
State of California

**EMERGENCY MEDICAL SERVICES AUTHORITY
PARAMEDIC DISCIPLINARY REVIEW BOARD**

**BOARD MEMBER
ADMINISTRATIVE PROCEDURE MANUAL**



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Board Member Administrative Procedure Manual

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Chapter 1. Introduction

Overview

The Paramedic Disciplinary Review Board was created by the California Legislature to act on appeals regarding the Emergency Medical Services Authority's denials of licensure and decisions to impose licensure action on and after January 1, 2023.

The Paramedic Disciplinary Review Board is presently comprised of seven members. By law, one member of the board shall be a California licensed physician who is board certified in emergency medicine, four members shall be field paramedics licensed in California, and two members shall be public members who are not licensed by the Emergency Medical Services Authority or by any previous authority under this division. The Governor shall appoint the physician member and two of the paramedic members of the board. The Senate Rules Committee and the Speaker of the Assembly shall each appoint one paramedic member and one public member. The Governor's initial appointees shall serve two-year terms. Except for the Governor's initial appointments, appointments shall be made for four-year terms, expiring on the first day of June.

Board members fill non-salaried positions and are paid \$100 for each day spent in the discharge of official duties. Board members are reimbursed travel and other expenses incurred in the performance of official duties from the Emergency Medical Services Personnel Fund.

This procedure manual is provided to Board Members as a ready reference of important laws, regulations, and Board policies, to guide the actions of the Board Members and ensure Board effectiveness and efficiency.

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

Definitions

APA Administrative Procedure Act
https://oal.ca.gov/publications/administrative_procedure_act/

GOV Government Code
<https://leginfo.legislature.ca.gov/faces/home.xhtml>

HSC Health and Safety Code
<https://leginfo.legislature.ca.gov/faces/home.xhtml>

SAM State Administrative Manual
<https://www.dgs.ca.gov/Resources/SAM>

General Rules of Conduct

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

Board Members shall maintain the confidentiality of confidential documents and information.

Board Members shall commit time, actively participate in Board activities, and prepare for Board meetings, which includes reading Board packets, and all required legal documents.

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

Board Members shall act fairly and in a nonpartisan, impartial, and unbiased manner.

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

Board Members' actions shall uphold the Board's primary mission – protection of the public.

Board Members shall not use their positions on the Board for political, personal, familial, or financial gain.

Chapter 2. Board Meeting Procedures

Frequency of Meetings (HSC 1797.125.03)

The board shall meet quarterly and shall convene at dates, times and locations that coordinate with the quarterly meetings of the Commission on Emergency Medical Services required pursuant to Section 1799.8.

Special meetings of the Board may be held at such times as the Board seems necessary.

Additional meetings may be held upon call of the chair or at the written request of any two members of the Board.

Four members shall constitute a quorum for the transactions of business at any Board meeting.

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

Board Member Attendance at Board Meetings (HSC 1797.125.01)

Meetings are subject to all provisions of the Bagley-Keene Open Meetings Act. This act governs meetings of state regulatory boards and meetings of committees of those boards where the committee consists of more than two members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included on the agenda.

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

Quorum

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

Agenda Items
(Board policy)

Any Board member shall submit items for a meeting agenda to the Executive Director not fewer than 30 days prior to the meeting with the approval of the Board Chairperson.

Notice of Meetings
(Government Code Section 11120 et seq.)

In accordance with the Open Meetings Act, meeting notices (including agendas) shall be sent to persons on the Board's mailing list at least 10 calendar days in advance. The notice shall include the name, work address, and work telephone number of a staff person who can provide further information prior to the meeting.

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

Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting and shall include the name, address, and 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.

Record of Meetings
(Board Policy)

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

Tape Recording
(Board Policy)

The meeting may be tape-recorded if determined necessary for staff purposes. Tape recordings will be disposed of upon approval of the minutes in accordance with record retention schedules.

Meeting Rules
(Board Policy)

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

Public Comment
(Board Policy)

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

- If, during a Board meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information, and the person shall be instructed to refrain from making such comments.
- If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedures or protocol or staff misconduct, involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the Board will address the matter as follows:
 - o Where the allegation involves errors of procedure or protocol, the Board may designate either its Executive Director or a Board employee to review whether the proper procedure or protocol was followed and to report back to the Board.
 - o Where the allegation involves significant staff misconduct, the Board may designate one of its members to review the allegation and to report back to the Board.
- The Board may deny a person the right to address the Board and have the person removed if such person becomes disruptive at the Board meeting.

- Persons wishing to address the Board shall be requested to complete a speaker request slip when in person or raise their hand in teleconference meeting in order to have an appropriate record of the speaker for the minutes. At the discretion of the Board Chairperson, speakers may be limited in the amount of time to present to give adequate time to everyone who wants to speak. In the event the number of people wishing to address the Board exceeds the allotted time, the Board Chairperson may limit each speaker to a statement of their name, organization, and whether they support or do not support the proposed action.

Written Comment
(Board Policy)

Prior to a Board meeting, an individual or group may submit materials related to a meeting agenda item to the Executive Director and request that the material may be provided to the Board members. Upon receipt of such a request, the Executive Director will verify that the materials are related to an open session agenda item (no materials will be distributed regarding complaints, investigations, contested cases, litigation, or other matters that may be properly discussed in closed session) and then forward the materials to the Board. When forwarding the applicable materials to the Board members, the Executive Director may include information regarding existing law, regulation, or past Board action relevant to the issue presented. The written communication must be provided at least four business days prior to the meeting in order to ensure delivery to the Board members.

Chapter 3. Travel & Salary Policies and Procedures

Travel Approval

The Board Chairperson's approval is required for all Board member travel, except for travel to regularly scheduled meetings to which the Board member is assigned.

Travel Arrangements (Board Policy)

Board members should make their own travel arrangements but are encouraged to coordinate with the Paramedic Disciplinary Review Board analyst on lodging accommodations.

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

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

Travel Claims (SAM Section 700 et seq.)

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim form. The Paramedic Disciplinary Review Board analyst maintains these forms and completes them as needed. Board members should submit their travel expense forms immediately after returning from a trip and no later than two weeks following the trip.

Salary Per Diem (HSC 1797.125.01)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by Health and Safety Code section 1797.125.01(c).

Salary Per Diem
(Board Policy)

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

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

- No salary per diem or reimbursement for travel-related expenses shall be paid to Board members, except for attendance at an official Board Meeting, unless substantial official service is performed by the Board member. Attendance at gatherings, events, hearings, conferences, or meetings other than official Board meetings, in which a substantial official service is performed, shall be approved in advance by the Board Chairperson. The Executive Director shall be notified of the event and approval shall be obtained from the Board Chairperson prior to the Board member’s attendance.
- The term “day actually spent in the discharge of official duties” shall mean such time as is expended from the commencement of a Board meeting to the conclusion of that meeting.

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

Chapter 4. Board Appointments, and Election & Duties of Chairperson

Appointment of Board Members (HSC 1797.125.01)

The Governor shall appoint the physician member and two of the paramedic members of the board. The Senate Rules Committee and the Speaker of the Assembly shall each appoint one paramedic member and one public member.

The Governor's initial appointees shall serve two-year terms. Except for the Governor's initial appointments, appointments shall be made for four-year terms expiring on the first day of June. A member shall not serve more than two consecutive terms.

Election of Board Chairperson (HSC 1797.125.03)

The Board shall select a chairperson from its members.

Duties of Board Chairperson (Board Policy)

The following are the duties of the Board Chairperson:

- Representative for the Paramedic Disciplinary Review Board
- Communicates with other Board members for Board business
- Approves Board meeting agendas
- Chairs and facilitates Board meetings
- Signs specified Decision and Orders
- Signs the minutes for each of the Board's meetings

Board Member Vacancies (HSC 1797.125.01)

Vacancies shall be filled by appointment to the unexpired term.

Chapter 5. Board Administration and Staff

Board Administration

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

Board Staff

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

Chapter 6. Other Policies & Procedures

Board Member Disciplinary Actions (Board Policy)

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

The Board chairperson shall sit as the chair of the hearing unless the censure involved the Board chairperson's own actions, in which case a Board designee shall sit as the Board chairperson.

Removal of Board Members (HSC 1797.125.01)

The appointing authority may remove from office at any time a member of the board for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. This section is not a limitation or restriction on the power of the appointing authority conferred on the appointing authority by any other law to remove a member of the board.

Resignation of Board Members (Government Code section 1750)

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter also shall be sent to the Director of the Department, the Board Chairperson, and the Executive Director.

Conflict of Interest (Government Code Section 87100)

No Board member may make, participate in making, or in any way attempt to use their official position to influence a governmental decision in which he or she knows or has a reason to know they have a financial interest. Any Board member who has a financial interest shall disqualify themselves from making or attempting to use their official position to influence the decision.

Any Board member who feels they are entering into a situation where there is a potential for a financial or personal conflict of interest should immediately consult the Executive Director or the Board's legal counsel.

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

**Gifts from
Candidates**
(Board Policy)

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

**Request for Records
Access**
(Board Policy)

No Board member may access the file of a licensee or candidate without the Executive Director's knowledge and approval of the conditions of access.

**Meetings with the
Public and
Interested Parties**
(Board Policy)

Interested parties may request to meet with a Board member on a matter or matters under the Board's jurisdiction. Members must remember that the power of the Board is vested in the board itself and not with any individual Board member. For that reason, Board members are cautioned to not express their personal opinions as a Board policy or position or represent that the Board has taken a position on a particular issue when it has not. It is strongly suggested that Board members disclose their attendance at any meeting of this type at the next scheduled Board meeting as identified in the next section, "Communication with Interested Parties."

**Communication
with Interested
Parties**
(Board Policy)

Board members are required to disclose at Board meetings all discussions and communications with interested parties regarding any item pending or likely to be pending before the Board. The Board minutes shall reflect the items disclosed by the Board members. All agendas will include, as a regular item, a disclosure agenda item where each member relays any relevant conversations with interested parties.

Media Inquiries
(Board Policy)

If a Board member receives a media call, the member should promptly refer the caller to the Board's Public Information Officer who is employed to interface with all types of media on any type of inquiry. The Public Information Officer can be reached by emailing emsa.externalaffairs@emsa.ca.gov. Members are recommended to make this referral as the power of the Board is vested in the Board itself and not with any individual Board member. Expressing a personal opinion can be seen as a Board policy or position and may be represented as the Board has taken a position on a particular issue when it has not.

A Board member who receives a call should politely thank the caller for the call, but state that it is the Board's policy to refer all callers to the Public Information Officer. The Board member should then send an email to the Executive Director indicating they received a media call and relay any information supplied by the caller.

Service of Lawsuits

The Board members may receive service of a lawsuit against themselves and the Board pertaining to a certain issue (e.g. a disciplinary matter, a complaint, a legislative matter, etc.). To prevent a confrontation, the Board member should notify the Executive Director of the service and indicate the name of the matter that was served and any other pertinent information. The Board member should then mail the entire package that was served to the Executive Director as soon as possible. The Board's legal counsel will provide instructions to the Board members on what is required of them once service has been made. The Board members may be required to submit a request for representation to the Board to provide to the Attorney General's Office.

**Ex Parte
Communications**
(Government Code
Section 11430.10 et
seq.)

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

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

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

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

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

If a Board member believes that they have received an unlawful *ex parte* communication, they should contact the Board’s assigned attorney or Executive Director.

**Board Member
Training
Requirements**

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

Board members shall review and acknowledge the EMSA Sexual Harassment Prevention Policy.

Appendix 1: Board Member Responsibilities

Board members represent the State of California and although they are an individual member, members have an obligation to represent the Board as a body. Each member should carefully consider each responsibility and time commitment prior to agreeing to become a Board member.

Attending Meetings (Minimum of 4 meetings per year)

- Attend all meetings; be prepared for all meetings by reviewing and analyzing all Board materials; actively participate in meeting discussions.

Make Decisions on Appeals of Licensure Actions (included in above)

- Pursuant to HSC 1797.125.05, the board acts on appeals of EMS Authority's decisions imposing licensure actions or denial of licenses. On appeals heard by Administrative Law Judges who issued proposed decision on contested matters, the board must act within 100 days of receipt of the proposed decision. If the board fails to act within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the board (GOV section 11517).
- Board members prepare to make decisions by reviewing and analyzing all materials pertaining to licensing/disciplinary matters and provide a fair, unbiased decision; timely respond to every request for a decision on any disciplinary matter; review and understand the Board's disciplinary guidelines; review and amend the Board's disciplinary guidelines on a regular basis to align with the policies set by the Board.

Make Policy Decisions (included in above)

- Make educated policy decisions based upon both qualitative and quantitative data; obtain sufficient background information on issues upon which decisions are being made; seek information from Board staff regarding the functions/duties/requirements for the licensees being overseen; allow public participation and comment regarding matters prior to making decisions; ensure public protection is the highest priority in all decision making (see HSC 1797.125.07).

Appendix 2: Code of Conduct – Board Meetings and/or Hearings

To ensure the integrity of Board Meetings and/or hearings, it is essential that the conduct and participation of board members be above reproach. Please adhere to the following guidelines:

Conflict of Interest

Members should avoid even the appearance of a conflict of interest. Before participating in an oral argument, or deliberating and voting on a proposed decision or stipulation, a board member should ask:

- Do I know the licensee personally or professionally?
- Do I know either attorney personally or professionally?
- Do I have any prior knowledge of the case (other than reading the case materials sent to me by the Authority)?
- Do I have any preformed opinion(s) regarding the investigative techniques utilized or the practices/procedures in question?
- Will the outcome of the hearing influence my position in the public?
- Has my employer had any involvement in this case or with this licensee?

If the answer to any of the above questions is yes, then you should ask yourself: Can I set the condition aside, objectively hear the matter, and render a fair and impartial decision? If you have doubt, then you should recuse (disqualify) yourself from participating in the decision. In evaluating the situation, you should also consider whether the conflict is such that it renders a significant appearance of possible bias even if you personally feel that you can be fair and impartial.

If a potential conflict (or appearance thereof) does exist and you are uncertain whether to recuse yourself, please contact the Paramedic Disciplinary Review Board attorney well in advance of the meeting, hearing, or of voting on the matter.

Appropriate Conduct When Deliberating or Voting on a Proposed Decision or Stipulation

- Do not discuss or comment on the case in public or with friends, peers, the press, the public, etc.
- Do not make a private investigation of the case or seek out your own experts.

Appropriate Conduct During Oral Argument

Oral arguments are formal legal proceedings and appropriate court decorum is essential to ensure fair and impartial proceedings. Board members must conduct themselves in such a way that there is no appearance of bias or prejudice. Please adhere to the following guidelines:

- Do not engage in conversation with either attorney, the investigators, witnesses, or the respondent.
- Avoid flippant comments of any kind.
- Wait until all evidence has been received before forming opinions or reaching conclusions regarding the case.
- Ask questions in a neutral manner to elicit information and not to convey an opinion.
- Ask relevant and material questions, not questions designed to satisfy your curiosity.

After the Hearing

When rendering a decision, board members should always bear in mind that their primary responsibility is protection of the public. Rehabilitation of a licensee is also desired but must yield to public protection where rehabilitation and protection of the public are inconsistent. Please adhere to the following guidelines:

- Closed session deliberations and decision-making processes are to be kept strictly confidential since you function as both judge and jury.
- Comments regarding the case made to the public and peers are not appropriate and could jeopardize the entire proceeding because, although you have reached a decision, that decision is not final and can be challenged in court.

Do not disclose the decision. All inquiries about the case should be referred to the Paramedic Disciplinary Review Board attorney. The decision is not public until after it has been served on the license.

Please remember that you may be held personally liable for any comments you make about a hearing or participants in that hearing that are made outside of your official capacity as a board member.

Appendix 3 – Tips for Case Review

Background

Administrative actions against paramedic licenseholder's and applicants for paramedic licensure are prosecuted by counsel for the Emergency Medical Services Authority (EMSA). Disciplinary actions which do not resolve by default action or a Stipulated Settlement Agreement between the parties will be heard by an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH).

Following the evidentiary hearing, the ALJ will draft a proposed decision (ALJ Proposed Decision) in the case laying out the factual findings, legal conclusions, and proposed disposition of the matter. The ALJ Proposed Decision will be received from OAH by EMSA's legal counsel and forwarded to the Paramedic Disciplinary Review Board (the Board) for review and action. During the post-hearing review process, the Board is assisted and advised by its own staff and counsel, separate from the EMSA staff and counsel who participated in the prosecution of the case.

Process Overview

The Board has 100 days from the date EMSA received the proposed decision to act. If the Board fails to act within this timeframe, the ALJ proposed decision is deemed adopted by the board.

The Board has the following decision-making options:

1. Adopt the Proposed Decision

- Adopt the proposed decision in its entirety; or
- Reduce the proposed penalty or otherwise mitigate it and adopt the balance of the proposed decision; or
- Make technical or other minor changes in the proposed decision and adopt it in its modified form (limited to clarifying or similar change not affecting factual or legal basis of proposed decision).

2. Non-Adopt the Proposed Decision

- Reject the proposed decision and
 - o Refer the case back to the ALJ to take additional evidence and prepare a revised proposed decision; or
 - o Decide the case itself on the record, including the transcript of the ALJ hearing, with or without taking additional evidence, but the Board must afford the parties an opportunity to provide written or oral argument before the Board.

As noted above, if the Board fails to take one of the actions listed above within 100 days of receipt of the proposed decision, the ALJ Proposed Decision will be deemed adopted by the agency.

Process after Adoption:

If the ALJ Proposed Decision is adopted by the Board, a Decision and Order is prepared and signed by the Board Chairperson or their designee and constitutes the Board's final action in the matter.

Process after Non-Adoption:

If the Board does not adopt the ALJ Proposed Decision, it must:

- Notify the parties that the proposed decision is not adopted and either
 - o Decide the case on the record; or
 - o Refer the case to the ALJ to take additional evidence.

If the Board determines that it will decide the case itself, it may do so on the record, including the hearing transcript, or an agreed statement of the parties, with or without taking additional evidence. The parties must be given an opportunity to present written or oral arguments before the agency. If the Board selects oral argument, argument will be held in open session at a future Board meeting.

If the Board elects to non-adopt the decision, it must issue its final decision no later than 100 days after the rejection of the proposed decision. If the ALJ Proposed Decision is non-adopted and a transcript is ordered, the Board must issue its final decision no later than 100 days after receipt of the transcript. In a special circumstance, the Board may issue an order further delaying the decision for no more than 30 days, specifying the reasons for the delay.

Regardless of whether the Board's final decision results through the adoption or non-adoption processes described above, there are processes available for the licensee to request post-decision reconsideration or judicial review.

Case Review

When Board members review the ALJ Proposed Decision and/or question the factual or legal findings of the ALJ and non-adopt the proposed decision, the following suggestions are intended to assist you in reviewing the case record in an efficient and more effective manner:

Read the Administration Record (in the following order):

1. The Accusation

- A. Make written notes of the code sections charged and brief description of what they cover. (e.g., Health and Safety Code 1798.200(c), California Code of Regulations 100174.)
- B. Read the facts that are alleged to prove the code violations.

In the case of an Accusation, the burden to prove the violations by "clear and convincing evidence to a reasonable certainty" is on the agency.

Clear and convincing evidence to a reasonable certainty is the standard of proof in professional license cases and caselaw defines it as "requiring a finding of high probability" (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 911,916; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal. App3d 853, 856; *In re Angelia P* (1981 28 Cal.3d 908, 919); see also California Administrative Procedure Act, section 7.56).

2. The Proposed Decision

If "gross negligence," "repeated negligent acts," or "incompetent" conduct is alleged, expert testimony is typically necessary to prove the violations. Whether conduct is "substantially related" could also require expert testimony.

A. Factual Findings

- Did the ALJ find the facts were proven by clear and convincing evidence? If not, why not?
- Was sufficient evidence introduced to prove the facts?
- Did the witnesses' testimony prove the facts?
- Did the ALJ find some witnesses more credible than others? If so, why?
- To which expert's testimony did the ALJ give the most weight?
- Was any evidence of mitigation introduced by the respondent?

B. Legal Conclusions (determination of issues)

- Do the facts proven constitute a violation of the code section?

C. Order

- Does the Order contain the appropriate penalty given the violations found?
- Is the Order consistent with the Disciplinary Guidelines and, if not, is there a basis in the record for deviating from the guidelines?

3. The Transcript

When the Board has not adopted the ALJ proposed decision, and will decide the case on the record, the Board orders the ALJ hearing transcripts.

Pay close attention to the ALJ's factual findings as you will need to evaluate them when you read the transcript.

Make frequent notes to determine whether the evidence introduced proves the facts and the violations alleged, considering:

A. Sufficiency of the Evidence

- Has "clear and convincing evidence to a reasonable certainty" been introduced to prove each factual allegation? You must be able to identify clear and convincing evidence in the record to support a finding.

B. Lay Witnesses

- Does the witness testimony prove the facts (keep in mind the ALJ's credibility findings)?
- If not, what evidence supports your conclusion as to who is more credible?

C. Expert Witnesses

- Which expert's testimony was given the most weight by the ALJ? Why or why not?
- If you do not agree, what evidence in the record supports your conclusion?

Case Review for Hearings Before the Board

1. Review Written Arguments

- A. The argument by the agency's attorney will contend the facts are clearly proven and constitute a violation of the law.
- B. The respondent's argument will likely focus on the weaknesses of the agency's case and the strength of the respondent's case. It will force you to answer the hard questions as to whether (a) the facts were proven, (b) the law was violated, and (c) the penalty is appropriate.

2. Again Review the Proposed Decision

You should now have a complete picture of the case. Make notes on the proposed decision where you agree and disagree with the ALJ as to the factual findings, the legal conclusion, and the proposed penalty. If you disagree, note the specific evidence in the record that supports your conclusion. You should also note the volume and page number of the transcript. You must cite "clear and convincing evidence to a reasonable certainty" to make a finding.

3. Oral Arguments

The oral arguments made by the respondent's attorney and the attorney for the agency typically highlight points made in the written argument. Board members may ask questions to clarify matters that may be confusing. **You may not ask questions that seek information that is not part of the existing record.**

4. Summary and Conclusion

During your review, keep in mind code sections alleged to have been violated and the facts alleged have occurred. If you keep this as your focus, your evaluation of all the elements of the case should make your decision much easier. This will also help your decision withstand judicial review as the licensee has the right to appeal the Board decision by requesting the Board reconsider its decision or by filing a Petition for Writ of Mandamus to a Superior Court of appropriate jurisdiction (California Code of Civil Procedure), section 1094.5; see also California Administrative Procedure Act, section 9.31).

The information contained herein can be found in the California Administrative Procedure Act (see California Government Code, sections 11370 et. al.; or https://oal.ca.gov/publications/administrative_procedure_act/).