconference from their offices, homes, or other convenient location unless those locations are identified in the notice and agenda, and the public is permitted to attend at those locations. Nothing prohibits additional locations, where only the public is connected to the teleconference meeting.
(§11123(b)(2))

VI. DELIBERATIONS AND VOTING

Keep in mind the Open Meeting Act declaration of legislative intent that actions of state agencies be taken openly and that their deliberation be conducted openly. (§11120) In this regard, there are a number of provisions in the Open Meeting Act which address deliberations and voting.

A. Seriatim Calls to Individual Agency Members Prohibited

Except as authorized by the above-discussed teleconferencing statutes, telephone conference calls may not be used to avoid the requirements of the Open Meeting Act. A conference call including members of a board, committee, subcommittee or task force sufficient to constitute a majority of that state body is prohibited, except pursuant to an authorized teleconference meeting.

In a case involving the Ralph M. Brown Act, the court concluded that a series of one-to-one telephone calls between members of a local body, where the purpose of the calls was to obtain a collective commitment on an issue, constituted a violation of the Act. (*Stockton Newspapers, Inc. v. Members of the Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95) The Brown Act is the local agency counterpart to the Bagley-Keene Open Meeting Act, and decisions rendered on its provisions are frequently followed in Open Meeting Act cases.

Citing the *Stockton Newspapers, Inc.* case, the court in *Sutter Bay Associates v. County of Sutter* held that to prevent evasion of the Brown Act, a series of private meetings (known as serial meetings) by which a majority of the members of the legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business would violate the open meeting requirement. ((1997) 58 Cal.App.4th 860, 877, 68 Cal.Rptr.2d 492, 502)

Effective January 1, 2010, the Act now specifically prohibits serial communications between a majority of members "to discuss, deliberate, or take action on any item of business that is within the subject matter of the state agency." (Emphasis added.)

B. E-Mail Prohibition

AB 192 of 2001 added subdivision (b) to section 11122.5 to provide:

"Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited."

The enactment of subdivision (b) of section 11122.5, expands upon and confirms a recent opinion of the Attorney General prohibiting the use of e-mail to reach a collective decision outside a regularly scheduled meeting. In 84 Ops.Cal.Atty.Gen. 30, the Attorney General concluded that:

"A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board."

As noted above, interpretations of the Brown Act, which governs local public agencies, are often cited as authority in interpreting similar provisions of the Bagley-Keene Open Meeting Act.

Members of a board must refrain from calling or otherwise contacting other members on a one-to-one basis, or conducting serial meetings, in order to discuss, deliberate, or take action outside the meeting on a matter within the subject matter of the board.

C. Secret Ballot Prohibited

An agency may not vote by secret ballot in a public meeting nor vote in closed session on any matter where discussion, deliberations, or action taken is required to be in an open meeting. (68 Ops.Cal.Atty.Gen. 65, 69)

For example, the election of board officers may not be conducted by secret ballot or in closed session.

D. Voting by Proxy Prohibited

Voting by proxy is not authorized. (68 Ops.Cal.Atty.Gen. 65, 70)

E. Use of Electronic Devices During Meeting

Board members should not text or email each other during an open meeting on any matter within the board's jurisdiction. Using electronic devices to communicate secretly on such a matter would violate the law. Where laptops are used by board members at the meeting because the board provides board materials electronically, the board president should make an announcement at the beginning of the meeting as to the reason for the laptops. We suggest the following (or something similar):

"You may notice board members accessing their laptops during the meeting. They are using the laptops solely to access the board meeting materials which are in electronic format."

F. Voting by Mail on Administrative Disciplinary Matters

As a general rule, all voting on items of business to be transacted must be done at a public meeting. However, the Administrative Procedure Act authorizes mail voting on all questions arising under that act. (Govt. Code §11526.) Thus, board members may vote by mail on proposed decisions, stipulated decisions, and other matters in connection with a formal disciplinary case. No other votes may be cast by mail. (68 Ops.Cal.Atty.Gen. 65, 69)

VII. MISCELLANEOUS PROVISIONS

There are several provisions governing public meetings which do not fit under any of the above headings, but of which you should be aware.

A. Conforming Board Member's Conduct

Any person who has been appointed as a member of a state body, who has not yet assumed the duties of the office, must conform his or her conduct to the provisions of the Open Meeting Act. (§11125.95)

B. Providing Open Meeting Act to New Board Members

A copy of the Bagley-Keene Open Meeting Act must be provided to each agency member upon his or her appointment to office. Each agency should insure that a copy is given to each new member. (§11121.9.)

C. Prohibition on Placing Conditions on Public's Attendance

1. Sign-in

No person can be required to register or sign-in or fulfill any other condition in order to attend a public meeting of an agency. While a person who wishes to make public comment may be asked to identify himself or herself for the board's record or minutes, a commenter cannot be compelled to do so or prevented from speaking because the commenter refuses to identify himself or herself.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, "it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document." (§11124)

2. Discrimination in Admittance to Meeting Facility

A meeting may not be held in any facility that prohibits the admittance of any persons on the basis of race, religious creed, color, national origin, ancestry, or sex. (§11131)

3. Access for the Disabled

All meetings must be accessible to the disabled. (§11131)

4. Charging a Fee or Requiring a Purchase for Access

The Open Meeting Act prohibits holding a meeting in any location where the public is required to pay a fee or make a purchase to attend. (§11131)

D. Agency Recording of the Proceedings

A tape or film record of an open and public meeting made by the agency must be made available for public inspection under the California Public Records Act, but may

be erased or destroyed 30 days after the taping or recording. An inspection must be provided without charge on an audio or video tape player made available by the state agency. (§11124.1(b))

E. Public's Right to Record the Proceedings

Persons attending a public meeting have a right to record the proceedings with an audio or video tape recorder or still or motion picture camera, in the absence of a reasonable finding by the agency that the recording could not continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings. (§11124.1(a))

F. Media Broadcast of the Proceedings

A state body may not prohibit or otherwise restrict the broadcast of a public meeting in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings. (§11124.1(c))

G. Webcasting

While webcasting is not required, if you plan to webcast your meeting, we encourage you to place the following statement on your agenda:

“While the board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources.”

H. Taking Agenda Items Out of Order

Items listed on the agenda may be taken up out of order, provided the purpose of moving the agenda items is not to frustrate public or other input on the item. It is a good practice to note on either the top or the bottom of your agenda that “All times indicated and the order of business are approximate and subject to change,” to alert members of the public this is a possibility.

If your agency schedules a multiple day meeting and may move items scheduled for a subsequent day to an earlier day, you should provide notice of this possibility on your agenda. Suggested language is that “Items scheduled for a particular day may be moved to an earlier day to facilitate the board’s business.” Again, the purpose may not be to frustrate public or other input.

I. Opportunity for Public Comment at Meetings

Section 11125.7 addresses the subject of public comment at board meetings. With specified exceptions, that section requires state agencies to provide an opportunity for members of the public to directly address the state agency on each agenda item

before or during the agency's discussion or consideration of the item. This opportunity for comment need not be made available if:

1. The agenda item has previously been considered at a public meeting by a committee comprised exclusively of board members, where members of the public were provided an opportunity to address the item. However, if the item has been substantially changed since the committee meeting, a new opportunity to address the agency would be required at the full board meeting.
2. The agenda item is one that may properly be considered in closed session, which would include deliberation and action on disciplinary proceedings under the Administrative Procedure Act. (§11125.7)

If a board wishes to establish a standing rule that discussion of agenda items will be given a specified amount of time, or that public comment will be limited to a certain amount of time, the board may do that by adopting an administrative regulation. (§11125.7(b))

The law specifically provides that a state agency may not prohibit public criticism of its policies, programs, or services, or of the acts or omissions of the agency. (§11125.7(c))

VIII. DISCLOSURE OF DOCUMENTS

A. Documents Distributed Prior to the Meeting

When writings which are public records are distributed to all, or a majority of all, of the members of a board or committee for discussion or consideration at a public meeting, the writings must be made available for public inspection. Generally, the records must be made available for inspection at the time of distribution to agency members. (§11125.1(a)) Records exempt from disclosure under Sections 6253.5, 6254 or 6254.7 of the Public Records Act need not be disclosed even though the subject matter of the records may be considered or discussed at the meeting. This includes records which are drafts, notes or memoranda which will not be retained by the agency, attorney-client privileged communications, records of pending litigation and claims against the state, personnel, medical or similar files, complaint and investigation files, except for Accusations and Proposed Decisions, and any records or data relating to examinations.

B. Documents Distributed During the Meeting

When public records pertaining to an agenda item are prepared by the state body or a member of the state body, and distributed to state body members during a meeting, the documents must be made available for public inspection at the meeting. If records are prepared by some other person, and distributed to members of the state body during a meeting, the documents must be made available for public inspection after the

meeting. (§11125.1(b)) Records exempt from public disclosure under specified statutes are not required to be publicly disclosed. (§11125.1(a), (b))

C. Charging a Fee for Public Documents

Under section 11126.7, an agency may not charge a fee for a notice, including the agenda, of a meeting, and may only charge those fees specifically authorized for public documents that are considered at the meeting

At its discretion, an agency may charge a fee to cover reproduction costs for providing the documents required to be made available, as discussed in paragraph (B), immediately above. If an agency charges a fee, it is limited to the direct costs of duplication authorized in Section 6257 for the reproduction of public records. (§11125.1(c))

Effective January 1, 2003, documents distributed prior to or during a meeting that are public records must be made available, upon request by a person with a disability, in appropriate alternative formats. No extra charge can be imposed for putting those documents into an alternative format.

IX. PENALTIES

Under previous law, any interested person could commence court action (mandamus, injunction, declaratory relief) to stop or prevent violations or threatened violations of the Open Meeting Act. SB 95, effective 1/1/98, added the Attorney General and the district attorney to the list of those who may commence such action. Court costs and reasonable attorney's fees may be awarded to a successful plaintiff to be paid from the funds of the agency. (§11130.5)

SB 95 also expanded the law to authorize the Attorney General, a district attorney, or any interested person to seek court action "to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, ..." (§11130(a)) This appears to be a rather unique provision, and its implications are unknown at this time.

SB 95 further expanded the law to authorize the Attorney General, a district attorney, or any interested person to seek a court action to compel a state agency to tape record its closed sessions. Upon a judgment of a violation of Section 11126, a court could so compel an agency. Discovery procedures for the tape recordings are also set forth. (§11130(b), and (c))

Section 11130.3 authorizes a person to institute a court action to obtain a judicial determination that an action taken in violation of the notice provisions or the provisions governing closed sessions of the Act is null and void. Court costs and reasonable attorney's fees may also be awarded to a successful plaintiff under this section. This

section reinforces the need for a specific, informative agenda as required by Section 11125.

These remedies extend to past actions of an agency. The statute of limitations for bringing an action is 90 days. (§§11130(c) and 11130.3(a)).

Section 11130.7 of the Act provides:

"Each member of a state body who attends a meeting of such body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled, is guilty of a misdemeanor."
(Emphasis added.)

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11120. Public policy; legislative finding and declaration; citation of article

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 1284, p. 4333, § 4; Stats. 1981, c. 968, p. 3683, § 4.)

11121. State body defined

As used in this article, "state body" means each of the following:

(a) Every state board, or

commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 515, § 1; Stats.1981, c. 968, p. 3683, § 5; Stats.1984, c. 193, § 38. Amended by Stats.1996, c. 1023 (S.B.1497), § 88, eff. Sept. 29, 1996; Stats.1996, c. 1064 (A.B.3351), § 783.1, operative July 1, 1997; Stats.2001, c. 243 (A.B.192), § 1; Amended Stats. 2003 ch 62 § 117 (SB 600)).

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11121.1. State body; exclusions

As used in this article, "state body" does not include any of the following:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

(Added by Stats.2001, c. 243 (A.B.192), § 2. Amended by Stats. 2008, c. 344 (S.B. 1145), § 2, eff. Sept. 26, 2008.)

11121.2. Repealed by Stats. 2001, c. 243 (A.B.192), § 3

The repealed section, added by Stats.1981, c. 968, p. 3684, § 5.2, related to multimember body with authority from state body.

11121.7. Repealed by Stats. 2001, c. 243 (A.B.192), § 4

The repealed section, added by Stats.1980, c. 1284, p. 4333, § 5, amended by Stats.1981, c. 968, p. 3685, § 6, related to representatives of the state body.

11121.8. Repealed by Stats. 2001, c. 243 (A.B.192), § 5

The repealed section, added by Stats.1981, c. 968, p. 3684, § 7, related to advisory bodies.

11121.9. Provision of copy of article to members of state body

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

(Added by Stats.1980, c. 1284, p. 4334, § 6. Amended by Stats.1981, c. 714, p. 2659, § 175; Stats.1981, c. 968, p. 3685, § 7.1.)

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11121.95. Appointees or elected officials not yet in office; conformity of conduct to article requirements

Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

(Added by Stats.1997, c. 949 (S.B.95), § 1.)

11122. Action taken

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3685, § 7.3.)

11122.5. Meeting defined; series of communications to discuss, deliberate, or take action prohibited; exceptions

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any

item that is within the subject matter jurisdiction of the state body to which it pertains.

(b)(1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person that do not violate subdivision (b).

(2)(A) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest

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to the public or to public agencies of the type represented by the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.

(B) Subparagraph (A) does not allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, if a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a

purely social or ceremonial occasion, if a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers.

(Added by Stats.2001, c. 243 (A.B.192), § 6.
Amended by Stats.2009, c. 150 (A.B.1494), § 1.)

11123. Meetings; attendance; teleconference option

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b)(1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the

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teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations,

connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1981, c. 968, p. 3685, § 7.5. Amended by Stats.1994, c. 1153 (A.B.3467), § 1; Stats.1997, c. 52 (A.B.1097), § 1; Stats.2001, c. 243 (A.B.192), § 7.)

11123.1. State body meetings to meet protections and prohibitions of the Americans with Disabilities Act

All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(Added by Stats. 2002, c. 300 (A.B. 3035), § 1.)

11124. Conditions to attendance

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

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If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3685, § 8.)

11124.1. Audio or video recording of proceedings; inspection of state's recording; broadcast restrictions

(a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the

recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

(Added by Stats.1980, c. 1284, p. 4334, § 7.
Amended by Stats.1981, c. 968, p. 3685, § 9;
Stats.1997, c. 949 (S.B.95), § 2; Stats.2009, c. 88 (A.B.176), § 42.)

11125. Notice of meeting

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

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or

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discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section

14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request, by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1973, c. 1126, p. 2291, § 1; Stats.1975, c. 708, p. 1695, § 1; Stats.1979, c. 284, § 1, eff. July 24, 1979; Stats.1981, c. 968, p. 3685, § 10. Amended by Stats.1997, c. 949 (S.B.95), § 3; Stats.1999, c. 393 (A.B.1234), § 1; Stats.2001, c. 243 (A.B.192), § 8; Stats. 2002, c. 300 (A.B. 3035), § 2.)

11125.1. Agendas and other writings distributed for discussion or consideration at public meetings; public records; Franchise Tax Board; inspection; availability on the Internet; closed sessions

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter

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subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the American with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed to members of the state body by the Franchise Tax Board staff or individual members prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject

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to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

(Added by Stats.1975, c. 959, p. 2238, § 4. Amended by Stats.1980, c. 1284, p. 4334, § 8; Stats.1981, c. 968, p. 3686, § 10.1. Amended by Stats.1997, c. 949 (S.B.95), § 4; Stats.2001, c. 670 (S.B.445), § 1; Stats. 2002, c. 300 (A.B. 3035), § 3.5.; Stats. 2005, c. 188 (A.B. 780), § 1.)

11125.2. Appointment, employment or dismissal of public employees; closed sessions; public report

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

(Added by Stats.1980, c. 1284, p. 4335, § 9. Amended by Stats.1981, c. 968, p. 3687, § 10.3.)

11125.3. Action on items of business not appearing on agenda; notice

(a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified

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in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

(Added by Stats.1994, c. 1153 (A.B.3467), § 2.
Amended by Stats.2001, c. 243 (A.B.192), § 9.)

11125.4. Special meetings; authorized purposes; notice; required finding of hardship or need to protect public interest

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall

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also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The

finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

(Added by Stats.1997, c. 949 (S.B.95), § 5. Amended by Stats.1999, c. 393 (A.B.1234), § 2; Stats.2004, c. 576 (A.B.1827), § 1.); Stats. 2007, c. 92 (S.B. 519), § 1.)

11125.5. Emergency meetings

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section

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11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

(Amended by Stats.1992, c. 1312 (A.B.2912), § 11, eff. Sept. 30, 1992; Stats.1997, c. 949 (S.B.95), § 6; Stats.1999, c. 393 (A.B.1234), § 3.)

11125.6. Fish and Game Commission; emergency meetings; appeals of fishery closures or restrictions

(a) An emergency meeting may be called at any time by the president of

the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that constitute the impact to the

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economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

(Added by Stats.1998, c. 1052 (A.B.1241), S 21.)

11125.7. Agenda item discussion before state body; opportunity for public address; regulation by state body; freedom of expression; application of provisions

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state

body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) The state body shall not prohibit public criticism of the policies,

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programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(d) This section is not applicable to closed sessions held pursuant to Section 11126.

(e) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(f) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims board pursuant to Sections 13963 and 13963.1.

(g) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

(Added by Stats.1993, c. 1289 (S.B.367), § 2. Amended by Stats.1995, c. 938 (S.B.523), § 13, operative July 1, 1997; Stats.1997, c. 949

(S.B.95), § 7.); Stats. 2006, c. 538 (S.B. 1852), § 248.)

11125.8. Hearings to consider crimes against minors or crimes of sexual assault or domestic violence; identification of applicant; disclosure of nature of hearing

(a) Notwithstanding Section 11131.5, in any hearing that the State California Victim Compensation and Government Claims Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

(Added by Stats.1997, c. 949 (S.B.95), § 9.; Stats. 2006, c. 538 (S.B. 1852), § 249.)

11125.9. Regional water quality control boards; compliance with notification guidelines

Regional water quality control boards shall comply with the notification

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guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

(Added by Stats.1997, c. 301 (A.B.116), § 1.)

§ 11126. Closed sessions.

(a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

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Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a

correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7)(A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of

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a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime

conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on

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the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18)(A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular

or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(d)(1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e)(1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive

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advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B)(i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C)(i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If

the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider

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disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Secretary of Emergency Management or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering

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matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding

closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1968, c. 1272, p. 2396, § 1; Stats.1970, c. 346, p. 741, § 5; Stats.1972, c. 431, p. 791, § 43; Stats.1972, c. 1010, p. 1872, § 63, eff. Aug. 17, 1972, operative July 1, 1972; Stats.1974, c. 1254, p. 2713, § 1; Stats.1974, c.

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1539, p. 3525, § 1; Stats.1975, c. 197, p. 570, § 1; Stats.1975, c. 959, p. 2238, § 5; Stats.1977, c. 730, p. 2318, § 5, eff. Sept. 12, 1977; Stats.1980, c. 1197, p. 4043, § 1; Stats.1980, c. 1284, p. 4338, § 11; Stats.1981, c. 180, p. 1096, § 1; Stats.1981, c. 968, p. 3688, § 12; Stats.1982, c. 454, p. 1842, § 40; Stats.1983, c. 143, § 187; Stats.1984, c. 678, § 1; Stats.1984, c. 1284, § 4; Stats.1985, c. 186, § 1; Stats.1985, c. 1091, § 1; Stats.1986, c. 575, § 1; Stats.1987, c. 1320, § 2; Stats.1988, c. 1448, § 29; Stats.1989, c. 177, § 2; Stats.1989, c. 882, § 2; Stats.1989, c. 1360, § 52; Stats.1989, c. 1427, § 1, eff. Oct. 2, 1989, operative Jan. 1, 1990; Stats.1991, c. 788 (A.B.1440), § 4; Stats.1992, c. 1050 (A.B.2987), § 17; Stats.1994, c. 26 (A.B.1807), § 230, eff. March 30, 1994; Stats.1994, c. 422 (A.B.2589), § 15.5, eff. Sept. 7, 1994; Stats.1994, c. 845 (S.B.1316), § 1; Stats.1995, c. 975 (A.B.265), § 3; Stats.1996, c. 1041 (A.B.3358), § 2; Stats.1997, c. 949 (S.B.95), § 8; Stats.1998, c. 210 (S.B.2008), § 1; Stats.1998, c. 972 (S.B.989), § 1; Stats.1999, c. 735 (S.B.366), § 9, eff. Oct. 10, 1999; Stats.2000, c. 1002 (S.B.1998), § 1; Stats.2000, c. 1055 (A.B.2889), § 30, eff. Sept. 30, 2000; Stats.2001, c. 21 (S.B.54), § 1, eff. June 25, 2001; Stats.2001, c. 243 (A.B.192), § 10; Stats.2002, c. 664 (A.B.3034), § 93.7; Stats.2002, c. 1113 (A.B.2072), § 1; Stats.2005, c. 288 (A.B.277), § 1; Stats.2007, c. 577 (A.B.1750), § 4, eff. Oct. 13, 2007; Stats.2008, c. 179 (S.B.1498), § 91; Stats.2008, c. 344 (S.B.1145), § 3, eff. Sept. 26, 2008; Stats.2010, c. 328 (S.B.1330), § 81; Stats.2010, c. 32 (A.B.1887), § 2, eff. June 29, 2010; Stats.2010, c. 618 (A.B.2791), § 124.)

11126.1. Record of topics discussed and decisions made at closed sessions; availability

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and

keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

(Added by Stats.1980, c. 1284, p. 4340, § 12.
Amended by Stats.1981, c. 968, p. 3691, § 13.)

11126.2. Closed session; response to confidential final draft audit report; public release of report

(a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

(Added by Stats.2004, c. 576 (A.B.1827), § 2.)

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11126.3. Disclosure of nature of items to be discussed in closed session; scope of session; notice of meeting; announcement of pending litigation; unnecessary disclosures; disclosures at open session following closed session

(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would

jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

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(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

(Added by Stats.1980, c. 1284, p. 4341, § 13. Amended by Stats.1981, c. 968, p. 3692, § 14; Stats.1987, c. 1320, § 3. Amended by Stats.1997, c. 949 (S.B.95), § 10; Stats.1998, c. 210 (S.B.2008), § 2; Stats.2001, c. 243 (A.B.192), § 11.)

11126.4. Closed sessions of Gambling Control Commission; information prohibited from being disclosed by law or tribal-state gaming compact; limitations; public notice

(a) Nothing in this article shall be construed to prevent the California Gambling Control Commission from

holding a closed session when discussing matters involving trade secrets, nonpublic financial data, confidential or proprietary information, and other data and information, the public disclosure of which is prohibited by law or a tribal-state gaming compact.

(b) Discussion in closed session authorized by this section shall be limited to the confidential data and information related to the agenda item and shall not include discussion of any other information or matter.

(c) Before going into closed session the commission shall publicly announce the type of data or information to be discussed in closed session, which shall be recorded upon the commission minutes.

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

(Added by Stats. 2005, c. 274 (S.B. 919), § 1.)

11126.5. Disorderly conduct of general public during meeting; clearing of room

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in

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session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

(Added by Stats.1970, c. 1610, p. 3385, § 1.
Amended by Stats.1981, c. 968, p. 3692, § 15.)

11126.7. Fees

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

(Added by Stats.1980, c. 1284, p. 4341, § 14.
Amended by Stats.1981, c. 968, p. 3692, § 16.)

11127. Application of article

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3692, § 17.)

11128. Time of closed session

Each closed session of a state body shall be held only during a regular or special meeting of the body.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1980, c. 1284, p. 4341, § 15;
Stats.1981, c. 968, p. 3692, § 18.)

11128.5. Adjournment; declaration; notice; hour for reconvened meeting

The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all

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purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

(Added by Stats.1997, c. 949 (S.B.95), § 11.)

11129. Continuance; posting notice

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3692, § 19.
Amended by Stats.1997, c. 949 (S.B.95), § 12.)

11130. Actions to prevent violations or determine applicability of article; validity of rules

discouraging expression; audio recording of closed sessions; discovery procedures for recordings

(a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

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(A) In any case in which discovery or disclosure of the audio recording is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have

violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1969, c. 494, p. 1106, § 1; Stats.1981, c. 968, p. 3693, § 20; Stats.1997, c. 949 (S.B.95), § 13; Stats.1999, c. 393 (A.B.1234), § 4; Stats.2009, c. 88 (A.B.176), § 43.)

11130.3. Judicial determination action by state body in violation of §§ 11123 or 11125 null and void; action by interested person; grounds

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or

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correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

(Amended by Stats.1999, c. 393 (A.B.1234), § 5.)

11130.5. Court costs and attorney fees

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

(Added by Stats.1975, c. 959, p. 2240, § 6.
Amended by Stats.1981, c. 968, p. 3693, § 21;
Stats.1985, c. 936, § 2.)

11130.7. Violations; misdemeanor

Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

(Added by Stats.1980, c. 1284, p. 4341, § 16.
Amended by Stats.1981, c. 968, p. 3693, § 22.
Amended by Stats.1997, c. 949 (S.B. 95), § 14.)

11131. Use of facility allowing discrimination; state agency

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry, or any characteristic listed or defined in Section 11135 or that is inaccessible to disabled persons, or where members of the public may not be present without

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making a payment or purchase. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

(Added by Stats.1970, c. 383, p. 798, § 1.
Amended by Stats.1981, c. 968, p. 3693, § 23.
Amended by Stats.1997, c. 949 (S.B.95), § 15.;
Stats. 2007, c. 568 (A.B. 14), § 32.)

11131.5. Identity of victims or alleged victims of crimes, tortious sexual conduct, or child abuse; public disclosure

No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

(Added by Stats.1997, c. 949 (S.B.95), § 16.)

11132. Closed session by state body prohibited

Except as expressly authorized by this article, no closed session may be held by any state body.

(Added by Stats.1987, c. 1320, § 4.)



PROGRAM PASS/FAIL INFORMATION
January 1, 2010 - December 31, 2010

National Pass % - New Candidates - 77.27%				
National Pass % - Repeat Candidates - 24.29%				
New Candidate Summary: The total number of applicants who have attempted the examination for the first time during the reporting period.				
Repeat Candidate Summary: The total number of applicants who have re-attempted the examination after failing on at least one prior occasion (possibly during an earlier reporting period).				
Program	Total	Pass	Fail	Program Pass %
AMERICAN CAREER COLLEGE - ANAHEIM				
New Candidate Summary	34	21	13	61.76%
Repeat Candidate Summary	24	8	16	33.33%
AMERICAN CAREER COLLEGE - ONTARIO				
New Candidate Summary	---NO DATA---			
Repeat Candidate Summary	No candidates tested during this reporting period			
AMERICAN RIVER COLLEGE				
New Candidate Summary	19	19	0	100.00%
Repeat Candidate Summary	8	0	8	0.00%
ANTELOPE VALLEY COLLEGE				
New Candidate Summary	13	13	0	100.00%
Repeat Candidate Summary	15	1	14	6.67%
BUTTE-GLENN COMMUNITY COLLEGE				
New Candidate Summary	23	20	3	86.96%
Repeat Candidate Summary	4	3	1	75.00%
CALIFORNIA COLLEGE SAN DIEGO				
New Candidate Summary	37	26	11	70.27%
Repeat Candidate Summary	41	10	31	24.39%
CARRINGTON COLLEGE - PLEASANT HILL				
New Candidate Summary	12	9	3	75.00%
Repeat Candidate Summary	8	2	6	25.00%
CONCORDE CAREER COLLEGE - GARDEN GROVE				
New Candidate Summary	76	67	9	88.16%
Repeat Candidate Summary	10	2	8	20.00%
CONCORDE CAREER COLLEGE - NORTH HOLLYWOOD				
New Candidate Summary	80	57	23	71.25%
Repeat Candidate Summary	79	21	58	26.58%
CONCORDE CAREER INSTITUTE SAN BERNARDINO				
New Candidate Summary	75	67	8	89.33%
Repeat Candidate Summary	9	7	2	77.78%
CONCORDE CAREER COLLEGE - SAN DIEGO				
New Candidate Summary	56	44	12	78.57%
Repeat Candidate Summary	18	6	12	33.33%
CRAFTON HILLS COLLEGE				
New Candidate Summary	29	28	1	96.55%
Repeat Candidate Summary	4	0	4	0.00%

PROGRAM PASS/FAIL INFORMATION
January 1, 2010 - December 31, 2010

National Pass % - New Candidates - 77.27%				
National Pass % - Repeat Candidates - 24.29%				
New Candidate Summary: The total number of applicants who have attempted the examination for the first time during the reporting period.				
Repeat Candidate Summary: The total number of applicants who have re-attempted the examination after failing on at least one prior occasion (possibly during an earlier reporting period).				
Program	Total	Pass	Fail	Program Pass %
EAST LOS ANGELES COLLEGE				
New Candidate Summary	36	36	0	100.00%
Repeat Candidate Summary	4	1	3	25.00%
EL CAMINO COMMUNITY COLLEGE				
New Candidate Summary	17	8	9	47.06%
Repeat Candidate Summary	11	5	6	45.45%
FOOTHILL COMMUNITY COLLEGE				
New Candidate Summary	20	20	0	100.00%
Repeat Candidate Summary	0	0	0	0.00%
FRESNO CITY COLLEGE				
New Candidate Summary	15	7	8	46.67%
Repeat Candidate Summary	19	1	18	5.26%
GROSSMONT COLLEGE				
New Candidate Summary	30	24	6	80.00%
Repeat Candidate Summary	13	4	9	30.77%
KAPLAN COLLEGE				
New Candidate Summary	68	51	17	75.00%
Repeat Candidate Summary	86	14	72	16.28%
LOMA LINDA UNIVERSITY				
New Candidate Summary	6	3	3	50.00%
Repeat Candidate Summary	5	1	4	20.00%
LOS ANGELES VALLEY COLLEGE				
New Candidate Summary	22	21	1	95.45%
Repeat Candidate Summary	1	1	0	100.00%
MODESTO JUNIOR COLLEGE				
New Candidate Summary	20	16	4	80.00%
Repeat Candidate Summary	4	1	3	25.00%
MOUNT SAN ANTONIO COLLEGE				
New Candidate Summary	30	27	3	90.00%
Repeat Candidate Summary	5	4	1	80.00%
NAPA VALLEY COLLEGE				
New Candidate Summary	22	18	4	81.82%
Repeat Candidate Summary	6	5	1	83.33%
OHLONE COLLEGE				
New Candidate Summary	19	18	1	94.74%
Repeat Candidate Summary	1	1	0	100.00%

PROGRAM PASS/FAIL INFORMATION
January 1, 2010 - December 31, 2010

National Pass % - New Candidates - 77.27%				
National Pass % - Repeat Candidates - 24.29%				
New Candidate Summary: The total number of applicants who have attempted the examination for the first time during the reporting period.				
Repeat Candidate Summary: The total number of applicants who have re-attempted the examination after failing on at least one prior occasion (possibly during an earlier reporting period).				
Program	Total	Pass	Fail	Program Pass %
ORANGE COAST COLLEGE				
New Candidate Summary	37	30	7	81.08%
Repeat Candidate Summary	18	8	10	44.44%
PIMA MEDICAL INSTITUTE				
New Candidate Summary	44	28	16	63.64%
Repeat Candidate Summary	34	11	23	32.35%
PLATT COLLEGE				
New Candidate Summary	---NO DATA---			
Repeat Candidate Summary	No candidates tested during this reporting period			
SAN JOAQUIN VALLEY COLLEGE - BAKERSFIELD				
New Candidate Summary	50	43	7	86.00%
Repeat Candidate Summary	23	4	19	17.39%
SAN JOAQUIN VALLEY COLLEGE - RANCHO CORDOVA				
New Candidate Summary	69	58	11	84.06%
Repeat Candidate Summary	18	10	8	55.56%
SAN JOAQUIN VALLEY COLLEGE - RANCHO CUCAMONGA				
New Candidate Summary	62	60	2	96.77%
Repeat Candidate Summary	3	3	0	100.00%
SAN JOAQUIN VALLEY COLLEGE - VISALIA				
New Candidate Summary	47	38	9	80.85%
Repeat Candidate Summary	22	6	16	27.27%
SIMI VALLEY ADULT SCHOOL				
New Candidate Summary	12	10	2	83.33%
Repeat Candidate Summary	10	3	7	30.00%
SKYLINE COLLEGE				
New Candidate Summary	23	19	4	82.61%
Repeat Candidate Summary	7	3	4	42.86%
VICTOR VALLEY COMMUNITY COLLEGE				
New Candidate Summary	17	13	4	76.47%
Repeat Candidate Summary	18	3	15	16.67%

Licensing for Job Creation Statistics DCA and RCB Reported Data

	October 2010		November 2010		December 2010		January 2011	
	DCA	RCB	DCA	RCB	DCA	RCB	DCA	RCB
Apps Pending at the Beginning of the Month	412	311	374	345	379	335	398	351
Apps Received	66	138	93	81	101	97	102	107
Apps Approved	87	87	80	79	79	74	93	95
Apps Closed	17	17	8	12	0	7	10	10
Apps Pending at the End of the Month	374	345	379	335	398	351	397	353
Apps Pending (outside of Board control)	276	311	245	314	317	323	353	332
Apps Pending (inside of Board control)	98	34	134	21	81	28	44	21
% of pending apps within Board control	28%	9%	35%	6%	20%	7%	11%	5%
Licenses Issued	87	87	125	79	124	74	212	95
Average Days to App Approval (incomplete)	N/A	N/A	0	N/A	0	N/A	0	N/A
Average Days to App Approval (complete)	95	N/A	111	N/A	94	N/A	90	N/A

Proposed
Record Retention Policy
February 25, 2011

The Respiratory Care Board (Board) is committed to the efficient retention and periodic purging of the Board's data for the purposes of providing cost effective and efficient record keeping practices. This policy includes a snapshot of record retention to date, for purposes of succession, and standard guidelines for retention of both paper and electronic records, with consideration given to storage capacity, current information systems used, and historical preservation.

The Board is considered a relatively young agency, with its first license issued on February 22, 1985. There are approximately 5,000 electronic applicant records, 31,000 electronic license records (and files) and 6,000 electronic enforcement records (and 10,000 files). To date, the Board has retained every electronic record and paper file created (with the exception of abandoned applicant files).

The Board (as well as the Department) has used the same database to track licensing and enforcement records since approximately 1991. Though it is the same database, there is limited interface. These enforcement and licensing records have a modest amount of independent tracking. The Board also began tracking *applications* in a separate Department database in or about 1997. The only real interface here is that applicant information rolls into the licensing database, once a license is issued.

The Department is one year into developing a new department-wide database, that will provide much more functionality and bring our technology into the 21st century. The database will include applicant, licensee, and enforcement tracking. We are fast approaching the opportunity to participate in a presentation of some of the new functions, though there has been much discussion of the needs and how the new database will be all-inclusive. The new database is rumored to include on-line applications and renewals, with greater capability of retaining many more, if not all, records electronically. The development of the new database, prompted the Department's request for boards and bureaus to establish an electronic record retention policy to limit the number of records that may need to be transferred. [There are many larger boards that have hundreds of thousands of records and have been issuing licenses since the early 1900s].

Business and Professions Code, Section 800, provides that most boards are required to purge complaints or reports within five years. However, the Board and a handful of others have authority to maintain these records "as long as each board deems necessary." The few boards that were exempted from purging records justified the exemption, based on high rates of recidivism.

Currently, the Board's file room is near capacity. Numerous files have been identified that are no longer active, that could be purged. At one time, the Board considered sending many of these records to the "State Archives," however they were not accepting records for several years. These files consume about 10% of the Board's file room.

For historical and succession purposes, below is the history of how the Board's records have been kept:

Applicant Records

Most applicant files move through the process and ultimately become licensing files. An applicant file where the application process has not been completed or the applicant is not actively working towards completing the application process within one year, is deemed "abandoned." Hard files that have been abandoned, have been destroyed over the years. Currently, there are about 300 abandoned applicant files stored, dating back about two years. These files consume a few shelves in the file room.

The Board also began tracking *applications* in a separate Department database in or about 1997. Any person who applied after this date, will have a record in this database.

License Records

All active hard files (includes delinquent, inactive, and active statuses) are maintained together in license number order (approximately 20,400 files /24 cabinets). The only files pulled from this group, are those files with cancelled (10,400 files/8 cabinets), deceased (200 files/2 shelves) , and retired (150 files / 1 shelf) statuses. Each of these groups are pulled and kept separately. No licensee hard files have been destroyed, to date. All licenses ever issued have an electronic record in our database, regardless of their current status (including those licenses issued prior to the use of the database in 1991).

Enforcement Records

Enforcement hard files are kept in their own space, but they are kept in alphabetical order. Most enforcement files are at least 3 inches thick and there are about 64 cases that consume their own archive box. Most, but not all enforcement files are tied to a licensee. However, some are under a business name, an unlicensed person, or an applicant who was never licensed. These files (excluding the 64 boxes), are stored in 32 cabinets. These records are critical to preserve, until there is no (or very small) opportunity that the licensee will practice again.

All complaints and enforcement actions tied to a licensee have an electronic record in our enforcement database. However, the history for complaints and enforcement actions tied to applicants differs. Any complaint where formal disciplinary action was pursued against an applicant, will have an electronic record in the enforcement database. However, it wasn't until 2002, when all complaints tied to an applicant (where formal discipline was *not* pursued) would also have an electronic record. Prior to 2002, if an enforcement case was opened against an applicant, an electronic record would not be established unless the case was forwarded to the Office of the Attorney General. However, all hard files have been retained.

Historical Preservation

In the interest of preserving some records from a historical perspective, the following is proposed for records that are purged in accordance with the retention time line that follows:

Hard Files

Files or hard copies shall be retained for a period of not less than those provided in the retention schedule. Upon destroying licensing files and documentation, the application itself, shall be pulled and stored separately in alphabetical order with all other purged files, preserved for historical reference. In or about 2045, consideration should be given to hard records that should be retained from enforcement files (e.g. formal pleadings).

Once a license has a status of cancelled, deceased or retired, the licensing file as well as any enforcement file, should be pulled and stored together. This will make it easier for staff to determine if the file may be purged when the retention periods have been reached. Pulling enforcement files, should be reevaluated in the future, if and when electronic records can be cross referenced. In addition, once these licensing files are identified as cancelled, deceased or retired, staff shall continue to notify the Department of Justice, per their directive, that the "Board" is no longer interested in receiving subsequent criminal information.

Also, once the Board has sufficient resources, it shall pull and review all applicant enforcement files to determine if the violations warrant retention. If so, an electronic record shall be established.

Electronic Files

At this time, purging electronic files may risk the loss of historical preservation, as the only means to keep them in an electronic format is by placing them in an Excel file. Depending on how often the electronic files are purged, there is a greater chance that records will be lost, given the change in software and technology that occurs. Considering the youth of the agency and the limited records, it is preferred at this time that all electronic files remain intact and be converted to the new database. It is hopeful that the new system will be able to "archive" purged files to make the electronic record inactive, yet still provide a historical resource.

In addition, the manner in which the following retention schedule has been developed, is contingent upon whether a record has enforcement action or not. Currently, only those records where a formal disciplinary action was taken are tied to the licensing record - which accounts for approximately 10% of the records. The remaining 90% are not tied electronically. Until such time that the electronic records can be identified as having an enforcement background, and hopefully provide an "archive" for purged records, the current processes and retention periods should remain in tact. However, this should be revisited, once more information is available with the new database or as technology advances.

ELECTRONIC AND PAPER RETENTION SCHEDULE

Record Description	Format	Minimum Retention Period (in Years unless noted otherwise, from eff. date of status)	Alternative Minimum Retention Period
LICENSE FILES - NO ENFORCEMENT HISTORY			
Cancelled	Paper	10 years	DOB > 80 Yrs.
Cancelled	Electronic	60 years	-
Retired	Paper	10 years	DOB > 80 Yrs.
Retired	Electronic	60 years	-
Deceased	Paper	10 years	DOB > 80 Yrs.
Deceased	Electronic	60 years	-
LICENSE FILES W/ ENFORCEMENT HISTORY & ALL ENFORCEMENT FILES			
All Files	Paper	60 years	DOB > 80 Yrs.
All Files	Electronic	60 years	-
APPLICANT FILES - WITH OR WITHOUT ENFORCEMENT HISTORY			
All Abandoned Applicant Files	Paper	2 years	-
All Abandoned Applicant Files	Electronic	60 years	-

Adopted this 25th day of February, 2011

Larry L. Renner
President

REVENUE

Revenue Category	Projected			Projected Workload	Current Fees 2010/11
	2008/09	2009/10	2010/11		
Application (CA)	\$233,800	\$256,600	\$260,000	1,300	\$200
Application (Foreign)	\$400	\$200	\$200	1	\$250
Application (O-O-S)	\$37,800	\$31,800	\$35,000	175	\$200
Initial License	\$117,009	\$119,328	\$124,800	1,300	var
Renewal	\$1,797,985	\$1,915,180	\$1,955,000	8,500	\$230
Delinquent Fees	\$40,941	\$43,480	\$43,700	150 / 20	\$230 / \$460
Endorsement	\$26,390	\$23,100	\$22,500	300	\$75
Duplicate License	\$2,500	\$2,475	\$2,500	100	\$25
Cite and Fine	\$30,121	\$41,863	\$50,000	var	var
Miscellaneous	\$22,364	\$37,751	\$19,040	var	var
Total Revenue	\$2,309,310	\$2,471,777	\$2,512,740		

EXPENDITURES

Expenditure Items	Projected			Actual Exp. thru 12/31/10	Budgeted 2010/11
	2008/09	2009/10	2010/11		
Salary & Benefits	\$1,181,571	\$1,141,805	\$1,318,000	\$593,656	\$1,179,861
Training	\$1,448	\$199	\$1,000	\$0	\$20,180
Travel	\$24,632	\$18,199	\$20,000	\$3,970	\$41,805
Printing	\$48,352	\$46,739	\$40,000	\$4,488	\$41,515
Postage	\$29,258	\$65,127	\$30,000	\$12,854	\$44,952
Equipment	\$3,029	\$5,946	\$10,000	\$0	\$37,000
ProRata ¹	\$397,263	\$370,391	\$403,860	\$199,465	\$403,860
Fingerprints	\$8,090	\$6,324	\$5,000	\$2,550	\$65,000
All Other Fixed Expenses ²	\$196,675	\$229,668	\$181,500	\$65,118	\$544,557
Investigations	\$4,391	\$8,396	\$29,731	\$4,602	\$29,731
Attorney General	\$329,078	\$513,784	\$450,000	\$203,100	\$462,214
Office of Admin Hearings	\$48,879	\$84,824	\$90,000	\$42,155	\$137,082
Court Reporter Services	\$4,071	\$11,311	\$5,000	\$1,685	\$0
Evidence and Witness	\$39,130	\$30,849	\$20,000	\$9,526	\$32,050
Total Expenditures	\$2,315,867	\$2,533,562	\$2,604,091	\$1,143,169	\$3,039,807

¹ ProRata includes departmental and central administrative services.

² All Other Fixed Expenses include general expenses, communications, facility operations, data processing maintenance, consultant and professional services, examinations and Teale Data Center.

FUND CONDITION

	<u>2009/10</u>	<u>2010/11*</u>	<u>2011/12*</u>	<u>2012/13*</u>
Beginning Reserve, July 1	\$1,789,000	\$1,965,744	\$1,887,050	\$1,409,204
Prior Year Adjustments	\$58,000			
Revenues	\$2,471,777	\$2,512,740	\$2,603,090	\$2,603,090
Interest		\$19,657	\$18,871	\$14,092
TOTAL RESOURCES	\$4,318,777	\$4,498,141	\$4,509,011	\$4,026,386
Budget Expenditure	\$2,533,562	\$2,604,091	\$3,039,807	\$3,039,807
State Controller Operations	\$9,000	\$7,000		
Cal Licensing System BCP			\$60,000	\$66,000
Reimbursements	(\$189,529)			
TOTAL EXPENDITURES	\$2,353,033	\$2,611,091	\$3,099,807	\$3,105,807
RESERVE, JUNE 30	\$1,965,744	\$1,887,050	\$1,409,204	\$920,579

* Projected

ENFORCEMENT STATISTICS

Agenda Item: 7a
Meeting Date: 02/25/11

Data through December 31, 2010

Applicant Licensed Unlicensed	CASELOAD	FY 01/02	FY 02/03	FY 03/04	FY 04/05	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10	FY 10/11
A	Applications Received	526	680	713	853	1003	1283	1359	1360	1443	505
L	Total Licensed	22,414	23,056	23,674	24,408	25,246	26,338	27,545	28,847	30,120	30,920
A L U	Enforcement Budget	\$725,452	\$568,422	\$436,421	\$494,771	\$514,365	\$557,312	\$584,409	\$579,161	\$640,576	\$661,077
L	Licenses Active	15,202	15,268	15,367	15,503	15,835	16,511	17,202	18,077	17,274	17,727
A	Applicants Investigated (RCB Staff)	99	98	113	141	205	238	269	270	311	111
A	Applicants Denied/Initial	12	17	19	11	23	19	31	46	35	12
L U	Complaints Received	470	603	521	515	495	476	472	493	583	288
A L U	Cases to Investigation (sworn investigators)	6	3	0	4	3	9	5	11	3	4
L U	Citations Issued	25	5	68	99	57	71	63	102	75	48
A L	Cases to the DAG	107	105	125	46	56	71	64	99	69	41
L	Prob. Cases to AG for Revocation	21	15	15	13	13	10	9	17	23	6
A L U	Cases to the DA	2	0	1	0	1	0	1	0	0	0
L	Accusations Filed	90	90	102	60	34	51	51	46	42	24
A	Statement of Issues Filed	11	17	17	9	15	21	22	40	29	13
A L	Stipulated Settlements	66	97	85	71	34	46	59	61	57	28
A L	Disciplinary Hearings Completed/Final Decisions	20	19	19	11	13	7	14	9	20	8
L	Revocations/Surrenders	35	44	36	31	27	24	29	30	45	20
A	Applications Denied (Final Decision)	1	2	2	0	3	2	3	1	6	2
A L	Public Reprimands	22	52	50	20	5	6	9	6	4	3
A L	Probationers (New)	42	46	38	53	27	32	40	48	39	17
L	Probationers (Active)	138	80	81	100	80	77	84	108	92	85
L U	Fines Imposed	\$25,000	\$5,000	\$51,600	\$61,050	\$33,600	\$33,413	\$32,450	\$60,950	\$123,975	\$22,500
L U	Fines Reduced, Withdrawn, Dismissed	\$5,000	\$2,000	\$1,550	\$1,350	\$900	\$900	\$1,225	\$2,715	\$400	\$3,500
L U	Fines Collected	\$18,729	\$9,379	\$23,386	\$41,942	\$37,941	\$31,919	\$31,061	\$30,121	\$41,863	\$18,132
A L	Cost Recovery Requested	\$169,256	\$230,033	\$213,720	\$233,873	\$198,758	\$183,032	\$208,563	\$198,892	\$263,848	\$165,901
A L	Cost Recovery Awarded	\$162,692	\$226,878	\$195,354	\$223,996	\$173,771	\$174,142	\$168,976	\$184,082	\$214,040	\$156,211
A L	Cost Recovery Collected	\$68,036	\$107,028	\$130,994	\$130,378	\$142,061	\$120,820	\$96,454	\$55,820	\$81,483	\$31,277
L	Probation Monitoring Costs Collected	\$146,344	\$111,907	\$83,447	\$100,746	\$102,596	\$81,613	\$79,748	\$85,176	\$90,316	\$40,424
A L U	Franchise Tax Board Collected	\$12,696	\$20,508	\$16,064	\$13,676	\$20,288	\$13,542	\$17,697	\$10,440	\$8,796	\$692
A L U	Collection Agency Collected *	Not Applicable		\$17,402	\$32,285	\$56,826	\$19,414	\$22,568	\$2,292	\$1,100	\$0

* Amount recovered by the Board's collection agency. This amount is also reflected in Fines, Cost Recovery, or Probation Monitoring Costs Collected depending on the account in which the money was ordered.

Department of Consumer Affairs
**Respiratory Care Board
 of California**

Performance Measures

Q2 Report (October - December 2010)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

In future reports, the Department will request additional measures, such as consumer satisfaction. These additional measures are being collected internally at this time and will be released once sufficient data is available.

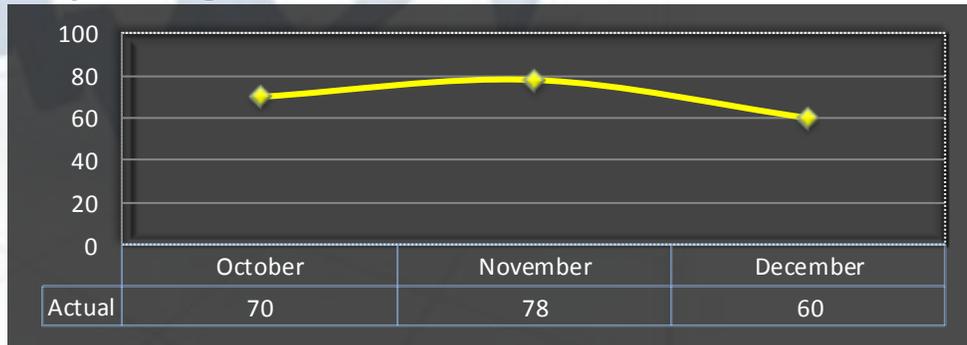
Volume

Number of complaints and convictions received.

Q2 Total: 208

Complaints: 45 Convictions: 163

Q2 Monthly Average: 69

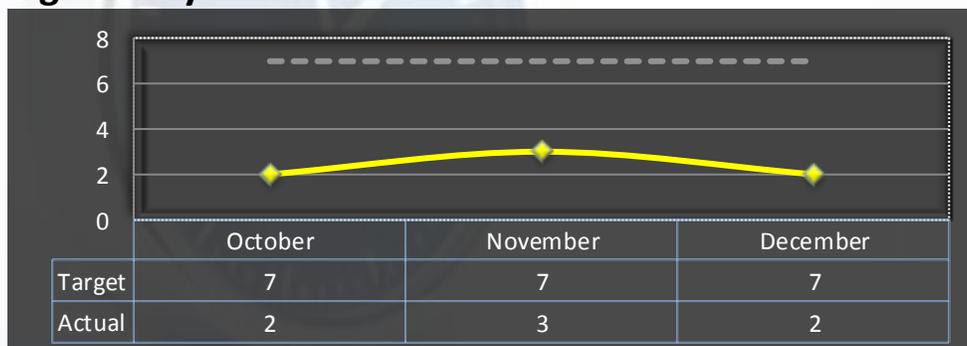


Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 7 Days

Q2 Average: 3 Days

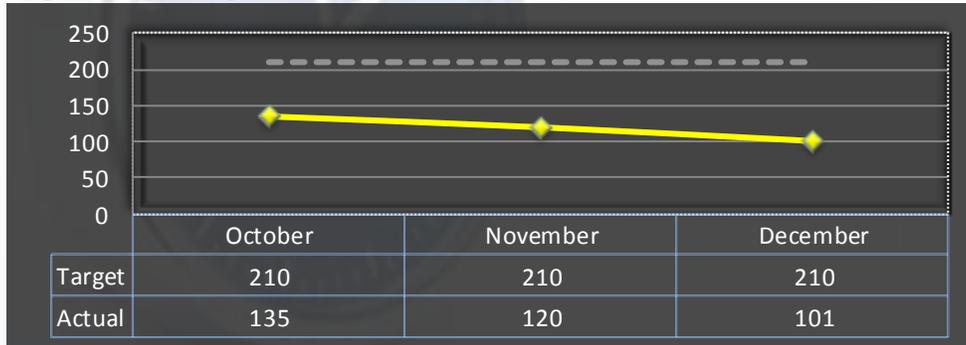


Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 210 Days

Q2 Average: 119 Days

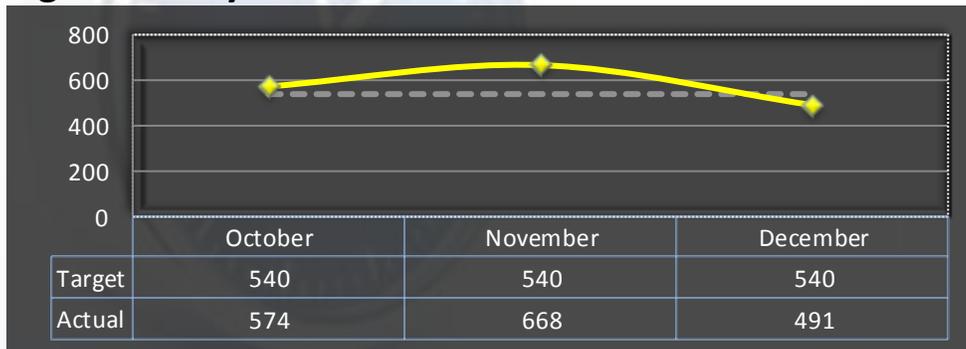


Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q2 Average: 582 Days

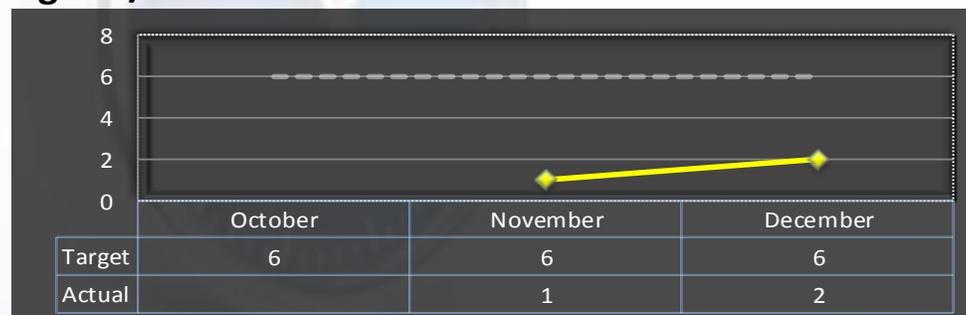


Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 6 Days

Q2 Average: N/A

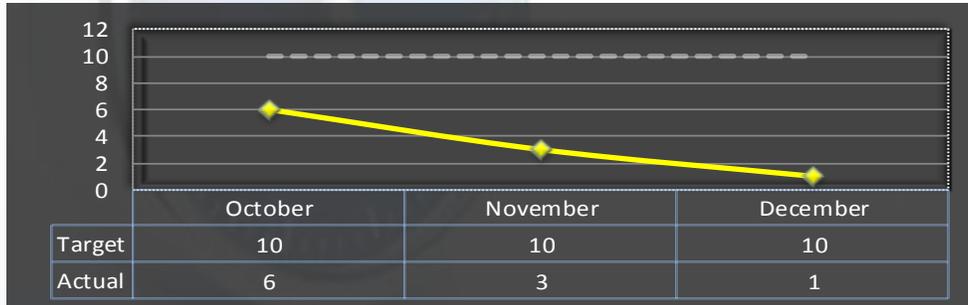


Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q2 Average: N/A



DRAFT

Complete Regulation Review Proposal ACTUAL LANGUAGE

California Code of Regulations Title 16. Professional and Vocational Regulations Division 13.6. Respiratory Care Board of California

ARTICLE 1. GENERAL PROVISIONS

§ 1399.301. Location of Office.

The principal office of the Respiratory Care Board of California is located at 444 North 3rd Street, Suite 270, Sacramento, CA 9581411.

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Section 3722, Business and Professions Code.

§ 1399.302. Definitions.

Unless the context otherwise requires, the following definitions shall apply:

- (a) "Board" means the Respiratory Care Board of California.
- (b) "B&PC" means the Business and Professions Code.
- (c) "Act" means the Respiratory Care Practice Act.
- (d) "Direct Supervision" means assigned to a currently licensed respiratory care practitioner who is on duty and immediately available in the assigned patient area.
- (e) "Employer" means any company, corporation, partnership, health maintenance organization, registry, staffing agent or agency, or any other entity or person that employs or contracts with, one or more respiratory care practitioners, ~~or unlicensed personnel, or any person,~~ to provide respiratory care services as provided in the Act.
- (f) "Licensed Home Care Employer" means a Home Medical Device Retail Facility, Home Health Agency, or any home care provider licensed by the California Department of Public Health, the Department of Health Care Services or its their successors.
- (g) "Regulations" means Division 13.6 of Title 16 of the California Code of Regulations.
- (h) "Unlicensed Personnel" means any individual who is not otherwise exempt, or who does not hold a valid and current license issued by the board. ~~not otherwise authorized or exempt to provide respiratory care services except as provided for in Article 6.~~

Note: Authority cited: Sections 3704, ~~and~~ 3722, 3739, 3742, 3760, and 3761 Business and Professions Code. Reference: Sections 3704, ~~and~~ 3717, 3722, 3739, 3742, 3758, 3758.6, 3760, 3761, 3767, 3773, and 3777 Business and Professions Code.

§ 1399.303. Delegation of Authority.

(a) Except for those powers reserved exclusively for the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, or in his or her absence, the president of the board, the power and discretion to prepare, receive and file accusations, statements of issues and stipulated settlements; issue notices of hearings; and statements to respondents and statements of issues; receive and file notices of defense and proposed and final decisions; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; calendar cases for hearing; prepare and file, proposed default decisions; adopt stipulated settlements where an action to revoke the license has been filed, and the respondent agrees to surrender his or her license, and perform other functions necessary to the businesslike dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code.

(b) The executive officer is further authorized, ~~subject to the approval of the board,~~ to investigate and evaluate each applicant for licensure under the Act, and to issue or deny a license in conformance with the provisions of the B&P~~G~~, the Act, this chapter, and disciplinary guidelines.

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections 3716 and 3753, Business and Professions Code.

ARTICLE 2. APPLICATIONS

§ 1399.320. Applications.

(a) Documentation related to the initial application process shall not be submitted more than ~~30~~ 90 days prior to the receipt of an initial application. If an application is not received within ~~30~~ 90 days, the submitted material will be destroyed.

Note: Authority cited: Section 3730, Business and Professions Code. Reference: Sections 3732, 3733, 3735, 3735.3, 3735.5 and 3740, Business and Professions Code.

ARTICLE 3. EDUCATION AND EXPERIENCE

§ 1399.330. Education Waiver Criteria.

(a) The board may waive the education requirements in ~~s~~Section 3740 of the B&P~~G~~ if an applicant for licensure

(1) Either successfully completed a minimum of a one-year respiratory care program supported by the Committee on Accreditation for Respiratory Care or its predecessor, prior to July 1, 2004 or previously held a license in good standing issued by the board and

(A) Holds a current valid license in good standing in another state, United States territory or Canadian province and has practiced respiratory care in that jurisdiction for a minimum of two years full time within the three years immediately preceding filing an application for licensure in this state; or

(B) Has practiced respiratory care in another state or United States territory, for a minimum of three years full time within the four years immediately preceding filing an application for licensure in this state, and that state or territory does not regulate the practice of respiratory care at the time the application for licensure is filed.

(2) Has not completed a respiratory care program described in subdivision (1) above but either

(A) Holds a current valid license in good standing in another state, United States territory or Canadian province and has competently practiced respiratory care in that state, United States territory or Canadian province for a minimum of four years full time within the five years immediately preceding filing an application for licensure in this state; or

(B) Has practiced respiratory care in another state or United States territory, for a minimum of five years full time within the six years immediately preceding filing an application for licensure in this state, and that state or territory does not license the practice of respiratory care at the time the application for licensure is filed.

(3) Does not meet the criteria described in subdivisions (1) or (2) above, but

(A) Has completed a minimum of a one-year respiratory care program supported by the Committee on Accreditation for Respiratory Care or its predecessor, and

(B) Has practiced respiratory care while serving in the U.S. military for a minimum of two years, full time, within the four years immediately preceding filing an application for licensure in this state, and

(C) The U.S. military verifies the applicant is in "good standing" as it pertains to his or her past or current employment.

(b) As used in this section, "good standing" means the applicant

- (1) is not currently under investigation;
- (2) has not been charged with an offense for any act substantially related to the practice of respiratory care by any public agency;
- (3) has not entered into any consent agreement or been subject to an administrative disciplinary decision including any voluntary surrender of license; and
- (4) has not been the subject of an adverse judgment or arbitration award resulting from a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in the practice of respiratory care.

(c) An applicant must provide sufficient documentary evidence to establish to the satisfaction of the board, that the applicant meets each requirement in the pathway under which the applicant is attempting to qualify. An applicant shall sign a release authorizing the board to obtain copies of personnel records or any other documentation that establishes the applicant's qualifications for a waiver of the educational requirements.

(d) This section shall not be construed to require the board to waive education requirements for any reason including, but not limited to, poor work performance, habits or communication, insufficient documentation to ascertain waiver criteria has been met, or employment with staffing agencies or registries where the applicant's experience is based on working at three or more sites.

(e) The application fee shall not be refunded for any application where education requirements are not waived pursuant to this section.

Note: Authority cited: Sections 3722 and 3740, Business and Professions Code. Reference: Section 3740, Business and Professions Code.

ARTICLE 4. EXAMINATIONS

~~§ 1399.340. Failure on Examinations:~~

~~For purposes of B&PC section 3730, the "next available examination" shall mean the board's state licensing examination, or the National Board for Respiratory Care, Inc. entry level certification examination for respiratory therapy. Failure of either examination, or failure to take either examination as scheduled except for due cause, shall result in termination of the privilege to work as a "respiratory care practitioner applicant".~~

~~Note: Authority cited: Section 3722, Business and Professions Code. Reference: Section 3730, Business and Professions Code.~~

ARTICLE 5. CONTINUING EDUCATION

§ 1399.352.7. Law and Professional Ethics Course Criteria.

An acceptable course in law and professional ethics shall meet the following criteria and be approved by the board:

(a) The course shall be provided by the American Association for Respiratory Care or the California Society for Respiratory Care.

(b) The course shall be three hours in length. One hour of instruction shall consist of not less than 50 minutes of actual classroom time or actual time spent by the licensee completing the coursework on the internet.

(c) The content of the course shall consist of the following subject areas:

- (1) Obligations of licensed respiratory care practitioners to patients under their care;
- (2) Responsibilities of respiratory care practitioners to report illegal activities occurring in the work place; and
- (3) Acts that jeopardize licensure and licensure status.

~~(d) One hour of instruction shall consist of not less than 50 minutes of actual classroom time or actual time spent by the licensee completing the coursework on the internet.~~

(d) The course shall meet all of the following requirements:

(1) The course shall consist of two (2) hours dedicated to professional ethics and one (1) hour toward California law. The board may opt to prepare or edit in full or part, any portion of the course.

(2) The course title shall be "Law and Professional Ethics."

(3) Delivery and format of the course shall be user-friendly and captivating with sufficient visual capabilities as determined by the board.

(4) The course will be at least thirty (30) pages of written material with at least twenty (20) test questions related to professional ethics and ten (10) related to California law.

(5) Course content must include course description, course objectives, references, scenarios, questions, certificate of completion and legal disclosures, as applicable.

(6) The course shall provide several segments. Each segment must include a narrative or discussion, a scenario, and at least one question. For each question there must be between three and six possible responses with only one correct answer. Each response must include an explanation as to why the response is incorrect or correct. The number of questions tied to each segment may vary, as each component will differ in length and content.

(7) The course will include at least thirty (30) scenario-based questions that require critical thinking skills.

(8) The provider shall submit course test scores, names and other course related information to the board, as requested by the board.

(9) The provider shall not charge more than thirty dollars (\$30) for board applicants and sixty dollars (\$60) for board licensees or petitioners.

(10) The provider shall ensure that procedures are in place to address Americans with Disabilities Act (ADA) requests.

(11) The participant shall be allowed one (1) year to complete the course/exam after enrollment.

(12) The participant shall not be able to exit the post examination once commenced.

(13) The participant shall not have a time limit to take the post examination.

(14) The minimum post examination passing score shall be 70%. The post examination shall be scored on all cumulative components, not by each section.

(15) As applicable, the provider shall offer and allow participants who failed the initial post examination to retake the post examination free of charge. There shall be no wait time to retake the post examination if previously failed.

(16) The course will include a survey, optional to participants, to gather feedback for the board.

(e) The course is solely the product of the provider and the provider assumes full responsibility for the course.

(f) The course must be revised once every four years. Each revision must be approved by the board. The board's Education Committee may rescind the approval of a course at any time if it believes it has been altered or finds that the course does not meet the requirements as provided for in this Article.

(g) The provider may advertise and or reference that an approved course is "approved" by the board.

Note: Authority cited: Sections 3719.5 and 3722, Business and Professions Code. Reference: Sections 35 and 3719.5, Business and Professions Code.

§ 1399.353. Audit and Sanctions for Noncompliance.

(a) The board shall audit a random sample of RCPs for compliance with the CE requirements.

(b) If documentation of the CE requirement is improper or inadequate, or the licensee fails to provide the requested documentation within 30 days, the license becomes inactive. The practice of respiratory care, or representation that one is an RCP, is prohibited while the license is inactive. Practice on an inactive license shall constitute grounds for appropriate disciplinary action pursuant to the B&PG.

(c) Notwithstanding subdivision (b), if the Bboard determines that through no fault of the licensee the CE completed does not meet the criteria set forth in this Article, the Bboard may grant an extension, not to exceed six months, for the licensee to complete approved CE.

(d) Misrepresentation of compliance shall constitute grounds for disciplinary action.

(e) Documentation supporting compliance with CE requirements shall be available to the board upon request during the four year period following relicensure.

Note: Authority cited: Sections 3719 and 3722, Business and Professions Code. Reference: Sections 3719 and 3750, Business and Professions Code.

ARTICLE 6. SCOPE OF PRACTICE

§ 1399.360. Unlicensed Personnel Services; Home Care.

(a) Unlicensed personnel (UP) may perform limited and basic respiratory care or respiratory care related services identified in subdivisions (b) and (c) in the home setting, ~~or for the purposes of patient transfer to the home setting, or at the facility of a Licensed Home Care Employer,~~ provided the following conditions are met:

(1) The UP is providing services through his or her employment with a Licensed Home Care Employer (LHCE);

(2) The UP has been provided initial training, and at least annually, ongoing in-service education, and periodic competency testing specific to each service and equipment-type by either a California licensed respiratory care practitioner (RCP) or other qualified licensed personnel, in accordance with his or her scope of practice, and documentation of such training, education and testing is maintained by the LHCE for a period of four years, and

(3) The LHCE ensures that the patient, the patient's family, or the patient's caregiver(s) are advised prior to or at the time equipment or supplies are delivered, that a RCP or other qualified licensed personnel, in accordance with his or her scope of practice, shall provide follow up checks, by telephone or in-person as appropriate, at the request of the patient or the patient's family, caregiver, or physician, or any person who has had contact with the patient, or as otherwise directed by a plan of care, and such services are provided accordingly.

(b) In accordance with this section and as it relates to:

- positive airway pressure (with or without a back-up rate) devices and supplies;
- intermittent positive pressure breathing devices and supplies;
- ventilators, ventilatory devices and supplies;
- nasotracheal or tracheal suctioning devices and supplies;
- apnea monitors and alarms and supplies;
- tracheostomy care devices and supplies;
- respiratory diagnostic testing devices and supplies, including but not limited to pulse oximetry,

CO2 monitoring, and spirometry devices and supplies;

● pulse-dose type or demand conserving oxygen delivery devices or high flow oxygen systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen, and

- any other respiratory care equipment and supplies not identified in subdivisions (b) and (c),

(1) UP may:

(A) Deliver equipment and supplies; and

(B) Instruct the patient, the patient's family or the patient's caregiver(s) on how to order equipment and supplies and the telephone number to call 24 hours a day, 7 days a week, in case of emergency in which a live person will be available to respond; and

(C) Set up equipment to the extent that the set-up is not dependent upon or influenced by any written or oral communication with the patient or the patient's family, caregiver(s) or physician (with the exception of identifying a physical location in the home for set-up), and

(D) Provide instruction to the patient, the patient's family or the patient's caregiver(s) limited to the mechanical operation of the equipment (e.g. switch, knob, and dial locations) or the general use of equipment or supplies.

(2) UP are prohibited from:

(A) Setting up equipment, including but not limited to, to an extent that it constitutes patient care such as applying or fitting any device to the patient or making any adjustment or taking any action, including but not limited to, applying positive pressure, that requires or is dependent upon or influenced by a prescription or any written or oral communication with the patient or the patient's family, caregiver(s) or physician;

(B) Providing any instruction ~~to an extent that it constitutes patient care, such as instruction in the operation or use of the equipment for the purpose of deriving an intended medical benefit~~ or instruction in

the clinical application of equipment and/or supplies;

(C) Performing any level of clinical assessment of the patient;

(D) Directly engaging in any discussion of clinical care plans, therapy, prescriptions, or clinical application;

(E) Touching the patient for the purposes of making an assessment or placing any device upon the patient, and

(F) Providing any service that is not expressly authorized by this section.

(c) In accordance with this section and as it relates to oxygen delivery systems and prefilled cylinders, with the exception of pulse-dose or demand conserving oxygen systems and high flow oxygen systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen,

(1) UP may:

(A) Deliver equipment and supplies;

(B) Instruct the patient, the patient's family or the patient's caregiver(s) on how to order oxygen equipment and supplies and the telephone number to call 24 hours a day, 7 days a week, in case of emergency in which a live person will be available to respond;

(C) Instruct the patient, the patient's family or the patient's caregiver(s) in the proper and safe operation of oxygen equipment including:

(i) equipment set-up for the purpose of making the equipment patient-ready;

(ii) connecting disposable tubing, cannulas, and masks;

(iii) verification of oxygen flow;

(iv) demonstration to the patient of prescribed flow rate(s);

(v) connection and cleaning of oxygen humidifying equipment and devices;

(vi) use of portable back-up oxygen cylinders and equipment, and

(vii) removal and disposition of disposable tubing, cannulas, and masks, and

(D) Use a mock, self-demonstration as a method of instruction for subdivision (c)(1)(C).

(E) Conduct regular in-home evaluations and gather information from the patient and home setting pertaining to the set-up, instruction, and provision of information as described in this subdivision for the use of the prescribing physician.

(2) UP are prohibited from:

(A) Direct administration of home oxygen;

(B) Handling or adjusting home oxygen equipment while it is in use by the patient or on the patient;

~~(C)~~ (C) Performing any level of clinical assessment of the patient;

~~(D)~~ (D) Touching the patient or placing any device upon the patient while engaged in the set-up and instruction of equipment, including, but not limited to, applying a cannula or performing an oximetry evaluation or oxygen saturation test, and

~~(E)~~ (E) Directly engaging in any discussion of clinical care plans, oxygen therapy or any modifications of physician prescribe equipment, dosages, or instructions or clinical applications.

Note: Authority cited: Sections 3722 and 3765, Business and Professions Code. Reference: Sections 3701, 3702, 3703, 3704, 3717 and 3760, Business and Professions Code; and Sections 109948.1 and 111656.3, Health and Safety Code.

§ 1399.364. Orders

(a) RCPs may work under the orders of qualified and licensed practitioners who are authorized by the hospital's medical staff, pursuant to protocol(s) developed in accordance with Sections 3702 and 3703 of the B&P.

Note: Authority cited: Sections 3702, 3703, and 3722 Business and Professions Code. Reference: Sections 3702 and 3703, Business and Professions Code.

ARTICLE 7. MISCELLANEOUS

§ 1399.370. Substantial Relationship Criteria.

For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include but are not limited to those involving the following:

- (a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the ~~Act~~B&P.
- (b) Commission of an act or ~~Conviction~~ of a crime involving fraud, fiscal dishonesty theft, or larceny.
- (c) Commission of an act or ~~Conviction~~ of a crime involving driving under the influence or reckless driving while under the influence.
- (d) Commission of an act or ~~Conviction~~ of a crime involving harassment or stalking as defined by the Penal Code and/or Civil Code.
- (e) Commission of an act or ~~Conviction~~ of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal Code.
- (f) Commission of an act or conviction of a crime involving human trafficking, as defined by the Penal Code.
- (g) Commission of an act or conviction of a crime involving gross negligence in the care of an animal or any form of animal cruelty as defined by the B&P or Penal Code.
- (h) Failure to comply with a court order.
- (i) Commission of an act or conviction of a crime, involving verbally abusive conduct or unlawful possession of a firearm or weapon.

Note: Authority cited: Section 481 and 3722, Business and Professions Code. Reference: Sections 481, 3750, 3750.5, 3752, 3752.5, 3752.6, ~~and~~ 3752.7, 3754.5, and 3755, Business and Professions Code; and Sections 266, 288, 314, 646.9, 647, 1203.097, 11414, 13519.6 and 13519.7, Penal Code.

§ 1399.374. Disciplinary Guidelines.

In reaching a decision on the disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), determining terms and conditions of probation, or consequences for non compliance of ordered probation, the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [~~3/02~~ 2010 Edition] which are hereby incorporated by reference. Deviation from these standards, guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 315, 3718, 3722 and 3750, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Section 315, Business and Professions Code and Sections 11400.20 and 11425.50(e), Government Code.

1399.375. Cease Practice-Probation

a) Any licensee placed on probation who has committed a "Major Violation," as identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374, shall receive a notice to cease the practice of respiratory care, as directed by the Board.

b) The Board shall attempt to contact the probationer by electronic and/or telephonic means to advise him/her of the notice to cease practice and shall deliver such notice by certified and regular mail. The Board shall update its licensing database to reflect the status of the license.

c) The probationer may file a written appeal, within ten days of the date of the notice to cease practice, to provide additional evidence disputing the finding of the violation(s) that was cause for the notice to cease practice. The Executive Officer will review the appeal and make a determination in the matter, within ten days from the date the written appeal and all supporting evidence or documentation is received. The probationer shall be notified of the outcome by certified mail.

d) The probationer shall not resume the practice of respiratory care until a final decision on an accusation and/or petition to revoke probation is made or until such time as the Board delivers written notification that the notice to cease practice has been dissolved.

e) The cessation of practice shall not apply to the reduction of the probationary period.

Note: Authority cited: Sections 315.2, 315.4, and 3722, Business and Professions Code. Reference: Sections 315.2 and 315.4, Business and Professions Code.

§ 1399.377. Records from Employer

Records requested by the board, or on behalf of the board, as provided for in Section 3717 of the B&P, shall be provided by the employer, within 10 business days from a written, electronic or oral request or be made available for review at the time of an inspection.

Note: Authority cited: Section 3717, Business and Professions Code. Reference: Section 3717, Business and Professions Code.

§ ~~1399.384~~-1399.378. Licensee Reporting.

Information required to be disclosed by any person issued a license to practice respiratory care, whether that license is valid or invalid, as provided in Section 3758.5 of the B&P shall be disclosed to the board within 10 calendar days from the date the person knows or should have reasonably known of a violation or probable violation has occurred.

Note: Authority cited: Sections 3722 and 3758, Business and Professions Code. Reference: Section 3758, Business and Professions Code.

§ ~~1399.385~~-1399.379. Employer Reporting.

Information required to be disclosed by any employer of a respiratory care practitioner as provided in Sections 3758 or ~~and~~ 3758.6 of the B&P shall be disclosed to the board within 10 calendar days from the date of suspension or termination, whichever occurs first.

Note: Authority cited: Sections 3722 and 3758, Business and Professions Code. Reference: Section 3758, Business and Professions Code.

ARTICLE 8. CITATIONS AND FINES

§ 1399.380. Citations.

(a) The executive officer of the board or his or her designee is authorized to issue a citation to any person or employer who holds a permit, certificate or license from the board for a violation of any provision of Division 1.5 and Chapter 1 of Division 2 of the B&P, as permitted, the Act, or any regulation adopted by the board.

(b) ~~Each~~ A citation shall be in writing and shall describe with particularity the nature ~~and facts of each~~ the violation ~~specified in the citation~~, including a specific reference to the statute or regulation ~~alleged~~ determined to have been violated.

(c) ~~Each~~ A citation ~~may shall, where appropriate,~~ contain an ~~assessment of an administrative fine, payable within a time period designated by the board, not to exceed 365 days,~~ an order of abatement fixing a reasonable time for abatement of the violation, ~~or both, for each alleged violation.~~

(d) A citation may also contain an assessment of an administrative fine as provided for in Section 1399.381, payable within 120 days.

~~(e)~~ Each ~~A~~ citation shall inform the cited person or employer of his or her right to a citation review, as provided in Section 1399.382, and/or a hearing to appeal the citation, as provided in Section 1399.383, and that such a request ~~for a hearing~~ be made in writing within 30 calendar days from the issuance date of the citation.

~~(e)~~ Each ~~A~~ citation shall be served upon the individual or employer by certified mail at the last address of record.

~~(f)~~ In assessing an administrative fine or issuing an order of correction or abatement, due consideration shall be given to the following factors:

- (1) the gravity of the violation
- (2) the good or bad faith exhibited by the cited person or employer
- (3) the history of previous violations
- (4) the extent to which the cited person or employer has cooperated with the board's investigation

~~(g)~~ The sanctions authorized under this section shall be separate from and in addition to any other administrative discipline, civil remedies, or criminal penalties.

~~(h)~~ Every citation ~~that is~~ issued pursuant to this article is a public record.

~~(i)~~ Once a fine is paid to satisfy an assessment based on the finding of a violation, the payment of the fine becomes public record.

Note: Authority cited: Sections 125.9, ~~and 3722, 3766, and 3767,~~ Business and Professions Code. Reference: Sections 125.9, 3766, and 3767 Business and Professions Code.

§ 1399.381. Fines:

(a) Fines shall be assessed in accordance with the following schedule, provided, however, in no case shall the total exceed \$2,500 for each violation.

B&PC	Description	Range of Fines
480	Grounds for denial of an application for licensure/certificate	\$100 to \$2,500
3731	Title Used by Licensee	\$25 to \$2,500
3739	Practice During License Process	\$100 to \$2,500
3750(a)	Advertising	\$250 to \$2,500
3750(b)	Fraud in the procurement of any license	\$1,000 to \$2,500
3750(c)	Knowingly employing unlicensed persons	\$100 to \$2,500
3750(d)	Conviction of Crime	\$100 to \$500
3750(e)	Impersonating an applicant in any examination	\$1,500 to \$2,500
3750(f)	Negligence	\$100 to \$2,500
3750(g)	Conviction of a violation of any provision of Division 2	\$100 to \$2,500
3750(h)	Aiding/Abetting person to violate this chapter	\$1000 to \$2,500
3750(i)	Aiding/abetting person to engage in unlawful practice	\$1000 to \$2,500
3750(j)	Commission of any fraudulent, dishonest or corrupt act	\$100 to \$2,500
3750(k)	Falsifying/ incorrect/ inconsistent entries in record	\$500 to \$2,500
3750(l)	Changing prescription/falsifying orders for treatment	\$1000 to \$2,500
3750(m)	Discipline taken by another agency	\$100 to \$2,500
3750(n)	Knowing failure to protect patients -infection control	\$1000 to \$2,500
3750(o)	Incompetence	\$500 to \$2,500
3750(p)	Pattern of substandard care	\$1000 to \$2,500
3750.5	Obtained/Possessed/Use of Drugs	\$100 to \$2,500
3750.6	Production of Work Permit or Pocket License for Inspection	\$25 to \$100
3753.1	Probation Monitoring Costs	Actual +\$25 to \$500
3753.5	Cost Recovery	Actual +\$25 to \$500
3754.5	Licensee who obtains license by fraud or misrepresentation	\$1000 to \$2,500
3755	Unprofessional Conduct	\$250 to \$2,500
3758.5	RCP to report any known violation made by other RCP	\$250 to \$2,500
3760(a)	Practice without a License	\$50 to \$2,500
3761(a)	Misrepresentation in claim of license to practice	\$100 to \$1,000
3761(b)	Knowingly employ unlicensed personnel	\$100 to \$2,500
3773(a)	License renewal - notice of conviction	\$100 to \$2,500
3773(b)	License renewal - identification of current employer(s)	\$100 to \$2,500
Regulations	Description	Range of Fines
1399.304	Current address	\$25 to \$250
1399.350	CE requirements	\$50 to \$1,500

(b) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.

§ 1399.381. Fines.

(a) Fines shall be assessed in accordance with the following schedule as provided for by law:

<u>BUSINESS AND PROFESSIONS CODES</u>	<u>Maximum Fine</u>
<u>3717 Records from employer</u>	<u>\$10,000</u>
<u>3731 Title Used by licensee</u>	<u>\$5,000</u>
<u>3739 Practice during license process</u>	<u>\$5,000</u>
<u>3750(a) Advertising</u>	<u>\$5,000</u>
<u>3750(b) Fraud in the procurement of any license</u>	<u>\$5,000</u>
<u>3750(c) Knowingly employing unlicensed persons</u>	<u>\$15,000</u>
<u>3750(d) Conviction of crime</u>	<u>\$5,000</u>
<u>3750(e) Impersonating an applicant in any examination</u>	<u>\$5,000</u>
<u>3750(f) Negligence</u>	<u>\$5,000</u>
<u>3750(g) Conviction of any violation of Division 2</u>	<u>\$5,000</u>
<u>3750(h) Aiding/Abetting person to violate this chapter</u>	<u>\$5,000</u>
<u>3750(i) Aiding/abetting person to engage in unlawful practice</u>	<u>\$5,000</u>
<u>3750(j) Commission of fraudulent, dishonest or corrupt act</u>	<u>\$5,000</u>
<u>3750(k) Falsifying/ incorrect/ inconsistent entries in record</u>	<u>\$5,000</u>
<u>3750(l) Changing prescription/falsifying orders for treatment</u>	<u>\$5,000</u>
<u>3750(m) Discipline taken by another agency</u>	<u>\$5,000</u>
<u>3750(n) Knowing failure to protect patients -infection control</u>	<u>\$5,000</u>
<u>3750(o) Incompetence</u>	<u>\$5,000</u>
<u>3750(p) Pattern of substandard care</u>	<u>\$5,000</u>
<u>3750.5 Obtained/possessed/use of drugs</u>	<u>\$5,000</u>
<u>3750.6 Production of work permit/pocket license</u>	<u>\$5,000</u>
<u>3753.1 Probation monitoring costs</u>	<u>\$5,000</u>
<u>3753.5 Cost recovery</u>	<u>\$5,000</u>
<u>3754.5 Obtains license by fraud or misrepresentation</u>	<u>\$5,000</u>
<u>3755 Unprofessional conduct</u>	<u>\$5,000</u>
<u>3758 Employer report on suspension/termination</u>	<u>\$10,000</u>
<u>3758.5 RCP report on violation made by other RCP</u>	<u>\$5,000</u>
<u>3758.6 Employer report on supervisor</u>	<u>\$10,000</u>
<u>3760 Practice without a license/Misrepresentation</u>	<u>\$15,000</u>
<u>3761(a) Misrepresentation in claim of license to practice</u>	<u>\$15,000</u>
<u>3761(b) Knowingly employing an unlicensed person</u>	<u>\$15,000</u>
<u>3773(a)(1) License renewal - notice of conviction</u>	<u>\$5,000</u>
<u>3773(a)(2) License renewal - identify employer</u>	<u>\$5,000</u>
<u>3773(b) License renewal - additional information</u>	<u>\$5,000</u>
 <u>REGULATIONS</u>	
<u>1399.304 Current address</u>	<u>\$5,000</u>
<u>1399.350 CE requirements</u>	<u>\$5,000</u>
<u>1399.350.5 Completion of ethics/professional law course</u>	<u>\$5,000</u>
<u>1399.360 Unlicensed personnel/home care</u>	<u>\$15,000</u>
<u>1399.377 Records from employer</u>	<u>\$10,000</u>
<u>1399.378 Licensee reporting</u>	<u>\$5,000</u>
<u>1399.379 Employer reporting</u>	<u>\$10,000</u>

(b) The methodology for assessing fine amounts shall be for each inspection or investigation made with respect to the violation, except as provided below:

(1) The assessment of fine amounts for a violation involving fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare, shall be based on each violation or count.

(2) The assessment of fine amounts for a violation of Section 3717 of the B&P or Section 1399.377

of the regulations, shall be based upon each incident in which the employer fails to respond to a request to inspect or produce records as provided for in Section 3717 of the B&P or Section 1399.377 of the regulations.

(3) The assessment of fine amounts for a violation of Section 3758, 3758.5 or 3758.6 of the B&P, or Section 1399.378 or 1399.379 of the regulations, shall be based upon each person and/or each incident required to be reported to the board.

(4) The assessment of fine amounts for a violation of Section 3750(c), 3760, 3761(a), or 3761(b) of the B&P or Section 1399.360 of the regulations, shall be based upon each person who acts in the capacity of, or engages in the business of, or represents themselves as, a respiratory care practitioner, at each facility or location.

(c) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.

Note: Authority cited: Sections 125.9, ~~and~~ 3722, 3758, 3766, and 3767, Business and Professions Code. Reference: Sections 125.9, 136, ~~480, 3717, 3731, 3739, 3750, 3750.5, 3750.6, 3753.1, 3753.5, 3754.5, 3755, 3758, 3758.5, 3758.6, 3760, 3761, 3766, 3767, and 3773, Business and Professions Code; and Sections 1399.304, ~~and~~ 1399.350, 1399.350.5, 1399.360, 1399.377, 1399.378, and 1399.379~~ Title 16, California Code of Regulations.

§ ~~1399.376. 1399.382.~~ Citation Review.

(a) ~~If the person cited is afforded the opportunity for a citation review, he or she may, within 30 calendar days after the date of service of the citation, notify the Executive Officer, in writing, of his or her request for a citation review by the executive officer, or a designated committee of the Board regarding the acts charged in the citation. Notification shall be through the United States Postal Service by certified or registered mail.~~

(b) ~~The executive officer or committee shall hold, within 240 60 calendar days from the receipt of the request, a citation review with the person cited or his or her legal counsel or other authorized representative in person or by telephone. At the conclusion of the citation review, the executive officer committee may affirm, modify or dismiss the citation, including any fine levied. The executive officer or committee shall state in writing the reasons for the action and serve a copy of it's the findings and decision on the person cited within 30 calendar days of the date of the citation review. This decision shall be deemed to be a final order of the Board with regard to the citation issued, including the fine levied. The decision shall inform the cited person of his or her right to a hearing as provided in Section 1399.383 of this Article, and that such a request must be made in writing within 30 calendar days from the issuance date of the decision resulting from the citation review.~~

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections ~~3764~~ 125.9, 3766, and 3767, Business and Professions Code.

§ ~~1399.382. 1399.383.~~ Appeals.

(a) ~~Any person or employer served with a citation or a decision resulting from a citation review, as provided in Section 1399.382 of this Article, may contest the citation by appealing to the board in writing, within 30 calendar days of the issuance of the citation or decision.~~

(b) ~~If the cited person fails to notify the board of his or her intent to contest the citation, the citation shall be deemed a final order of the board.~~

(c) ~~If a cited person or employer requests a hearing to appeal the citation, notifies the board that he or she intends to contest a citation, the board shall afford an opportunity for a citation review in accordance with section 1399.376 of the board's regulations or a hearing in accordance with the provisions of Chapter 5 (commencing with sSection 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

(d) ~~The failure of a cited person who has appealed to the board to appear at the time and place of the citation review or hearing shall be deemed a withdrawal of his or her appeal, and the citation shall constitute a final order of the board.~~

Note: Authority cited: Sections 125.9, ~~and~~ 3722, ~~and~~ 3767, Business and Professions Code. Reference: Section 125.9, ~~and~~ 3767, Business and Professions Code; Sections ~~1399.376~~, 1399.380, ~~and~~ 1399.382, Title 16, California Code of Regulations; and Sections 11500, et seq., Government Code.

1399.384. Failure to Respond or Appear

(a) If the cited person or employer fails to request a citation review or a hearing as provided in subdivision (e) of Section 1399.380, or fails to request a hearing as provided in subdivision (a) of Section 1399.383, the citation shall be deemed a final order of the board and shall not be subject to administrative review.

(b) The failure of a cited person or employer who has requested a citation review, if applicable, or hearing, to appear at the time and place of the citation review or hearing shall be deemed a withdrawal of his or her request, and the citation shall be deemed a final order of the board and shall not be subject to administrative review.

Note: Authority cited: Sections 125.9, 3722, and 3767, Business and Professions Code. Reference: Section 125.9, and 3767, Business and Professions Code; Sections 1399.380, 1399.382, and 1399.383, Title 16, California Code of Regulations; and Sections 11500, et seq., Government Code.

§ ~~1399.383~~. 1399.385. Failure to Comply with Citation.

The failure to comply with a citation containing an assessment of an administrative fine or an order of abatement or both, after the citation is final and has been properly served, shall result in one or more of the following:

(a) the non renewal of a license.

(b) referral to collection entities to collect the fine.

(c) the pursuit of further legal action by the board to collect the fine.

Note: Authority cited: Sections 125.9, ~~and~~ 3722, ~~3768, and~~ 3778, Business and Professions Code. Reference: Sections ~~125.9, 3767, and~~ 3768, Business and Professions Code.

§ ~~1399.387~~. Citations -Employer.

~~(a) The executive officer of the board or his or her designee is authorized to issue a citation to any employer for a violation of sections 3717, 3758 and 3758.6 of the B&PC or Section 1399.385 of the regulations.~~

~~(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.~~

~~(c) Each citation may contain an assessment of an administrative fine, payable within a time period designated by the board, not to exceed 365 days, an order of abatement fixing a reasonable time for abatement of the violation, or both, for each alleged violation.~~

~~(d) Each citation shall inform the cited employer of its right to a hearing and that such a request for a hearing be made in writing within 30 days from the issuance date of the citation.~~

~~(e) Each citation shall be served upon the employer by certified mail at the last address of record.~~

~~(f) In assessing an administrative fine or issuing an order of correction or abatement, due consideration shall be given to the following factors:~~

~~(1) the gravity of the violation~~

~~(2) the good or bad faith exhibited by the employer~~

~~(3) the history of previous violations~~

~~(4) the extent to which the employer has cooperated with the board's investigation~~

~~(g) The sanctions authorized under this section shall be separate from and in addition to any other administrative discipline, civil remedies, or criminal penalties.~~

~~(h) Every citation that is issued pursuant to this article is a public record.~~

~~(l) Once a fine is paid to satisfy an assessment based on the finding of a violation, the payment of the fine becomes a public record.~~

~~Note: Authority cited: Sections 125.9, 3722, 3758 and 3758.6, Business and Professions Code. Reference: Sections 125.9, 3717, 3758 and 3758.6, Business and Professions Code.~~

~~§ 1399.388. Fines - Employer.~~

~~(a) Failure of an employer to provide reports or records or allow inspections as required by Section 3717 of the B&PC shall be punishable by an administrative fine ranging from \$250 to \$2,500.~~

~~(b) Failure of an employer to make a report required by Section 3758 of the B&PC shall be punishable by an administrative fine ranging from \$2,500 to \$10,000.~~

~~(c) Failure of an employer to make a report as required by Section 3758.6 of the B&PC shall be punishable by an administrative fine ranging from \$500 to \$2,500.~~

~~(d) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.~~

~~Note: Authority cited: Sections 3722 and 3758, Business and Professions Code. Reference: Sections 3717, 3758 and 3758.6, Business and Professions Code.~~

~~§ 1399.389. Appeals - Employer.~~

~~(a) Any employer served with a citation, may contest the citation by appealing to the board in writing, within 30 calendar days of the issuance of the citation.~~

~~(b) If the cited employer fails to notify the board of his or her intent to contest the citation, the citation shall be deemed a final order of the board and shall not be subject to administrative review.~~

~~(c) If a cited employer notifies the board that it intends to contest a citation, the board shall afford an opportunity for a hearing. The board shall thereafter issue a decision based on findings of fact, affirming, modifying or vacating the citation or penalty or both, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(d) The failure of a cited employer that has appealed to the board to appear at the time and place of the hearing shall be deemed a withdrawal of its appeal, and the citation shall constitute a final order of the board and shall not be subject to administrative review.~~

~~Note: Authority cited: Sections 125.9 and 3722, Business and Professions Code. Reference: Section 125.9, Business and Professions Code; and Section 11500, et seq., Government Code.~~

~~§ 1399.390. Failure to Comply with Citation - Employer.~~

~~The failure to comply with a citation containing an assessment of an administrative fine or an order of abatement or both after the citation is final and has been properly served shall result in the pursuit of further action by the board to collect the fine.~~

~~Note: Authority cited: Sections 3722 and 3758, Business and Professions Code. Reference: Section 3758, Business and Professions Code.~~

~~§ 1399.391. Citation and Fine - Unlicensed Personnel.~~

~~(a) The executive officer or his or her designee is authorized to determine when and against whom a citation will be issued and to issue a citation to any person, or employer of a person, who acts in the capacity of or engages in the business of a respiratory care practitioner in this state without having a license in good standing pursuant to the Act and who is not otherwise exempted from the provisions of the Act. Each citation for unlicensed activity shall contain an order of abatement, and shall be in writing and state with particularity the basis of the citation. "Employer," as used in this section, means any entity or person that employs or contracts with one or more persons who are acting in the capacity of, or engaged in the business of, a respiratory care practitioner, including but not limited to, any person, facility, company, corporation, partnership, organization or health maintenance organization.~~

~~(b) An administrative fine shall be paid within the time period designated in the citation, not to exceed 365 days. The amount of an administrative fine shall be separate from section 1399.381 and in accordance with section 3767(b)(2) of the B&PC.~~

~~(c) A citation shall inform the cited person or employer of his or her right to a hearing and that such a request for a hearing be made in writing within 15 calendar days after service of the citation. A citation shall be served upon the individual or employer by certified mail.~~

~~(d) In assessing an administrative fine and issuing an order of abatement, due consideration shall be given to the following factors for each violation:~~

~~(1) the gravity of the violation;~~

~~(2) the good or bad faith exhibited by the cited person or employer;~~

~~(3) the history of previous violations;~~

~~(4) the extent to which the cited person or employer has cooperated with the board's investigation.~~

~~(e) A cited person or employer who wishes to contest the citation may serve a written appeal on the board, within 15 calendar days after service of the citation, through the United States Postal Service by certified or registered mail.~~

~~(f) If the cited person or employer notifies the board that he/she/it intends to contest a citation, the board shall afford an opportunity for a hearing. The board shall thereafter issue a decision based on findings of fact, affirming, modifying or vacating the citation with its fine or order of abatement, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(g) The failure of a cited person or employer to appear at the time and place of the hearing shall be deemed a withdrawal of the appeal, and the citation shall constitute a final order of the board and shall not be subject to further administrative review.~~

~~Note: Authority cited: Sections 3722, 3760, 3761, 3766 and 3767, Business and Professions Code. Reference: Sections 3760, 3761, 3766 and 3767, Business and Professions Code.~~

ARTICLE 9. FEES

§ 1399.395. Fee Schedule.

The following schedule of fees is hereby adopted pursuant to Sections 3775 and 3775.5 of the B&PG:

(a) Application fee	\$200 <u>300</u>
(b) Application fee [pursuant to Section 3740(c)]	\$250
(b e) Examination fee	\$190
(c d) Re-examination fee	\$150
(e) Initial license fee	\$200
(This fee is prorated based on the length of the initial license period)	
(d f) Renewal fee for licenses expiring on or after January 1, 2002	\$230
(e g) Delinquency fee (not more than 2 years after expiration)	\$230
(f h) Delinquency fee (after 2 years but not more than 3 years after expiration) ...	\$460
(g i) Inactive license fee	\$230
(h j) Duplicate license fee	\$25
(i k) Endorsement fee	\$75 <u>25</u>

Note: Authority cited: Sections 3722, 3775 and 3775.5, Business and Professions Code. Reference: Sections 3775 and 3775.5, Business and Professions Code.

Adopt this package of the 2011 Edition of "Disciplinary Guidelines"
which are incorporated by reference in Section 1399.374.

Respiratory Care Board

Disciplinary Guidelines

"Protection of the Public Shall be the Highest Priority"

Business and Professions Code, Section 3710.1



2011 Edition

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These guidelines are incorporated by reference in Section 1399.374 of Division 13.6 of Title 16 of the California Code of Regulations

INTRODUCTION

Licensed Respiratory Care Practitioners (RCPs) regularly perform critical lifesaving and life support procedures prescribed by physicians that directly affect major organs of the body. Respiratory care provides relief to millions of Americans, from newborns to the elderly, who have difficulty breathing or cannot breathe on their own due to impaired or nonfunctioning lungs. Typical patients of RCPs suffer from asthma, chronic obstructive pulmonary disease (COPD), bronchitis, lung cancer, stroke, drowning accidents, heart attacks, birth defects, emphysema, cystic fibrosis, or sleep apnea. Trauma victims and surgery patients are also treated by respiratory therapists. In addition to treatment, respiratory care also includes education and rehabilitation services, plus diagnostic testing.

Typical respiratory care duties include, but are not limited to:

- Employing life support mechanical ventilation including assessment, analysis, application and monitoring.
- Administering of medications in aerosol form.
- Monitoring equipment and patients' responses to therapy.
- Obtaining blood specimens and analyzing them to determine levels of oxygen, carbon dioxide, and other gases.
- Maintaining artificial airways (tracheostomy or intubation).
- Measuring the capacity of patients' lungs to determine if there is impairment.
- Obtaining and analyzing sputum specimens and chest X-rays.
- Interpreting data from tests.
- Assessing vital signs and other indicators of respiratory dysfunction.
- Performing stress tests and other studies of the cardiopulmonary system.
- Assessing and treating people with disruptive sleep patterns.
- Conducting rehabilitation activities.
- Leading asthma education and smoking cessation programs.

Most respiratory care therapists work in hospitals (emergency, intensive care, neonatal/pediatric units, cardiac care, etc.), but there is a growing number being employed in other settings, including:

- Medical flight transports
- Hyperbaric oxygen units
- Private homes
- Skilled nursing facilities
- Various laboratories (e.g., Rehabilitation, Cardiopulmonary, Blood gas, Sleep testing)

The minimum education requirements for licensure as an RCP include an associate degree with completion of an approved respiratory care program. However, over 1/3 of licensed RCPs hold baccalaureate, masters or doctorate degrees. There are approximately 33 schools throughout California that offer respiratory care programs. Areas of study include human anatomy and physiology, chemistry, physics, microbiology, and mathematics. Programs also include clinical practice at local hospitals. Respiratory care students receive on average, 300 hours of intense education and training specific to ventilator assessments and care. Programs take more than two years of full-time dedication to complete.

The Respiratory Care Board of California (Board) has issued over 30,000 RCP licenses since its inception in 1985. Applicants for licensure complete a criminal background check (DOJ/FBI/DMV), are competency tested, and must provide official transcripts and other documentation to verify they have met educational and other requirements.

The Board's mandate is "...to protect the public from the **unauthorized and unqualified practice** of respiratory care and from **unprofessional conduct** by persons licensed to practice respiratory care..." [reference, §3701, *Business and Professions Code*]. In addition, "**Protection of the public shall be the highest priority for the [Board]** in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount" [reference §3710.1, *Business and Professions Code*].

The Board's mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, increasing public awareness of respiratory care as a profession, and supporting the development and education of all respiratory care practitioners.

The Board has the authority to issue or deny, suspend, and revoke licenses to practice respiratory care as provided in the Respiratory Care Practice Act and respiratory care regulations (Business and Profession Code, sections 475, 480, 490, 3718, 3732, 3750, 3750.5, 3752.7, 3754, 3754.5, 3755, 3757, 3752.5, 3752.6, and California Code of Regulations, Title 16, Division 13.6, sections 1399.303, 1399.370, 1399.374).

The Board strives to ensure that only eligible, qualified, capable and competent individuals are licensed, and to expeditiously respond to all consumer complaints by efficiently and effectively investigating every complaint and pursuing disciplinary action in all appropriate cases. Finally, the Board strives to ensure that appropriate and aggressive post-disciplinary monitoring occurs.

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

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

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

PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued, legal pleadings filed and final decisions will be published as a matter of public record.

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including but not limited to expert consultant opinions and services. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct had required investigation and prosecution, not upon the profession as a whole.

References

§ 3753.5. Payment of costs of investigation and prosecution of disciplinary action

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law or any term and condition of board probation to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are

not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case. Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any practitioner directed to pay costs...

§ 3753.7. Items included in costs of prosecution

For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.

PROBATION MONITORING PURPOSE

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. **The purpose is NOT for the Board to rehabilitate the probationer.** Probation is a privilege afforded by the Board to:

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

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

CITATIONS

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

STIPULATED SETTLEMENTS

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

DISCIPLINARY GUIDELINES

2011 Edition

EVIDENCE IN AGGRAVATION/MITIGATION OF PENALTY

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

EVIDENCE IN AGGRAVATION OF PENALTY

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

EVIDENCE IN MITIGATION OF PENALTY

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

DISCIPLINARY GUIDELINES SUMMARY FOR USE BY ADMINISTRATIVE LAW JUDGES

These guidelines were developed for use by Administrative Law Judges. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 3753.5.

B&P Code	KEY "R" - Required Term and Condition "W" - Include Term and Condition if Warranted	CONDITIONS OF PROBATION											
		1-13. Standard Terms & Conditions	14. Work Schedules	15. Biological Fluid Testing	16. Abstinence from Mood Altering Sub.	17. Suspension	18. Restriction of Practice	19. Direct Supervision	20. Education	21. Competency Exam	22. Alcohol/Drug Treatment	23. Psychological Evaluation	24. Physical Examination
3750 (a) False/Misleading Advertising Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R				W	W	W					
3750 (b) Fraud in Procurement of License Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				W	R	W					
3750 (c) Knowingly Employing Unlicensed Persons Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R				W	R	R					
3750 (d) Conviction of a Crime Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R	W	W	W	W	W	W	W	W	W	W	W
3750 (e) Impersonating/Acting as a Proxy for Applicant Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation		R				W	R	W					
3750 (f) Negligence Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				W	W	R	R	W	W	W	W
3750 (g) Violation of Any Provision Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R	W	W	W	W	W	W	W	W	W	W	W

B&P Code	KEY "R" - Required Term and Condition "W" - Include Term and Condition if Warranted	CONDITIONS OF PROBATION											
		1-13. Standard Terms & Conditions	14. Work Schedules	15. Biological Fluid Testing	16. Abstinence from Mood Altering Sub.	17. Suspension	18. Restriction of Practice	19. Direct Supervision	20. Education	21. Competency Exam	22. Alcohol/Drug Treatment	23. Psychological Evaluation	24. Physical Examination
3750 (h) Aiding or Abetting a Violation Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R				W	R	W					
3750 (i) Aiding or Abetting Unlawful Practice Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R				W	R	R					
3750 (j) Fraudulent, Dishonest or Corrupt Act Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				W	R	W			W		
3750 (k) Patient, Hospital, or Other Records - Entries Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				W	W	R			W	W	
3750 (l) Falsifying Verbal or Written Order/Prescription Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				W	R	R			W		
3750 (m) Discipline Taken by Another Agency Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R				W	W	W			W	W	
3750 (n) Failure to Follow Infection Control Guidelines Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				W	W	W			W	W	

B&P Code	KEY "R" - Required Term and Condition "W" - Include Term and Condition if Warranted	CONDITIONS OF PROBATION											
		1-13. Standard Terms & Conditions	14. Work Schedules	15. Biological Fluid Testing	16. Abstinence from Mood Altering Sub.	17. Suspension	18. Restriction of Practice	19. Direct Supervision	20. Education	21. Competency Exam	22. Alcohol/Drug Treatment	23. Psychological Evaluation	24. Physical Examination
3750 (o) Incompetence Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				W	W	R	R	R	W	W	W
3750 (p) Pattern of Substandard Care Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				W	W	R	R	R	W	W	W
3750.5 (a) Obtained, Possessed, Used, or Administered Controlled Substance or Dangerous Drug Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R	R	R	R	R	W	W	W	W	W		
3750.5 (b) Used Drugs or Alcohol in Dangerous Manner or Impaired Ability to Practice Safely Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R	R	R	R	R	W	W	W	W	W		
3750.5 (c) Applied for Employment or Worked While Under the Influence of Alcohol Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R	R	R	R	R	W	W	W	W	W		
3750.5 (d) Conviction of Offense Involving (a) or (b), Falsify Record Pertaining to Substances Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation		R	R	R	R	R	R	R	R	R	W	W	W
3750.5 (e) Committed or Confined for Use of or Addiction to Substances Described in 3750.5 (a) (b) & (c) Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation		R	R	R	R	R	R	R	R	R	W	W	W

B&P Code	KEY "R" - Required Term and Condition "W" - Include Term and Condition if Warranted	CONDITIONS OF PROBATION											
		1-13. Standard Terms & Conditions	14. Work Schedules	15. Biological Fluid Testing	16. Abstinence from Mood Altering Sub.	17. Suspension	18. Restriction of Practice	19. Direct Supervision	20. Education	21. Competency Exam	22. Alcohol/Drug Treatment	23. Psychological Evaluation	24. Physical Examination
3752.5	Bodily Injury or Attempted Bodily Injury Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R	W	W	W	W	R	W			W		
3752.6	Sexual Misconduct Maximum: Revocation or Denial Minimum: Revocation or Denial	See Statute											
3752.7	Sexual Contact w/Patient or Conviction of Sexual Offense Maximum: Revocation or Denial Minimum: Revocation or Denial	See Statute											
3755	Unprofessional Conduct Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R				W	W				W		
3760	Unlawful Practice Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R				W	R						
3761	Misrepresentation Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R				W	R						

PROBATIONARY TERMS AND CONDITIONS

A probationary or conditional license is generally issued for a period between 2 and 5 years (see corresponding code violations on pages 6-9), with consideration given to any aggravating or mitigating factors present. Following is a summary of terms and conditions of probation:

STANDARD CONDITIONS

1. Obey All Laws
2. Quarterly Reports
3. Probation Monitoring Program
4. Probation Monitoring Costs
5. Employment Requirement
6. Notice to Employer
7. Supervisor Quarterly Reports
8. Changes of Employment or Residence
9. Cost Recovery
10. Tolling for Out-of-State Residence or Practice
11. Valid License Status
12. Violation of Probation
13. Completion of Probation

STANDARD ALCOHOL/DRUG CONDITIONS

14. Work Schedules
15. Biological Fluid Testing
16. Abstention from Use of Mood Altering Substances

SPECIALTY CONDITIONS

17. Suspension
18. Restriction of Practice
19. Direct Supervision
20. Education
21. Competency Examination
22. Alcohol and Drug Treatment
23. Psychological Evaluation
24. Physical Examination

STANDARD TERMS AND CONDITIONS

Standard conditions are imposed on each and every probationer, regardless of cause for discipline.

- 1. OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.

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

- 2. QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

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

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

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

- 3. PROBATION MONITORING PROGRAM** Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

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

Respondent shall provide to the Board the names, physical work addresses, work mailing addresses, telephone numbers, and e-mail addresses of all employers, human resources personnel, directors, managers, supervisors, and contractors, and any person providing direct supervision, and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, human resources personnel, directors, managers, supervisors, and contractors, and any person providing direct supervision, to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation or potential violation of any probationary term and condition.

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

- 4. PROBATION MONITORING COSTS** All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased. Probation monitoring costs will not be tolled.

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

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

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

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

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.

- 5. EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

- 6. NOTICE TO EMPLOYER** Respondent shall be required to inform all current and subsequent employers, directors, managers, supervisors, and contractors during the probation period, of the discipline imposed by this decision by providing his/her current and subsequent human resources personnel, directors, managers, supervisors, and contractors with a complete copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 3 days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall also make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her human resources personnel, manager, and supervisor for each shift, at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

In addition, any employer, director, manager, supervisor or contractor, shall report to the Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of alcohol or any substance or has had any occurrence of substance abuse.

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

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

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

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

Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports.

8. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 3 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 3 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his/her physical residence address as well.

9. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ _____ and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

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

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

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

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for these costs.

10. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the obey all laws, quarterly reports, probation monitoring program, probation monitoring costs, or cost recovery requirements. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 3 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

Respondent's license shall automatically be cancelled if respondent's cumulative period tolling is greater than five years. However, the cancellation of the license does not relieve the respondent from outstanding cost recovery or probation monitoring costs.

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

12. VIOLATION OF PROBATION If Respondent commits a "Major Violation," as identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374, he/she shall receive a notice to cease the practice of respiratory care, as directed by the Board. The Board shall attempt to contact Respondent by electronic and/or telephonic means to advise him/her of the notice to cease practice and shall deliver such notice by certified and regular mail. The Board shall update its licensing database to reflect the status of the license.

If the Respondent is ordered to cease practice, he/she may file a written appeal, within ten days of the date of the notice to cease practice, to provide additional evidence disputing the finding of the violation(s) that was cause for the notice to cease practice. The Executive Officer will review the appeal and make a determination in the matter, within ten days from the date the written appeal and all supporting evidence or documentation is received. The probationer shall be notified of the outcome by certified mail.

Respondent shall not resume the practice of respiratory care until a final decision on an accusation and/or petition to revoke probation is made or until such time as the Board delivers written notification that the notice to cease practice has been dissolved. The cessation of practice shall not apply to the reduction of the probationary time period.

The Board will contact the Respondent and his/her employers, human resources personnel, directors, managers, supervisors, and contractors and notify them that Respondent has been issued a notice to cease practice.

In addition, if Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed.

If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

13. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license shall be fully restored.

STANDARD ALCOHOL/DRUG CONDITIONS

14. WORK SCHEDULES Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation for each and every place of employment. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.

15. BIOLOGICAL FLUID TESTING Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, and/or any drug screening program approved by the Board.

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

At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California must be approved by the Board, 30 days prior to the vacation or travel.

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

If Respondent tests positive for a banned substance (including testing positive for ETG), the Board will contact the Respondent and his/her employers, human resources personnel, directors, managers, supervisors, and/or contractors and notify them of the positive test, including the substance(s) and levels detected. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and/or support group facilitators to determine whether the positive test is evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall inform the Respondent and others previously contacted, that the positive test was not a violation of his/her probationary order.

16. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES For purposes of these terms and conditions, a banned substance includes alcohol, marijuana, controlled substances and any and all other mood altering drugs and substances. Respondent shall completely abstain from the possession or use of all banned substances and their associated paraphernalia. Respondent may take other medication when lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall provide the Board a copy of a prescription within five days of the date the prescription was filled.

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

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Respondent shall also ensure he/she is not ingesting or using any product that contains trace amounts of alcohol or any other banned substances (e.g. cold/flu medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products, perfumes, poppy seeds, dessert or any foods, etc...).

Any positive result that registers over the established laboratory cutoff level for a banned substance, shall be reported to each of Respondent's employers.

SPECIALTY CONDITIONS

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

17. SUSPENSION As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of _____, beginning the effective date of this decision. If not employed as a respiratory care practitioner or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

Respondents required to engage in Biological Fluid Testing, shall be suspended for a minimum of 10-60 days.

Respondents required to undergo a Psychological Evaluation, shall be suspended for a minimum of 30-90 days.

18. RESTRICTION OF PRACTICE Respondent may not be employed or function as a member of respiratory care management or supervisory staff during the entire length of probation. **This includes lead functions. Respondent is prohibited from working as part of a transport team.**

Respondent is prohibited from working in home care or for a registry. Respondent is also prohibited from providing instruction or supervision to respiratory care students or applicants whether in a clinical or classroom setting.

Respondent is prohibited from working with _____ (i.e. neonates, elderly, comatose patients, children).

19. DIRECT SUPERVISION During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license, who has not previously been disciplined by the Board. The Respondent shall not have a financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability to provide supervision and render impartial and unbiased reports to the board.

Respondent shall be required to provide a copy of the Statement of Issues or Accusation and decision in this matter and the person providing direct supervision shall inform the Board in writing that he/she is aware of the discipline. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the persons authorized to provide supervision and the level of supervision prior to the commencement of work.

Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation and identify who is providing supervision for each shift. Respondent shall ensure the Board has a copy of her/his current work schedule identifying supervisor(s) at all times for each place of employment.

In addition to completing supervisor quarterly reports, any employer, director, manager, supervisor or contractor, shall report to the Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of alcohol or any substance or has had any occurrence of substance abuse.

20. EDUCATION

[] **CONTINUING EDUCATION** Respondent shall be required to complete additional Continuing Education, approved by the Board, beyond that which is required for license renewal. A minimum of fifteen (15) additional hours is required for each year of probation. Respondent shall submit proposed courses to the Board 30 days in advance for approval consideration. Respondent shall also submit proof to the Board of successful completion of all continuing education requirements.

[] **EDUCATION/COURSE WORK** As directed by the Board, Respondent shall be required to successfully complete 3-12 semester units (or its equivalent) of education courses in California at an institution approved by the Board in addition to the continuing education required for the renewal of licensure. The course selection shall be submitted to and approved by the Board in advance. The Board, at its discretion, may require the education to be in a specific area of study. Successful completion is a grade of "C" or "70%" or better for any completed course.

Respondent shall be required to submit proof of successful completion in the form of official transcripts no later than twelve (12) months prior to the date probation is scheduled to end.

Failure to timely and successfully complete approved courses at an approved institution(s), or provide documentation thereof shall constitute a violation of probation.

Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

21. COMPETENCY EXAMINATION Within 6 months of the effective date of this decision and/or as designated by the Board, Respondent shall be required to take and pass a written competency examination as designated by the Board. This examination shall be taken on a date specified by the Board and Respondent shall pay all examination fees.

Respondent's failure to appear for or pass any scheduled examination will be noted as failure to pass or failure to successfully complete the examination. Respondent's failure to successfully complete the examination after one scheduled examination, shall constitute incompetence and a violation of probation. Failure to pay costs for the examination, shall also constitute a violation of probation.

22. ALCOHOL AND DRUG TREATMENT Respondent, at his/her expense, shall successfully complete a treatment regimen at a recognized and established program in California of at least six months duration approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board.

Respondent shall inform the program director, psychiatrist or psychologist, of his/her probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing. Positive results shall be reported immediately to the Board and shall be used in administrative discipline. Respondent shall execute a release authorizing clinical providers to divulge the aforementioned information to the Board.

23. PSYCHOLOGICAL EVALUATION Within 60 days of the effective date of this decision, and on a periodic basis thereafter as may be required or directed by the Board, Respondent, at his/her own expense, shall have a mental health examination, including psychological assessment and testing as appropriate, to determine his/her capacity to perform all professional duties with safety to self and to the public.

The examination will be performed by a licensed psychiatrist or psychologist appointed by the Board. The evaluator shall have three years experience in conducting evaluations in accordance with acceptable professional standards. The evaluator shall not have a current or past financial relationship, personal relationship, or business relationship with the licensee.

Respondent shall provide this evaluator with a copy of the Board's disciplinary order prior to the evaluation.

The examiner must submit a written report of that assessment and recommendations to the Board within 10 days, unless additional time is needed, but not to exceed 30 days. If the evaluator determines that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination. Recommendations for cessation or restriction of practice for the safety of patients, treatment, therapy or counseling made as a result of the mental health examination, will be instituted and followed by the Respondent.

Respondent shall execute a release authorizing the evaluator to divulge all findings and/or information revealed through the evaluation process, to the Board.

All costs incurred for evaluation and treatment are the responsibility of the Respondent. Failure to timely pay for the evaluation shall also constitute a violation of probation.

24. PHYSICAL EXAMINATION Within 60 days of the effective date of this decision, Respondent, at his/her expense, shall undergo an assessment of his/her physical condition by a physician appointed by the Board. Respondent shall provide the examining physician with a copy of the Board's disciplinary order prior to the examination. The examining physician must submit a written report of his/her findings to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board on forms provided by the Board.

If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board within three (3) working days. The Board shall notify Respondent in writing of the examining physician's determination of unfitness to practice and shall order the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Board.

Respondent shall execute a release authorizing the physician to divulge the aforementioned information to the Board.

Failure to timely pay for the evaluation shall also constitute a violation of probation.

VIOLATION STANDARDS

MAJOR VIOLATIONS

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

1. Any act that presents a threat to a patient, the public, or the respondent him/herself.
2. Failure to timely complete a board-ordered program or evaluation;
3. Committing two or more minor violations of probation;
4. Practicing respiratory care or making patient contact while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
6. Failure to make daily contact as directed, submit to testing on the day requested, or appear as requested by any Board representative for testing, in accordance with the "biological fluid testing" term and condition;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of a banned substance.
9. Failure to adhere to any suspension or restriction in practice.
10. Falsifying any document in connection with the terms and conditions of probation.

If a Respondent commits a major violation, the Board shall issue a notice to cease practice, pursuant to section 1399.375 of Division 13.6, Title 16, California Code of Regulations, and the Board shall refer the matter for formal disciplinary action.

MINOR VIOLATIONS

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

1. Failure to submit complete and required documentation in a timely manner to the Board, an employer, or any other party, in accordance with the terms and conditions of probation;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required;
4. Failure to submit cost recovery or monthly probation monitoring costs timely.
5. Any other violation that does not present a threat to the Respondent or public.

If a Respondent commits a minor violation, the Board shall determine the appropriate action, up to and including referral of the matter for disciplinary action.

**Disciplinary Guidelines
2011 Edition**

Published by

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REPEAL DISCIPLINARY GUIDELINES 3/02 EDITION AND ADOPT DISCIPLINARY GUIDELINES 2010 EDITION AS FOLLOWS:

~~Disciplinary Guidelines~~

~~3/02 Edition~~



Issued by
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INTRODUCTION

The Respiratory Care Board of California (Board) licenses the practice of respiratory care in the State of California. The Board is mandated to protect the public from unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. The Board has the authority to issue or deny, suspend, and revoke licenses to practice respiratory care as provided in the Respiratory Care Practice Act and respiratory care regulations (Business and Profession Code, sections 475, 490, 3718, 3733, 3750, 3750.5, 3754, 3754.5, 3755, and California Code of Regulations, sections 1399.303, 1399.370, 1399.374).

The Board's mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, and promoting the profession by increasing public awareness of respiratory care as a profession and supporting the development and education of all respiratory care practitioners.

The Board strives to ensure that only eligible, qualified, capable and competent individuals are licensed, and to expeditiously respond to all consumer complaints by efficiently and effectively investigating every complaint and pursuing disciplinary action in all appropriate cases. Finally, the Board strives to ensure that appropriate post-disciplinary monitoring occurs.

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

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

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

PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued, legal pleadings filed and final decisions will be published as a matter of public record.

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including but not limited to expert consultant opinions and services. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct had required investigation and prosecution, not upon the profession as a whole.

PROBATION MONITORING

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. The purpose is NOT for the Board to rehabilitate the probationer. Probation is a privilege afforded by the Board:

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

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

CITATIONS

The Board has the authority to issue citations and fines for violations of several sections of the Respiratory Care Practice Act and its regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. [Reference: California Code of Regulations section 1399.380(g)]. However, an applicant who stipulates to the issuance of a citation and fine in lieu of the Board filing a formal statement of issues is not subject to additional discipline for the same offense. Any prior citation may be used in future actions as aggravating evidence.

STIPULATED SETTLEMENTS

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

The following is incorporated by reference in Section 1399.374 of Division 13.6 of Title 16 of the California Code of Regulations

DISCIPLINARY GUIDELINES

3/02 Edition

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

EVIDENCE IN AGGRAVATION OF PENALTY

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

EVIDENCE IN MITIGATION OF PENALTY

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

~~DISCIPLINARY GUIDELINES SUMMARY~~

~~for use by Administrative Law Judges~~

~~These guidelines were developed for use by Administrative Law Judges. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 3753.5.~~

~~The following page includes a brief description and suggestion for the use of each specialty condition of probation:~~

- ~~Maximum Penalty: Revocation~~
- ~~Medium Penalty: Revocation stayed, 3-5 years probation~~
- ~~Minimum Penalty: Revocation stayed, 2 years probation~~

~~Standard Conditions of Probation for All Disciplinary Actions Resulting in Probation~~

- ~~Obey All Laws~~
- ~~Quarterly Reports~~
- ~~Probation Monitoring Program~~
- ~~Probation Monitoring Costs~~
- ~~Employment Requirement~~
- ~~Notice to Employer~~
- ~~Changes of Employment or Residence~~
- ~~Cost Recovery~~
- ~~Tolling for Out-of-State Residence or Practice~~
- ~~Valid License Status~~
- ~~Violation of Probation~~
- ~~Completion of Probation~~

~~Standard Conditions of Probation for All Disciplinary Actions That Involve Alcohol and/or Drugs in Any Manner~~

- ~~Standard Conditions Listed Above and~~
- ~~Work Schedules~~
- ~~Biological Fluid Testing~~
- ~~Abstention from Use of Mood Altering Substances~~

~~Specialty Conditions of Probation~~

- ~~Supervisor Quarterly Reports~~
- ~~Restriction of Practice~~
- ~~Direct Supervision~~
- ~~Additional Continuing Education~~
- ~~Education Course Work~~
- ~~Statute and Regulation Examination~~
- ~~Suspension~~
- ~~Alcohol and Drug Treatment~~
- ~~Competency Examination~~
- ~~Psychological Evaluation~~
- ~~Physical Examination~~

SPECIALTY CONDITIONS OF PROBATION DESCRIPTIONS AND RECOMMENDATIONS FOR USE

(Actual language for each term and condition is located at the end of this manual)

Supervisor Quarterly Reports

Recommended for use when evidence presents a possible alcohol or drug addiction or in cases directly related to the functions and responsibilities of a respiratory care practitioner. The Respondent's employer is required to complete a one-page form every three months, updating the Board on any irregularities.

Restriction of Practice

Recommended for use in any case that involves dishonesty or negligence, incompetence or unprofessional conduct in his or her duties as a respiratory care practitioner or any other circumstances that may directly affect the patient safety or the Board's ability to monitor the probationer. This condition is three-fold. Respondent will be restricted from working in the capacity of a supervisor or manager and may include three additional restrictions:

Direct Supervision

Recommended for use in cases where evidence of drug or alcohol addiction exists or in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists. This condition requires direct supervision, defined as a supervisor within immediate distance (same hospital floor), at all times during practice by Respondent.

Additional Continuing Education

Recommended for use in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists. This condition requires Respondent to gain additional continuing education than what is required as part of the renewal of his/her respiratory care practitioner license.

Education Course Work

Recommended for use in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists or in any case where the Respondent would benefit from additional course work (i.e. possible cocaine addiction - class on the effects of cocaine or drugs).

Statute and Regulation Examination

Recommended for use in any case where it is believed that Respondent is not aware that he or she has jeopardized his/her license or is unclear on the Board's legislative intent and authority.

Suspension

Recommended for use as an additional penalty. Respondent would be required to temporarily cease practicing as a respiratory care practitioner for a period of time as ordered.

Alcohol and Drug Treatment

Recommended for use in cases where evidence of drug or alcohol addiction exists. This condition requires Respondent to enter into a formal rehabilitation program.

Competency Examination

Recommended for use if it is suspected that Respondent may not be competent to perform as a respiratory care practitioner, weighted on the gravity of negligence or incompetence.

Psychological Evaluation

Recommended for use when circumstances indicate Respondent may have a mental instability which in turn, may affect his or her ability to practice safely. Respondent would be required to have a full evaluation performed by a licensed psychiatrist or psychologist to determine if he or she can practice safely.

Physical Examination

This specialty term and condition is rarely ordered. Recommended for use in cases where patient safety is at risk.

DISCIPLINARY GUIDELINES BY CODE

for use by Administrative Law Judges
and in order of sections of the Business and Professions Code

All decisions shall include cost recovery in accordance with Business and Professions Code section 3753.5.

SECTION 3750(a): FALSE / MISLEADING ADVERTISING

Maximum Penalty: Revocation stayed, 5 years probation

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]

Additional Continuing Education [19]

Suspension [22]

SECTION 3750(b): FRAUD IN THE PROCUREMENT OF ANY LICENSE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Quarterly Reports [12]

Statute and Regulation Examination [21]

If Warranted: Additional Continuing Education [19]

Suspension [22]

Note: "Good" practice while unauthorized or unlicensed shall NOT mitigate such practice

SECTION 3750(c): KNOWINGLY EMPLOYING UNLICENSED PERSONS

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]

Suspension [22]

SECTION 3750(d): CONVICTION OF A CRIME

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]

If Warranted: Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

Note: Nature of crime should be cross referenced if applicable, i.e., Bodily Injury Conviction - also see 3752.5

SECTION 3750(e): IMPERSONATING OR ACTING AS A PROXY FOR AN APPLICANT

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 5 years probation

Conditions of Probation

Required: Revocation stayed, 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Suspension [22]

SECTION 3750(f): NEGLIGENCE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(g): Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Statute and Regulation Examination [21]

If Warranted: Work Schedules [13]

Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Education /Course Work [20]

Suspension [22]

Alcohol and Drug Treatment [23]

Competency Examination [24]

Psychological Evaluation [25]

Physical Examination [26]

Note: Nature of crime should be cross referenced if applicable, i.e., Bodily Injury Conviction - also see 3752.5

SECTION 3750(h): AIDING OR ABETTING A VIOLATION

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Suspension [22]

SECTION 3750(i): AIDING OR ABETTING UNLAWFUL PRACTICE

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]
Direct Supervision [18]
Education /Course Work [20]
Suspension [22]

SECTION 3750(j): COMMISSION OF ANY FRAUDULENT, DISHONEST OR CORRUPT ACT

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Restriction of Practice [17]
Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]
Suspension [22]
Psychological Evaluation [25]

SECTION 3750(k): PATIENT, HOSPITAL OR OTHER RECORDS - ENTRIES

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(l): CHANGING PRESCRIPTION / FALSIFYING VERBAL OR WRITTEN ORDERS

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Suspension [22]

Alcohol and Drug Treatment [23]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(m): DISCIPLINE TAKEN BY ANOTHER AGENCY

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Note: Terms are dependent upon actual grounds or offense

SECTION 3750(n): FAILURE TO FOLLOW INFECTION CONTROL GUIDELINES

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(o): INCOMPETENCE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(p): PATTERN OF SUBSTANDARD CARE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 5 years probation

Conditions of Probation

Required: Revocation stayed, 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750.5(a): OBTAINED / POSSESSED / ADMINISTERED / FURNISHED ANY CONTROLLED SUBSTANCE OR DANGEROUS DRUG

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

- Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
- If Warranted: Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750.5(b): USED CONTROLLED SUBSTANCE, DANGEROUS DRUG OR ALCOHOLIC BEVERAGE, IN DANGEROUS MANNER

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

- Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
- If Warranted: Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750.5(c): ~~CONVICTION OF A CRIMINAL OFFENSE INVOLVING SUBDIVISIONS (a) OR (b), FALSIFICATION OF A RECORD PERTAINING TO THE SUBSTANCES DESCRIBED IN SUBDIVISION (a)~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation stayed, 2 years probation~~

Conditions of Probation

~~Required: Revocation stayed, 2 to 5 years probationary period~~

~~Standard Terms and Conditions of Probation [1-12]~~

~~Work Schedules [13]~~

~~Biological Fluid Testing [14]~~

~~Abstention from Use of Mood Altering Substances [15]~~

~~If Warranted: Supervisor Quarterly Reports [16]~~

~~Restriction of Practice [17]~~

~~Direct Supervision [18]~~

~~Additional Continuing Education [19]~~

~~Education /Course Work [20]~~

~~Statute and Regulation Examination [21]~~

~~Suspension [22]~~

~~Alcohol and Drug Treatment [23]~~

~~Competency Examination [24]~~

~~Psychological Evaluation [25]~~

~~Physical Examination [26]~~

SECTION 3750.5(d): ~~COMMITTED OR CONFINED BY COURT FOR INTEMPERATE USE OF OR RELATING TO ADDICTION TO ANY SUBSTANCES DESCRIBED IN SUBDIVISIONS (a) OR (b)~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation stayed, 5 years probation~~

Conditions of Probation

~~Required: Revocation stayed, 5 years probationary period~~

~~Standard Terms and Conditions of Probation [1-12]~~

~~Work Schedules [13]~~

~~Biological Fluid Testing [14]~~

~~Abstention from Use of Mood Altering Substances [15]~~

~~Supervisor Quarterly Reports [16]~~

~~Restriction of Practice [17]~~

~~Direct Supervision [18]~~

~~If Warranted: Additional Continuing Education [19]~~

~~Education /Course Work [20]~~

~~Statute and Regulation Examination [21]~~

~~Suspension [22]~~

~~Alcohol and Drug Treatment [23]~~

~~Competency Examination [24]~~

~~Psychological Evaluation [25]~~

~~Physical Examination [26]~~

SECTION 3750.5(e): PATIENT, HOSPITAL OR OTHER RECORDS - ENTRIES PERTAINING TO THE SUBSTANCES DESCRIBED IN SUBDIVISION (a)

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Work Schedules [13]

Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Suspension [22]

Alcohol and Drug Treatment [23]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3752.5: A CRIME INVOLVING BODILY INJURY OR ATTEMPTED BODILY INJURY

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

If Warranted: Work Schedules [13]

Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Education /Course Work [20]

Statute and Regulation Examination [21]

Suspension [22]

Alcohol and Drug Treatment [23]

Competency Examination [24]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3752.6: ~~A CRIME INVOLVING SEXUAL MISCONDUCT IS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF RESPIRATORY CARE~~

~~See 3752.7~~

SECTION 3752.7: ~~SEXUAL CONTACT W/PATIENT / SEX OFFENSES CONVICTION~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation or Denial of License~~

~~See statute.~~

SECTION 3754.5 ~~OBTAIN LICENSE BY FRAUD OR MISREPRESENTATION~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation stayed, 3 years probation~~

Conditions of Probation

~~Required: Revocation stayed, 3 to 5 years probationary period~~

~~Standard Terms and Conditions of Probation [1-12]~~

~~Statute and Regulation Examination [21]~~

~~If Warranted: Additional Continuing Education [19]~~

~~Suspension [22]~~

SECTION 3755: ~~UNPROFESSIONAL CONDUCT~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation stayed, 3 years probation~~

Conditions of Probation

~~Required: Revocation stayed, 3 to 5 years probationary period~~

~~Standard Terms and Conditions of Probation [1-12]~~

~~Supervisor Quarterly Reports [16]~~

~~Restriction of Practice [17]~~

~~Direct Supervision [18]~~

~~Additional Continuing Education [19]~~

~~Statute and Regulation Examination [21]~~

~~Competency Examination [24]~~

~~If Warranted: Suspension [22]~~

~~Psychological Evaluation [25]~~

~~Physical Examination [26]~~

SECTION 3760: UNLAWFUL PRACTICE

Authority 3750(g) Maximum Penalty: Revocation or Denial of License
Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]
Suspension [22]
If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]

SECTION 3761: MISREPRESENTATION (FOR LICENSEES)

Authority 3750(g) Maximum Penalty: Revocation or Denial of License
Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]
Suspension [22]
If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]

~~PROBATIONARY TERMS AND CONDITIONS~~

~~A probationary or conditional license is generally issued for a period between 2 and 5 years, dependant upon whether any aggravating or mitigating factors exist.~~

~~STANDARD CONDITIONS~~

~~The standard conditions are conditions which are imposed on each and every probationer regardless of cause for discipline:~~

- ~~1. **OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.~~

~~— Respondent shall notify the Board in writing within 14 days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.~~

- ~~2. **QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license:~~

~~— Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:~~

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

~~— For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.~~

~~— For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.~~

~~— For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.~~

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

- ~~3. **PROBATION MONITORING PROGRAM** Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.~~

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

- ~~— Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.~~
- ~~— Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~
- 4. **PROBATION MONITORING COSTS** All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.
- ~~— All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)~~
- ~~— If Respondent is unable to submit costs for any month, he/she shall be required, instead to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.~~
- ~~— Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.~~
- ~~— In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.~~
- ~~— The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.~~
- 5. **EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.
- ~~— Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.~~
- 6. **NOTICE TO EMPLOYER** Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

~~— If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.~~

~~— The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.~~

~~— Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.~~

~~7. **CHANGES OF EMPLOYMENT OR RESIDENCE** Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.~~

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

~~8. **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ _____ and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.~~

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

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

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

~~— The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for these costs.~~

9. ~~**TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**~~ Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.
10. ~~**VALID LICENSE STATUS**~~ Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.
11. ~~**VIOLATION OF PROBATION**~~ If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.
12. ~~**COMPLETION OF PROBATION**~~ Upon successful completion of probation, Respondent's license shall be fully restored.
-

~~STANDARD ALCOHOL/ DRUG CONDITIONS~~

~~13. **WORK SCHEDULES** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.~~

~~Failure to submit current work schedules on a continuous basis, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

~~14. **BIOLOGICAL FLUID TESTING** Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.~~

~~At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances.~~

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

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

~~15. **ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.~~

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

~~Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s).~~

~~Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

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

~~SPECIALTY CONDITIONS~~

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

~~16. **SUPERVISOR QUARTERLY REPORTS** Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:~~

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

~~— For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.~~

~~— For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.~~

~~— For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.~~

~~— Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.~~

~~17. **RESTRICTION OF PRACTICE** Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions:~~

~~— [] Respondent is prohibited from working in home care unless it is under direct supervision and personal observation.~~

~~— [] Respondent is prohibited from working for a registry.~~

~~— [] Respondent is prohibited from working with _____
(i.e. neonates, elderly, comatose patients, children)~~

~~18. **DIRECT SUPERVISION** During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he/she is functioning as a licensed respiratory care practitioner. The appropriate level of supervision must be approved by the Board prior to commencement of work.~~

~~19. **ADDITIONAL CONTINUING EDUCATION** Respondent shall be required to complete additional Continuing Education beyond that which is required for license renewal. A minimum of fifteen (15) additional hours is required for each year of probation. Respondent shall submit proof to the Board of successful completion of all continuing education requirements.~~

~~20. **EDUCATION/COURSE WORK** Respondent shall be required to successfully complete _____ semester (or its equivalent) units of education courses in California at an institution approved by the Board in addition to the continuing education required for the renewal of licensure. The course selection shall be submitted to and approved by the Board in advance. The Board, at its discretion, may require the education to be in a specific area of study. Successful completion is a grade of "C" or "70%" or better for any completed course.~~

~~_____ Respondent shall be required to submit proof of successful completion in the form of official transcripts no later than six (6) months prior to the date probation is scheduled to end.~~

~~_____ Failure to timely and successfully complete approved courses at an approved institution(s), or provide documentation thereof shall constitute a violation of probation.~~

~~_____ Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.~~

~~21. **STATUTE AND REGULATION EXAMINATION** Within six months of the effective date of this decision, Respondent shall be required to take and pass an examination on the Respiratory Care Practice Act, the Respiratory Care Practitioner Regulations, and other provisions that affect the practice of respiratory care. This examination shall be taken on a date specified by the Board.~~

~~_____ Respondent shall be responsible for paying all costs for any scheduled examination(s) prior to taking any examination [\$50 per each scheduled exam].~~

~~_____ Failure to appear for any scheduled examination, or to pass the examination after two attempts shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

~~_____ Failure to submit timely fees for one or more examinations shall constitute a violation of probation.~~

~~22. **SUSPENSION** As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of _____, beginning the effective date of this decision. If not employed as a respiratory care practitioner or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.~~

~~23. **ALCOHOL AND DRUG TREATMENT** Respondent, at his/her expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board.~~

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

~~24. **COMPETENCY EXAMINATION** Within 6 months of the effective date of this decision and/or as designated by the Board, Respondent shall be required to take and pass a written competency examination as designated by the Board. This examination shall be taken on a date specified by the Board and Respondent shall pay all examination fees.~~

~~— Respondent's failure to appear for or pass any scheduled examination will be noted as failure to pass or failure to successfully complete the examination. Respondent's failure to successfully complete the examination after one scheduled examination, shall constitute incompetence and a violation of probation for the purposes of disciplinary proceedings and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

~~— Failure to pay costs for the examination, will constitute a violation of probation.~~

~~25. **PSYCHOLOGICAL EVALUATION** Within _____ days of the effective~~

~~— date of this decision, and on a periodic basis thereafter as may be required or directed by the Board, Respondent, at his/her own expense, shall have a mental health examination, including psychological assessment and testing as appropriate, to determine his/her capacity to perform all professional duties with safety to self and to the public. The examination will be performed by a licensed psychiatrist or psychologist appointed by the Board. Respondent shall provide this evaluator with a copy of the Board's disciplinary order prior to the evaluation. The examiner must submit a written report of that assessment and recommendations to the Board. Recommendations for cessation of practice for safety of patients, treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the Respondent. All costs incurred for evaluation and treatment are the responsibility of the Respondent.~~

~~— Any examination required of a Respondent whose violation(s) involves substance abuse must be performed by a licensed psychiatrist or psychologist who has established expertise in the field of alcohol and drug assessment, treatment, and recovery.~~

~~— Respondent shall execute a release authorizing the evaluator to divulge the aforementioned information to the Board.~~

~~26. **PHYSICAL EXAMINATION** Within 45 days of the effective date of this decision, Respondent, at his/her expense, shall undergo an assessment of his/her physical condition by a physician appointed by the Board. Respondent shall provide the examining physician with a copy of the Board's disciplinary order prior to the examination. The examining physician must submit a written report of his/her findings to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board on forms provided by the Board.~~

~~— If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board within three (3) working days. The Board shall notify Respondent in writing of the examining physician's determination of unfitness to practice and shall order the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Board.~~

~~— Respondent shall execute a release authorizing the physician to divulge the aforementioned information to the Board.~~



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M E M O R A N D U M

TO: Attendees and Participants in the
**“Transitioning the Respiratory Therapist
Workforce For 2015 and Beyond”**
Conference and Subsequent Community
Input Session

FROM: Sam P. Giordano, MBA, RRT, FAARC
Chair, 2015 and Beyond Project Planning Group

RE: **Update**

DATE: August 24, 2010

On behalf of the American Association for Respiratory Care, I want to take this opportunity to thank you for attending our third and final Project 2015 conference, or our Community Input Session hosted by AACRC last July in Florida. Your input was outstanding and provided great insight into all issues surrounding change.

As you may recall, the conference which was convened on July 12th in Marco Island, Florida was the third in a series of three conferences. The first conference focused on future clinical roles and responsibilities for respiratory therapists 2015 and beyond. The second identified competencies that must be acquired in order for these future therapists to successfully execute those roles and responsibilities, and most recently, the final conference which focused on transition, strategies and plans that would serve to move the profession from where it is today in 2010 to where it needs to be in 2015 and beyond.

After the conference was adjourned we executed the community input phase of the project. We invited all interested parties to a special briefing provided by the three conference co-chairs, Charles Durbin, MD, Woody Kageler, MD, and Thomas Barnes, EdD, RRT. One hundred twenty-five employers, managers, educators, and RTs accepted the invitation.

The goal of this process, which was planned several years ago by the 2015 Planning Group, was to obtain feedback related to the overall approach of the transition. We did

provide a quick review of the proceedings from the first two conferences as part of this briefing, as well as highlighting the two manuscripts that have been published in our peer-reviewed science journal *RESPIRATORY CARE* from March 2008 and May 2010.

We noted the comments related to recommendations generated as part of Conference 3, but also received invaluable feedback from the community which consisted of employers and educators.

The next steps are as follows. The Planning Group must now consider action on the recommendations and attributes generated which are attached to this memo. Once the Planning Group takes action, I will then forward their recommendations to the AARC's Board of Directors. The AARC Board will then have its first opportunity to consider the next steps in the process.

I want to assure all of you that with the conclusion of Conference 3 we actually mark the beginning of a process, not the end. As you may recall there were varying degrees of agreement related to all recommendations. You may also recall there was expressed a strong sentiment to utilize the next year or so as a period in which to provide briefings to each stakeholder group represented in the process. This will allow us to obtain even more feedback, but also better position AARC's Board of Directors to make informed decisions with regard to the proposed recommendations.

The Planning Group is developing a manuscript based on the proceedings from Conference 3. It is our intention to submit the manuscript to *RESPIRATORY CARE* for consideration for publication, thus each of the three conferences will have generated a manuscript, which taken together can provide fundamental guidance to all of us.

If you have any questions regarding the foregoing, please feel free to contact me directly. Once again, I want to thank you for participating in the project. Please rest assured that no decisions regarding future transition plans or goals have been made by the AARC. Moreover, no decisions of this nature will be made by the AARC until additional feedback is obtained and carefully considered.

Attached you'll find the recommendations and transition attributes generated from Conference 3. The research data presented to you as part of the conference will be included in the manuscript and available to you at that time.

Thank you for your support.

Recommendations

The following are recommendations approved by the majority of the attendees at the *Transitioning the Respiratory Therapist Workforce Conference for 2015 and Beyond* conference

1. Statement of Goal-To position RTs to fulfill the roles and responsibilities identified in conference 1¹ and to assist respiratory therapists to acquire the competencies identified in conference 2².

¹Kacmarek, RM, Durbin CG, Barnes TA, Kageler WV, Walton, JR, O'Neil EH, Creating a Vision for Respiratory Care in 2015 and Beyond, *Respir Care*. 2009;54(3):375-389

²Barnes TA, Gale DD, Kacmarek RM, Kageler WV. Competencies needed by graduate respiratory therapists in 2015 and beyond. *Respir Care* 2010;55(5):601-616.

2. Accept the attributes as revised (See attached list of final attributes)

3. Accept the recommendation to the CoARC to amend section C.101.

Proposed concept: AARC request CoARC to change by 7/1/12 accreditation standard 1.01 to read as follows:

1.01 The sponsoring institution must be a post-secondary academic institution accredited by a regional or national accrediting agency that is recognized by the U.S. Department of Education (USDE) and must be authorized under applicable law or other acceptable authority to award graduates of the program a baccalaureate or graduate degree at the completion of the program. Programs accredited prior to 2013 that do not currently offer a baccalaureate or graduate degree must transition to conferring a baccalaureate or graduate degree, which should be awarded by the sponsoring institution, upon all RT students who matriculate into the program after 2020.

4. Agreement with the following statements:

- That AARC recommends to the NBRC on July 1, 2011, that CRT examination be retired after 2014.
- That the AARC recommend to the NBRC on July 1, 2011 that the multiple choice examination components (CRT+RRT written) for the RRT should be combined after 2014.
- That the AARC establish on July 1, 2011, a commission to assist state regulatory boards transition to a RRT requirement for licensure as respiratory therapist.

5. Agreement with the following recommendation:

That the AARC Executive Office request that the AARC BOD ask the appropriate existing sections to develop standards to assess competency of RTs in the workforce relative to job assignments of the RT.

1. Standards should address the variety of work sites that employ RTs
2. Standards should address RT knowledge, skills and attributes relative to the tasks being evaluated

6. Agreement with the following recommendation:

The AARC encourage clinical department educators and state affiliates continuing education venues use clinical simulation as a major tactic for increasing competency levels for the current workforce.

7. Agreement with the following recommendation:

We request the AARC, in cooperation with CoARC, consider development of consortial and cooperative models for associate degree programs that wish to align with bachelor degree granting institutions for the award of the bachelors degree.

8. Agreement with the following recommendation:

We request the AARC to provide budgetary resources to assist associate degree programs with the transition to baccalaureate level respiratory therapist education.

9. Agreement with the following recommendation:

Request that the AARC BOD explore development and promotion of career ladder educational options for the members of the existing workforce to obtain advanced competencies and the baccalaureate degree.

10. Agreement with the following recommendation:

We request the AARC request the ARCF to establish a restricted fund for donations to support the transition of associate degree programs to baccalaureate level respiratory therapist education.

Transition Plan Attributes

The transition plan must:

- Maintain an adequate number of respiratory therapists throughout the transition.
- Address unintended consequences such as respiratory therapist shortages.
- Require multiple options and flexibility in educating both students and the existing workforce. (e.g. affiliation agreements, internships, special skills workshops, continuing education, etc)
- Require competency documentation options for new graduates.
- Support a process of competency documentation for the existing workforce.
- Assure that credentialing and licensure recommendations evolve with changes in practice.
- Address implications of changes in licensing and credentialing
- Establish practical timelines for recommended actions.
- Assure that emerging conference recommendations must be supported by a plurality of the stakeholders in attendance.
- Reflect the outcomes of the previous two 2015 and Beyond conferences
- Identify the agency most appropriate to implement identified elements.

Board Meeting - Scheduling

2011 Calendar

January	February	March																																																																																																																																						
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Proposed Locations

May: San Diego (in conjunction with CSRC's Annual Convention)
 October: Sacramento