



Paramedic Disciplinary Review Board Quarterly Meeting

Meeting Materials

March 7, 2024

1. PDRB Meeting Minutes December 7, 2023
2. AB 2188
3. GOV 12954
4. HSC 11362.45
5. SB 700
6. Gov 12952
7. HSC 1798.200(c)(8) PowerPoint
8. EMSA Recommended Guidelines for Disciplinary Orders and Conditions of Probation, July 26, 2008
9. Medical Board of California Manual of Model Disciplinary Orders and Disciplinary Guidelines, 2016
10. State of California Board of Registered Nursing Recommended Guidelines for Disciplinary Orders and Conditions of Probation, October 2002
11. Bagley-Keene Open Meeting Act Guide, 2023
12. SB 544 Bagley-Keene Open Meeting Act – Teleconferencing

13. Bagley-Keene PowerPoint
14. PDRB Travel Expense PowerPoint
15. EMSA Pocket Travel Guide Jan 2024
16. STD 255C – Excess Lodging Rate Request/Approval
17. STD 262 – Travel Expense Claim
18. OFAM 100 – Short-Term Vehicle Justification (Rev. 10-2021)



Paramedic Disciplinary Review Board

December 7, 2023
1:00pm – 4:00pm

Physical Meeting Location:
11120 International Drive, Suite 200
Rancho Cordova, CA 95670

MEETING MINUTES

BOARD MEMBERS PRESENT:

Jesse Conner
James De La Torre
Jane Kang
David Konieczny
Kelli Moore
Richard Ramirez
Anne Viricel

EMS AUTHORITY STAFF PRESENT:

Gurdeep Nagi, Project Manager and Advisor
Katherine Rice, Paramedic Disciplinary Review Board Analyst
Diane Sabonis, Paramedic Disciplinary Review Board Attorney
Ashley Williams, Deputy Director of Legislative and External Affairs

1. CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF A QUORUM

David Konieczny called the meeting to order at 1:03pm on December 7, 2023. David Konieczny served as the meeting facilitator and conducted roll call. Quorum was established to conduct business.

2. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

No public comment.

3. REVIEW AND APPROVAL OF SEPTEMBER 14, 2023, MEETING MINUTES

Richard Ramirez moved to approve the September 14, 2023 Paramedic Disciplinary Review Board Meeting Minutes as presented. Kelli Moore seconded the motion. Motion carried unanimously.

Public Comment

No public comment.

4. CLOSED SESSION

The Board convened in closed session as authorized by Government Code section 11126(c)(3) to deliberate on proposed disciplinary decisions. The board reviewed and discussed one administrative law judge proposed decision.

5. DISCUSSION OF, AND POSSIBLE ACTION ON, HEALTH AND SAFETY CODE SECTION 1798.200(c) VIOLATIONS TABLED FROM SEPTEMBER 14, 2023, MEETING

A. Section 1798.200(c): Review

Diane Sabonis, Paramedic Disciplinary Review Board attorney, reviewed the recommendations board members made at the September 7, 2023 Paramedic Disciplinary Review Board Meeting pursuant to Health and Safety Code section 1797.125.07 regarding violations as set forth in the Recommended Guidelines for Disciplinary Orders and Conditions of Probation, dated July 26, 2008 (Health and Safety code section 1798.200(c)) via PowerPoint Slides in Attachment 1, slides 2 - 5.

At the September 14, 2023 meeting, the PDRB made recommendations that are set forth in detail in the approved minutes of that meeting and are summarized below.

The PDRB made recommended changes to Optional Conditions of the progressive disciplinary schemes for 1798.200(c)(11), (c)(12)(A), and (c)(12)(B).

Specifically, the board recommended adding optional conditions 1, 2, & 4 to 1798.200(c)(11). To 1798.200(c)(12)(A), the board recommended adding optional conditions 5, 6, 8, 9, and 11. The board recommended adding optional condition 5 to 1798.200(c)(12)(B).

The PDRB recommended changes to the progressive disciplinary schemes for 1798.200(c)(1), (c)(3), and (c)(5).

Specifically, the board recommended changing the minimum discipline for 1798.200(c)(11) to include a 3-year probation and to delete the 60-day suspension. To 1798.200(c)(3), the board recommended changing the disciplinary scheme to equal that of gross negligence. For 1798.200(c)(5), the board recommended changing the recommended discipline to equal the maximum discipline.

At the September 14, 2023 meeting, the PDRB tabled discussion of recommendations to the progressive disciplinary schemes to the December 7, 2023 meeting for 1798.200(c)(4), (c)(8), (c)(9), and (c)(10)

Public Comment

No public comment.

B. Section 1798.200(c)(4): Incompetence.

Board attorney Diane Sabonis reviewed the current progressive disciplinary scheme listed in the Recommended Guidelines for Disciplinary Orders and Conditions of Probation, dated July 26, 2008, via PowerPoint slides in Attachment 1, slides 31 and 32. She reviewed board recommendations from the September 14, 2023 meeting at which time the board unanimously approved a motion to change the discipline for repeated negligent acts to equal that of gross negligence.

Ms. Sabonis provided comparisons to the progressive disciplinary schemes used by the California Medical Board and the Board of Registered Nursing noting the Medical Board combines gross negligence, repeated negligent acts, and incompetence together and assigns the same disciplinary scheme under Business and Professions (B&P) Code section 2234. The Board of Registered Nursing takes a similar approach combining incompetence and gross negligence and assigns the same disciplinary scheme under B&P code section 2761.

Board Discussion

Jesse Conner questioned who makes the determination of incompetence in the other fields. Diane Sabonis discussed that the definition of incompetence is based in case law, which would be the same standard for a doctor or nurse. David Konieczny discussed that this violation was tabled at the last meeting due to discussions among board members and considering comments from the public that the suspension of the paramedic for this violation seemed punitive and not rehabilitative and that the board should consider a suspension or revocation with a possible stay of revocation as the minimum discipline.

Jesse Conner discussed mandating training to bring the paramedic up to competency. David Konieczny discussed the suspension was not meant to be punitive but to be a stop gap to ensure the paramedic had time to receive the required reeducation or training.

Public Comment

There was public comment that discussed that a suspension was temporary, that stipulations can be placed on a suspension, and the purpose of the suspension is not necessarily punitive but is designed to protect the public.

Board Action

David Konieczny moved to remove the 30-day suspension from the recommended discipline and keep a stayed revocation and 3-year probation with terms and conditions and keep the maximum and minimum discipline the same. Anne Viricel

seconded. Motion carried unanimously.

C. Section 1798.200(c)(8): Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.

Ms. Sabonis discussed the current progressive disciplinary scheme listed in the Recommended Guidelines for Disciplinary Orders and Conditions of Probation, dated July 26, 2008, via PowerPoint slides in Attachment 1, slides 33 and 34.

Ms. Sabonis provided comparisons to the progressive disciplinary schemes used by the California Medical Board and the Board of Registered Nursing. The Medical Board defines the violation as a conviction of drug violation, violation of drug statutes, excessive use of controlled substances, practice under the influence of narcotic(s) under B & P code sections 2237, 2238, 2239, 2280, 2238, and 2241. The Board of Registered Nursing defines the violation under B&P Code section 2762 as the conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of, or falsification of a record pertaining to narcotics or dangerous drugs. Discipline is based on whether the violation occurred while on the job or while not on the job.

Board Discussion

Jesse Conner questioned the impacts of this violation as California legalized marijuana, but that it is still not considered legal federally, and how Assembly Bill 2188 will affect California employers' drug testing policies.

Public Comment

No public comment.

Board Action

Jesse Conner motioned to table until the next meeting to obtain more information on AB 2188. Dr. James De La Torre seconded the motion. Motion carried unanimously.

D. Section 1798.200(c)(9): Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

Ms. Sabonis discussed the current progressive disciplinary scheme listed in the Recommended Guidelines for Disciplinary Orders and Conditions of Probation, dated July 26, 2008, via PowerPoint slides in Attachment 1, slides 35 – 38.

Ms. Sabonis provided comparisons to the progressive disciplinary schemes used by the California Medical Board for violations of B&P code sections 2236, 2237, 2238, 2239, and 2280 and the disciplinary scheme used by the Board of Registered Nursing for violations of B&P code sections 2761(f) and 2762(a).

Board Discussion

David Konieczny questioned how often these regulations can be updated. Diane Sabonis explained that changes would have to go through the California rulemaking process. Jesse Conner suggested cleaning up the language for this section.

Public Comment

No public comment.

Board Action

Jesse Conner motioned to leave the language of this violation unchanged pending any substantive reason to recommend a change. Kelli Moore seconded. Motion carried unanimously.

E. Section 1798.200(c)(10): Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

Ms. Sabonis discussed the current progressive disciplinary scheme listed in the Recommended Guidelines for Disciplinary Orders and Conditions of Probation, dated July 26, 2008, via PowerPoint slides in Attachment 1, slides 39 and 40.

Ms. Sabonis noted there were no direct comparisons to violations defined by the California Medical Board or Board of Registered Nursing only noting that the California Medical Board cites violations of excessive prescribing, excessive treatment, prescribing to addicts, and illegal cancer treatments, for which discipline ranges from revocation, revocation stayed with 60-day suspensions, and 5-year probation terms.

Board Discussion

Anne Viricel asked for clarification on the meaning of this violation. Jesse Conner asked if the Good Samaritan Laws were affected by this provision. David Konieczny discussed the public comment from the September meeting regarding the 15-day suspension period seeming arbitrary. Jesse Conner asked how many cases EMSA receives annually regarding this violation. Diane Sabonis discussed some examples of this violation.

Public Comment

No public comment.

Board Action

Jesse Conner motioned to leave this regulation unchanged. Anne Viricel seconded. Motion carried out unanimously.

6. DISCUSSION OF, AND POSSIBLE ACTION ON, HEALTH AND SAFETY CODE SECTION 1798.200(c) ADMINISTRATIVE FINES

Pursuant to Health and Safety Code section 1797.125.07 regarding violations as set forth in the Recommended Guidelines for Disciplinary Orders and Conditions of Probation, dated July 26, 2008 (Health and Safety code section 1798.200(c)), Diane Sabonis discussed the current administrative fine structure, Health and Safety Code section 1798.210 subsections (a) and (b), and the factors to be considered in assessing fines via PowerPoint slides in Attachment 2.

Historically, there were 57 cases involving fines from 2019 to 2023. To date, there were seven cases appealed to an Administrative Law Judge.

Board Discussion:

The board decided to discuss the fine structure as a whole rather than by each line item.

David Konieczny asked if fines were purely punitive. Does fine revenue go toward EMSA's work to oversee this program?

Jesse Connor asked how was the original fee structure determined? He added that violations have suspensions and that may be why the state does not issue a whole lot of fines and opined the regulations say they cannot fine if they have another monetary penalty. Do we have any history on that? Does EMSA forecast fines in the budget?

Ms. Sabonis answered she had no information on how the fine structure was set when the Disciplinary Guidelines were put together in July 2008. She explained that fines are for violations that do not result in patient harm and this form of discipline is not as significant as the progressive discipline we just discussed.

Board Action

James De La Torre motioned to keep the fine structure as is. Jesse Conner seconded. Jesse Conner then posed additional questions asking if the state had someone that specialized in equity/diversity that could review the fine structure to determine impacts of fines on paramedics with different socioeconomic backgrounds. Ms. Sabonis was unaware of any program that would collect/analyze such data and doing so would require tabling this agenda item. Jesse Conner motioned to make an amended motion to have such a review performed. This amendment to the motion failed. The original motion to keep the fine structure the same carried unanimously.

7. TOPICS FOR MARCH 7, 2024, MEETING AGENDA

Discussion

There were no comments from the board members regarding the March 7, 2024 Meeting Agenda. Jesse Conner asked if the board members can send an email to EMSA staff requesting a topic to be placed on the agenda if anything comes up before the March 7, 2024 meeting. Ms. Sabonis replied that Mr. Conner could send agenda ideas via email to PDRB staff and added that the agenda is set by the board chair and PDRB staff.

Public Comment

No public comment.

8. ADJOURNMENT

David Konieczny adjourned the meeting at 4:12pm on December 7, 2023.

Attachment 1

**HSC 1798.200(c) Violations
September 14, 2023
Meeting Review**



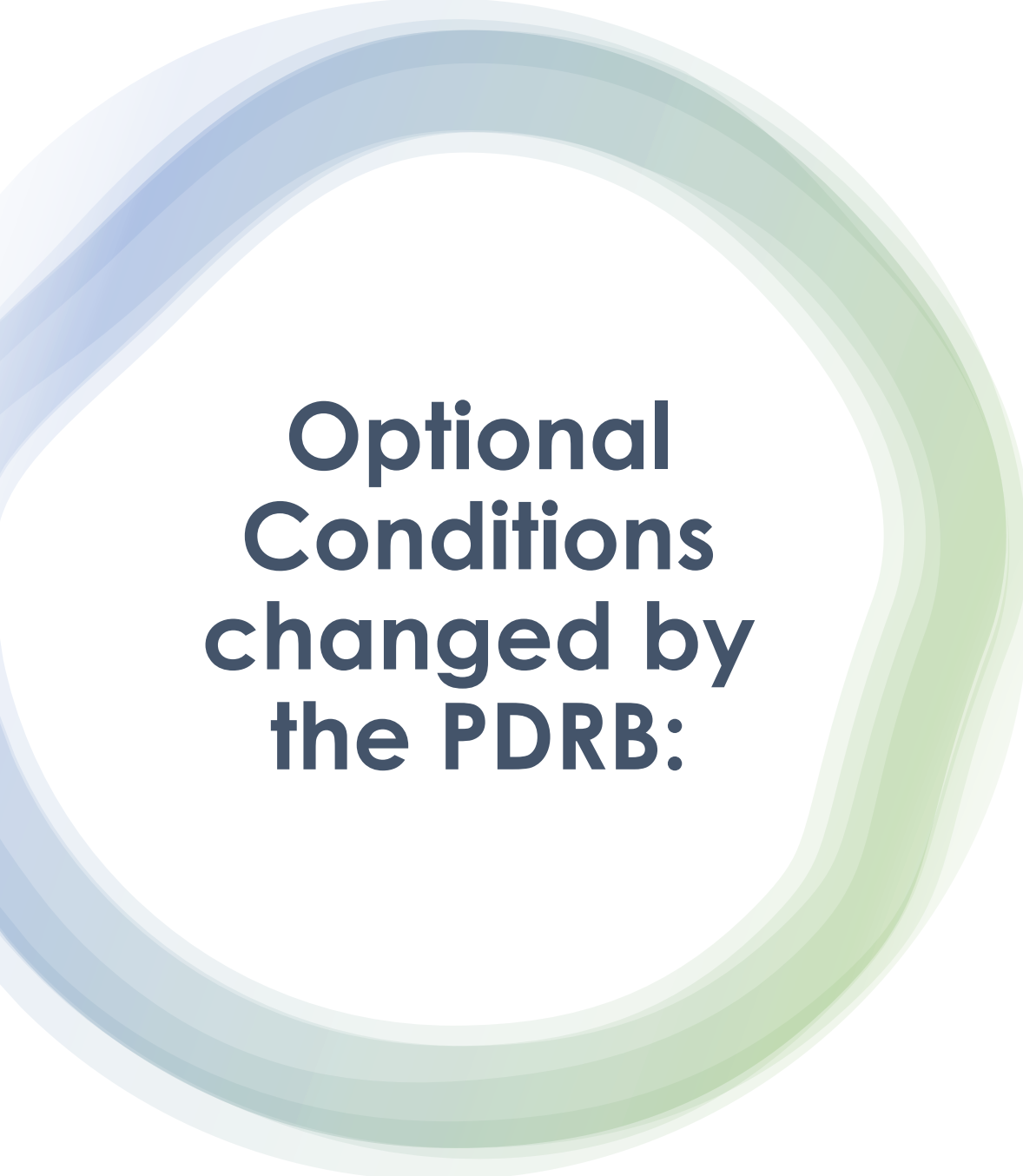
No changes by the PDRB:

1798.200(c)(2): Gross negligence.

1798.200(c)(6): Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or certified copy of the record shall be conclusive.

1798.200(c)(7): Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

1798.200(c)(12)(C): The commission of any sexually related offense specified under Section 290 of the Penal Code.



Optional Conditions changed by the PDRB:

1798.200(c)(11): Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired. Added optional conditions 1, 2, & 4.

1798.200(c)(12)(A): The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance. Added optional conditions: 5, 6, 8, 9, & 11.

1798.200(c)(12)(B): The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 and 56.6, inclusive of the Civil Code. Added optional condition 5.



Discipline changed by the PDRB:

1798.200(c)(1): Fraud. Changed the minimum discipline to a 3-year probation but deleted a 60-day suspension.

1798.200(c)(3): Repeated negligent acts. Changed the discipline to equal that of Gross Negligence.

1798.200(c)(5): The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel. Changed the recommended discipline to equal max discipline.



**HSC
1798.200(c)
violations
tabled by the
PDRB:**

1798.200(c)(4): Incompetence.

1798.200(c)(8): Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

1798.200(c)(9): Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

1798.200(c)(10): Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

HSC 1798.200(c)(1):

Fraud in the procurement of any certificate or license under this division.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation or denial.

Recommended Discipline: Revocation or denial.

Minimum Discipline: Revocation stayed, and 60-day suspension/denial.

Paramedic Disciplinary Review Board:

Changed the Minimum Discipline, deleting the 60-day suspension, added 3 yrs of probation, and added Optional Condition 6.

Maximum Discipline: Revocation or denial.

Recommended Discipline: Revocation or denial.

Minimum Discipline: Revocation stayed, 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Condition 6-EMS Ethics course.

HSC 1798.200(c)(1) Comparison to CMB and BRN

Fraud in the procurement of any certificate or license under this division.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

CMB:

Procuring a license by fraud: Revocation.

BRN:

Procurement of certificate by fraud, misrepresentation, or mistake: Revocation.

BRN added: Furnishing false information in applying for licensure: Denial or Revocation.

In applying for renewal: Revocation stayed, 3-year probation.

Paramedic Disciplinary Review Board:

Changed the Minimum Discipline, deleting the 60-day suspension, added 3 yrs of probation, and added Optional Condition 6.

Maximum Discipline: Revocation or denial.

Recommended Discipline: Revocation or denial.

Minimum Discipline: Revocation stayed, 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Condition 6.

HSC 1798.200(c)(2):

Gross negligence.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

Paramedic Disciplinary Review Board:

No change.

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

HSC 1798.200(c)(2) Comparison to CMB and BRN

Gross negligence.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

CMB:

Combines gross negligence, repeated negligent acts, and incompetence.

Max Discipline: Revocation.

Min Discipline: Revocation stayed, 5-year probation.

BRN:

Combine incompetence and gross negligence.

Recommended: Revocation.

Minimum: Revocation stayed with 3-year probation.

Paramedic Disciplinary Review Board:

No change.

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

HSC 1798.200(c)(3):

Repeated negligent acts.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 30-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

Paramedic Disciplinary Review Board:

Increased Discipline.

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

HSC 1798.200(c)(3) Comparison to CMB and BRN

Repeated negligent acts.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

CMB:

Combines gross negligence, repeated negligent acts, and incompetence.

Max Discipline: Revocation.

Min Discipline: Revocation stayed, 5-year probation.

BRN:

Combine incompetence and gross negligence.

Recommended: Revocation.

Minimum: Revocation stayed with 3-year probation.

Paramedic Disciplinary Review Board:

Increased Discipline to Equal that of Gross negligence

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, **60-day suspension**, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and **3-year probation** with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

HSC 1798.200(c)(4):

Incompetence - the lack of that degree of knowledge, skill, and ability ordinarily possessed and exercised by a licensed and accredited paramedic.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 30-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

Paramedic Disciplinary Review Board:

Discussion tabled until December Quarterly Meeting.

HSC 1798.200(c)(5):

The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 6

Paramedic Disciplinary Review Board:

Changed Recommended Discipline to Maximum Discipline.

Maximum Discipline: Revocation.

Recommended Discipline:
Revocation/Denial.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 6

HSC 1798.200(c)(5) Comparison to CMB and BRN

The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

CMB:

Defines a violation of dishonesty related to QFD's arising from or occurring during pt care, treatment, mgmt. or billing

Max: Revocation.

Min: Revocation stayed, 1-year suspension, and at least 7-year probation.

Dishonesty not related to or arising from patient care, treatment, mgmt., or billing.

Max: Revocation.

Min: Revocation stayed, 5-year probation

Paramedic Disciplinary Review Board:

Changed Recommended Discipline to Maximum Discipline.

Maximum Discipline: Revocation.

Recommended Discipline:
Revocation/Denial.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 6

HSC 1798.200(c)(6):

Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or certified copy of the record shall be conclusive evidence of such conviction.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Variable depending on the nature of the crime with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions.

Paramedic Disciplinary Review Board:

No change.

Maximum Discipline: Revocation.

Recommended Discipline: Variable depending on the nature of the crime with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Condition.

HSC 1798.200(c)(6) Comparison to CMB and BRN

Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or certified copy of the record shall be conclusive evidence of such conviction.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

CMB:

Same as for dishonesty.

Max: Revocation.

Min: Revocation stayed, 1-year suspension, at least 7-year probation.

For misdemeanor conviction:

Min: Revocation stayed, and 5-year probation

BRN:

Recommended: Revocation.

Paramedic Disciplinary Review Board:

No change.

Maximum Discipline: Revocation.

Recommended Discipline: Variable depending on the nature of the crime with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Condition.

HSC 1798.200(c)(7):

Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 6.

Paramedic Disciplinary Review Board:

No change.

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 6.

HSC 1798.200(c)(7) Comparison to CMB and BRN

Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

BRN:

Min: Revocation stayed, 3-year probation

Paramedic Disciplinary Review Board:

No change.

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 6.

HSC 1798.200(c)(8):

Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 1, 2, 3, 4, and 10.

Paramedic Disciplinary Review Board:

Discussion tabled until December Quarterly Meeting.

HSC 1798.200(c)(9):

Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, suspension until assessment and successful completion of drug/alcohol detoxification diversion program, and 5-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 1, 2, 3, 4, and 10.

Paramedic Disciplinary Review Board:

Discussion tabled until December Quarterly Meeting.

HSC 1798.200(c)(10):

Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 15-day suspension, and 1-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 5 and 8.

Paramedic Disciplinary Review Board:

Discussion tabled until December Quarterly Meeting.

HSC 1798.200(c)(11):

Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, and suspension until resolution of the physical or mental disability.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 8, 9, and 10.

Paramedic Disciplinary Review Board:

Added Optional Conditions 1, 2, & 4.

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, and suspension until resolution of the physical or mental disability.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and **Optional Conditions 1, 2, 4, 8, 9, and 10.**

HSC 1798.200(c)(11) Comparison to CMB and BRN

Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

CMB:

Mental or Physical Illness.

Max: Revocation.

Min: Revocation stayed, 5-year probation.

BRN:

Recommended: Suspension/Revocation.

Paramedic Disciplinary Review Board:

Added Optional Conditions 1, 2, & 4.

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, and suspension until resolution of the physical or mental disability.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and **Optional Conditions 1, 2, 4, 8, 9, and 10.**

HSC 1798.200(c)(12)(A): Unprofessional Conduct

The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation/Denial.

Recommended Discipline: Revocation stayed, 60-day suspension, and a 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 7 and 10.

Paramedic Disciplinary Review Board:

Added Optional Conditions 5, 6, 8, 9, & 11.

Maximum Discipline: Revocation/Denial.

Recommended Discipline: Revocation stayed, 60-day suspension, and a 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and **Optional Conditions 5, 6, 7, 8, 9, 10, and 11.**

HSC 1798.200(c)(12)(A): Comparison to CMB and BRN

The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

No mention of excessive force or physical abuse in CMB or BRN guidelines.

Paramedic Disciplinary Review Board:

Added Optional Conditions 5, 6, 8, 9, & 11.

Maximum Discipline: Revocation/Denial.

Recommended Discipline: Revocation stayed, 60-day suspension, and a 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and **Optional Conditions 5, 6, 7, 8, 9, 10, and 11.**

HSC 1798.200(c)(12)(B): Unprofessional Conduct

The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 and 56.6, inclusive of the Civil Code.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation/Denial.

Recommended Discipline: Revocation stayed, 30-day suspension, and 1-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 6 and 9.

Paramedic Disciplinary Review Board:

Added Optional Condition 5.

Maximum Discipline: Revocation/Denial.

Recommended Discipline: Revocation stayed, 30-day suspension, and 1-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and **Optional Conditions 5, 6, and 9.**

HSC 1798.200(c)(12)(B) Comparison to CMB and BRN

The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 and 56.6, inclusive of the Civil Code.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

CMB:

No specific language.

BRN:

Other actions which constitute unprofessional conduct including but not limited to failure to report client abuse to an appropriate agency and holding oneself out to meet a licensing standard without meeting the standard.

Min: Revocation stayed, 3-year probation.

Paramedic Disciplinary Review Board:

Added Optional Condition 5.

Maximum Discipline: Revocation/Denial.

Recommended Discipline: Revocation stayed, 30-day suspension, and 1-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and **Optional Conditions 5, 6, and 9.**

HSC 1798.200(c)(12)(C): Unprofessional Conduct

The commission of any sexually related offense specified under Section 290 of the Penal Code.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation/Denial.

Recommended Discipline:
Revocation/Denial.

Minimum Discipline: Revocation/Denial.

Paramedic Disciplinary Review Board:

No changes.

Maximum Discipline: Revocation/Denial.

Recommended Discipline:
Revocation/Denial.

Minimum Discipline: Revocation/Denial.

HSC 1798.200(c)(12)(C) Comparison to CMB and BRN

The commission of any sexually related offense specified under Section 290 of the Penal Code.

Comparison with California Medical Board (CMB) and Board of Registered Nursing (BRN):

CMB:

Has three code sections

Sexual misconduct: Revocation, or 7-year probation.

Sexual exploitation and registration as a sex offender: Revocation.

BRN:

Sexual abuse, misconduct, or relations with a patient: Revocation.

Paramedic Disciplinary Review Board:

No changes.

Maximum Discipline: Revocation/Denial.

Recommended Discipline:
Revocation/Denial.

Minimum Discipline: Revocation/Denial.



HSC 1798.200(c) Violations Tabled by the PDRB

HSC 1798.200(c)(4):

Incompetence - the lack of that degree of knowledge, skill, and ability ordinarily possessed and exercised by a licensed and accredited paramedic

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 30-day suspension, and 3-years probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

Gross Negligence & Repeated Negligent Acts

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions: 5, 8, 9, and 11.

HSC 1798.200(c)(4) Comparison to CMB and BRN

Incompetence - the lack of that degree of knowledge, skill, and ability ordinarily possessed and exercised by a licensed and accredited paramedic

California Medical Board:

B&P Code 2234 combines gross negligence, repeated negligent acts and incompetence.

Max: Revocation.

Recommended: Revocation stayed, 30-day suspension, and 3-year probation with terms and conditions.

Min: Revocation stayed, and 5-year probation.

Conditions include education courses, prescribing practices course, medical record keeping course, ethics course, clinical competence assessment program, practice monitoring billing, solo practice prohibition, prohibition of practice.

Board of Registered Nursing:

B&P Code 2761 combines incompetence and gross negligence.

Recommended: Revocation.

Minimum: Revocation stayed, and 3-year probation.

Conditions 1-13, and others if applicable. Add Condition 19 if patient death occurred - therapy or counseling.

HSC 1798.200(c)(8):

Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 1, 2, 3, 4, and 10.

Paramedic Disciplinary Review Board:

Discussion tabled until December Quarterly Meeting.

HSC 1798.200(c)(8) Comparison to CMB and BRN

Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

California Medical Board

Conviction of drug violation, violation of drug statutes, excessive use of controlled substances, practice under the influence of narcotic(s).

Maximum Discipline: Revocation

Minimum: Revocation stayed, 60-day suspension or more, and 5-year probation.

Illegal sales of controlled substances:
Revocation.

Prescribing to addicts: Revocation, or 60-day suspension, and 5-year probation.

Board of Registered Nursing

B&P Code 2762 conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of, or falsification of a record pertaining to narcotics or dangerous drugs

Separated into sub violations:

Recommend revocation when nurse was under the influence, withheld, or substituted drugs while on the job.

For documented participation in an ongoing rehab program but not when under the influence/withholding, or substitution of drugs on the job:
Revocation stayed, with 3-year probation.

For conviction of falsification of records pertaining to controlled substances: Revocation stayed, and 3-year probation.

HSC 1798.200(c)(9):

Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, suspension until assessment and successful completion of drug/alcohol detoxification diversion program, and 5-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 1, 2, 3, 4, and 10.

Paramedic Disciplinary Review Board:

Discussion tabled until December Quarterly Meeting.

HSC 1798.200(c)(9) Comparison to CMB

Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

California Medical Board

Conviction of crime arising from/occurring during patient care, treatment, management, or billing:

Max: Revocation.

Min: Revocation stayed, 1-year suspension, at least 7-year probation.

Conviction of crime - felony - not arising from/occurring during patient care, treatment, management, or billing:

Max: Revocation, suspension of 30 days or more.

Min: Revocation stayed, 7-year probation.

Conviction of crime, misdemeanor not arising from/occurring during patient care, treatment, management, or billing:

Max: Revocation.

Min: Revocation stayed, 5-year probation.

HSC 1798.200(c)(9) Comparison to CMB

Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

California Medical Board

Conviction of drug violations, excessive use of controlled substances, or practice under the influence of a narcotic:

Max: Revocation

Min: Revocation stayed, 5-year probation, suspension of 60 days or more.

Illegal sale of controlled substances: Revocation

Excessive use of Alcohol: Practice under the influence of alcohol:

Max: Revocation

Min: Revocation stayed, 5-year probation, Suspension of 60 days or more.

HSC 1798.200(c)(9) Comparison to BRN

Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

Board of Registered Nursing

Conviction of felony or any offense substantially related to qualifications, functions, and duties of a registered nurse, defined as but not limited to child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, sale or use of controlled substances:

Recommended: Revocation.

Illegal obtaining, possession, or administering narcotics or dangerous drugs to self or others. Use of any narcotic, dangerous drugs, or alcohol to the extent it is dangerous to self or others, or the ability to practice nursing safely is impaired:

Recommended: Revocation.

1st time offense with documented evidence of an ongoing rehabilitation program:
Revocation stayed, 3-year probation.

HSC 1798.200(c)(10):

Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

Maximum Discipline: Revocation.

Recommended Discipline: Revocation stayed, 15-day suspension, and 1-year probation with terms and conditions.

Minimum Discipline: Revocation stayed, and 1-year probation with terms and conditions.

Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 5 and 8.

Paramedic Disciplinary Review Board:

Discussion tabled until December Quarterly Meeting.

HSC 1798.200(c)(10) Comparison to CMB and RBN

Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

California Medical Board

No direct comparison.

Excessive prescribing, excessive treatment, prescribing to addicts, illegal cancer treatments, for which discipline ranges from revocation, revocation stayed with 60-day suspensions, and 5-year probations.

Board of Registered Nursing

No direct comparison.

Attachment 2

**Administrative Fines
by HSC 1798.200(c)
Violations**

Paramedic Disciplinary Review Board's Role

HSC 1798.210(a):

- The Paramedic Disciplinary Review Board may impose an administrative fine of up to two thousand five hundred dollars (\$2,500) per violation against a licensed paramedic found to have committed any of the actions described by subdivision (c) of Section 1798.200 that did not result in actual harm to a patient.
- Fines may not be imposed if a paramedic has previously been disciplined by the authority or the board for any other act committed within the immediately preceding five-year period.

Paramedic Disciplinary Review Board's Role

HSC 1798.210(b):

The board shall adopt regulations establishing an administrative fine structure, taking into account the nature and gravity of the violation. The administrative fine shall not be imposed in conjunction with a suspension for the same violation, but may be imposed in conjunction with probation for the same violation except when the conditions of the probation require a paramedic's personal time or expense for training, clinical observation, or related corrective instruction.

Factors in Assessing an Appropriate Fine

In assessing fines, give due consideration to the appropriateness of the fine with respect to the following factors:

- Gravity of the violation,
- Good faith of the paramedic,
- History of previous violations,
- Any discipline imposed by the paramedic's employer for the same occurrence of that conduct, and
- The totality of the discipline to be imposed.

Current Admin Fines listed in the Recommended Guidelines for Disciplinary Orders

Minimum	Maximum	Violation
\$2,000	\$2,500	Health and Safety Code 1798.200 (c)(1), Fraud in the procurement of any certificate or license under this division.
\$500	\$2,500	Health and Safety Code 1798.200(c)(3), Repeated negligent acts.
\$1,000	\$2,500	Health and Safety Code 1798.200 (c)(5), The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.
\$1,000	\$2,500	Health and Safety Code 1798.200 (c)(7), Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.
\$1,000	\$2,500	Health and Safety Code 1798.200 (c)(8), Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.
\$250	\$2,500	Health and Safety Code 1798.200 (c)(10), Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.
\$500	\$2,500	Health and Safety Code 1798.200 (c)(12), Unprofessional Conduct - The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 and 56.6, inclusive of the Civil Code.

Number of Cases involving Fines

Cases settled with EMSA (2020 to 2023): 57

Cases appealed to an Administrative Law Judge (to date): 7

HSC 1798.200(c)(1): Fraud in the procurement of any certificate or license under this division.

Fine Range: \$2,000 to \$2,500

Settlement cases: 2

2022:
2 cases fined \$2,000

ALJ cases: 1*

1 case fined \$2,500

*This ALJ case was disciplined for HSC 1798.200(c)(1) and HSC 1798.200(c)(5).

1798.200(c)(3): Repeated negligent acts.

Fine Range: \$500 to \$2,500

Settlement cases:

None

ALJ cases:

None

1798.200(c)(5): The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.

Fine Range: \$1,000 to \$2,500

Settlement cases: 13

2020:

2 cases fined \$1,000

4 cases fined \$2,500

2021:

2 cases fined \$500

3 cases fined \$1,500

2 cases fined \$2,500

2022:

2 cases fined \$2,500

ALJ cases: 1

1 case fined \$2,500

1798.200(c)(7): Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

Fine Range: \$1,000 to \$2,500

Settlement cases: 26

ALJ cases: 0

2019:

- 3 cases fined \$500
- 3 cases fined \$2,500

2020:

- 1 case fined \$2,500

2022:

- 1 case fined \$500
- 5 cases fined \$1,000
- 2 cases fined \$1,500
- 7 cases fined \$2,500

2023:

- 1 case fined \$250
- 2 cases fined \$500
- 1 case fined \$1,000

None

1798.200(c)(8): Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

Fine Range: \$1,000 to \$2,500

Settlement cases: 0

None

ALJ cases: 0

None

1798.200(c)(10): Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

Fine Range: \$250 to \$2,500

Settlement cases: 17

2019:

- 2 cases fined \$2,500

2020:

- 1 case fined \$2,500

2022:

- 3 cases fined \$250
- 2 cases fined \$500
- 1 case fined \$1,000
- 3 cases fined \$2,500

2023:

- 1 case fined \$250
- 3 cases fined \$500
- 1 case fined \$1,000

ALJ cases: 6

- 3 cases fined \$500
- 2 cases fined \$1,500
- 1 case fined \$2,500

1798.200(c)(12): Unprofessional Conduct - The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 and 56.6, inclusive of the Civil Code.

Fine Range: \$500 to \$2,500

Settlement cases: 1

2019:

1 cases fined \$2,500

ALJ cases: 1

1 case fined \$1,500

Assembly Bill No. 2188

CHAPTER 392

An act to add Section 12954 to the Government Code, relating to employment.

[Approved by Governor September 18, 2022. Filed with
Secretary of State September 18, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2188, Quirk. Discrimination in employment: use of cannabis.

Existing law, the California Fair Employment and Housing Act, protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination, abridgment, or harassment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The act prohibits various forms of employment discrimination and empowers the Civil Rights Department to investigate and prosecute complaints alleging unlawful practices.

This bill, on and after January 1, 2024, would also make it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon the person's use of cannabis off the job and away from the workplace, except for preemployment drug screening, as specified, or upon an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. The bill would exempt certain applicants and employees from the bill's provisions, including employees in the building and construction trades and applicants and employees in positions requiring a federal background investigation or clearance, as specified. The bill would specify that the bill does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares both of the following:

(a) Tetrahydrocannabinol (THC) is the chemical compound in cannabis that can indicate impairment and cause psychoactive effects. After tetrahydrocannabinol is metabolized, it is stored in the body as a nonpsychoactive cannabis metabolite. These metabolites do not indicate

impairment, only that an individual has consumed cannabis in the last few weeks.

(b) The intent of drug tests is to identify employees who may be impaired. While there is consensus that an employee should not arrive at a worksite high or impaired, when most tests are conducted for cannabis, the results only show the presence of the nonpsychoactive cannabis metabolite and have no correlation to impairment on the job.

(c) As science has improved, employers now have access to multiple types of tests that do not rely on the presence of nonpsychoactive cannabis metabolites. These alternative tests include impairment tests, which measure an individual employee against their own baseline performance and tests that identify the presence of THC in an individual's bodily fluids.

SEC. 2. Section 12954 is added to the Government Code, to read:

12954. (a) It is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the following:

(1) The person's use of cannabis off the job and away from the workplace. This paragraph does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid preemployment drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.

(2) An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

(b) Nothing in this section permits an employee to possess, to be impaired by, or to use, cannabis on the job, or affects the rights or obligations of an employer to maintain a drug- and alcohol-free workplace, as specified in Section 11362.45 of the Health and Safety Code, or any other rights or obligations of an employer specified by federal law or regulation.

(c) This section does not apply to an employee in the building and construction trades.

(d) This section does not apply to applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the United States Department of Defense pursuant to Part 117 of Title 32 of the Code of Federal Regulations, or equivalent regulations applicable to other agencies.

(e) This section does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances, including laws and regulations requiring applicants or employees to be tested, or the manner in which they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

(f) This section shall become operative on January 1, 2024.

State of California

GOVERNMENT CODE

Section 12954

12954. (a) (1) Except as specified in subdivision (c), it is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the following:

(A) The person's use of cannabis off the job and away from the workplace. This paragraph does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid preemployment drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.

(B) An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

(2) This subdivision does not apply to an employee in the building and construction trades.

(b) Except as specified in subdivision (c), it is unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis.

(c) Information about a person's prior cannabis use obtained from the person's criminal history is subject to subdivisions (a) and (b), unless the employer is permitted to consider or inquire about that information under Section 12952 or other state or federal law.

(d) This section does not permit an employee to possess, to be impaired by, or to use, cannabis on the job, or affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace, as specified in Section 11362.45 of the Health and Safety Code, or any other rights or obligations of an employer specified by state or federal law or regulation.

(e) This section does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances, including laws and regulations requiring applicants or employees to be tested, or the manner in which they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

(f) This section does not apply to applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the United States Department of Defense pursuant to Part 117 of Title 32 of the Code of Federal Regulations, or equivalent regulations applicable to other agencies.

(g) This section shall become operative on January 1, 2024.

(Amended by Stats. 2023, Ch. 408, Sec. 1. (SB 700) Effective January 1, 2024.)

State of California

HEALTH AND SAFETY CODE

Section 11362.45

11362.45. Section 11362.1 does not amend, repeal, affect, restrict, or preempt:

(a) Laws making it unlawful to drive or operate a vehicle, boat, vessel, or aircraft, while smoking, ingesting, or impaired by, cannabis or cannabis products, including, but not limited to, subdivision (e) of Section 23152 of the Vehicle Code, or the penalties prescribed for violating those laws.

(b) Laws prohibiting the sale, administering, furnishing, or giving away of cannabis, cannabis products, or cannabis accessories, or the offering to sell, administer, furnish, or give away cannabis, cannabis products, or cannabis accessories to a person younger than 21 years of age.

(c) Laws prohibiting a person younger than 21 years of age from engaging in any of the actions or conduct otherwise permitted under Section 11362.1.

(d) Laws pertaining to smoking or ingesting cannabis or cannabis products on the grounds of, or within, any facility or institution under the jurisdiction of the Department of Corrections and Rehabilitation or the Division of Juvenile Justice, or on the grounds of, or within, any other facility or institution referenced in Section 4573 of the Penal Code.

(e) Laws providing that it would constitute negligence or professional malpractice to undertake any task while impaired from smoking or ingesting cannabis or cannabis products.

(f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace, or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

(g) The ability of a state or local government agency to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased, or occupied by the state or local government agency.

(h) The ability of an individual or private entity to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately owned property.

(i) Laws pertaining to the Compassionate Use Act of 1996.

(Amended by Stats. 2017, Ch. 27, Sec. 133. (SB 94) Effective June 27, 2017. Note: This section was added on Nov. 8, 2016, by initiative Prop. 64.)

Senate Bill No. 700

CHAPTER 408

An act to amend Section 12954 of the Government Code, relating to employment discrimination.

[Approved by Governor October 7, 2023. Filed with Secretary of State October 7, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 700, Bradford. Employment discrimination: cannabis use.

Existing law, the California Fair Employment and Housing Act, prohibits various forms of employment discrimination and empowers the Civil Rights Department to investigate and prosecute complaints alleging unlawful practices. Existing law, on and after January 1, 2024, makes it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person because of the person's use of cannabis off the job and away from the workplace, except as specified.

This bill would make it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis, as specified. Under the bill, information about a person's prior cannabis use obtained from the person's criminal history would be exempt from the above-described existing law and bill provisions relating to prior cannabis use if the employer is permitted to consider or inquire about that information under a specified provision of the California Fair Employment and Housing Act or other state or federal law.

The people of the State of California do enact as follows:

SECTION 1. Section 12954 of the Government Code is amended to read:

12954. (a) (1) Except as specified in subdivision (c), it is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the following:

(A) The person's use of cannabis off the job and away from the workplace. This paragraph does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid preemployment drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.

(B) An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

(2) This subdivision does not apply to an employee in the building and construction trades.

(b) Except as specified in subdivision (c), it is unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis.

(c) Information about a person's prior cannabis use obtained from the person's criminal history is subject to subdivisions (a) and (b), unless the employer is permitted to consider or inquire about that information under Section 12952 or other state or federal law.

(d) This section does not permit an employee to possess, to be impaired by, or to use, cannabis on the job, or affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace, as specified in Section 11362.45 of the Health and Safety Code, or any other rights or obligations of an employer specified by state or federal law or regulation.

(e) This section does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances, including laws and regulations requiring applicants or employees to be tested, or the manner in which they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

(f) This section does not apply to applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the United States Department of Defense pursuant to Part 117 of Title 32 of the Code of Federal Regulations, or equivalent regulations applicable to other agencies.

(g) This section shall become operative on January 1, 2024.

State of California

GOVERNMENT CODE

Section 12952

12952. (a) Except as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following:

(1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.

(2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant.

(3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment:

(A) Arrest not followed by conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the Labor Code.

(B) Referral to or participation in a pretrial or posttrial diversion program.

(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation.

(4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to prevent an employer from conducting a conviction history background check not in conflict with the provisions of subdivision (a).

(c) (1) (A) An employer that intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment described in this paragraph, the employer shall consider all of the following:

(i) The nature and gravity of the offense or conduct.

(ii) The time that has passed since the offense or conduct and completion of the sentence.

(iii) The nature of the job held or sought.

(B) An employer may, but is not required to, commit the results of this individualized assessment to writing.

(2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification may, but is not required to, justify or explain the employer's reasoning for making the preliminary decision. The notification shall contain all of the following:

(A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer.

(B) A copy of the conviction history report, if any.

(C) An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.

(3) The applicant shall have at least five business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. If, within the five business days, the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report that was the basis for the preliminary decision to rescind the offer and that the applicant is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.

(4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision.

(5) If an employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer shall notify the applicant in writing of all the following:

(A) The final denial or disqualification. The employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.

(B) Any existing procedure the employer has for the applicant to challenge the decision or request reconsideration.

(C) The right to file a complaint with the department.

(d) This section does not apply in any of the following circumstances:

(1) To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.

(2) To a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.

(3) To a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code.

(4) To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. For purposes of this paragraph, federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934,

as amended by 124 Stat. 1652 (Public Law 111-203), pursuant to the authority in Section 19(b) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203).

(e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.

(f) For purposes of this section:


(1) "Conviction" has the same meaning as defined in paragraphs (1) and (3) of subdivision (a) of Section 432.7 of the Labor Code.

(2) Notwithstanding paragraph (1), the term "conviction history" includes:

(A) An arrest not resulting in conviction only in the specific, limited circumstances described in subdivision (f) of Section 432.7 of the Labor Code, when an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, may ask an applicant for certain positions about specified types of arrests.



(B) An arrest for which an individual is out on bail or his or her own recognizance pending trial.

(Amended by Stats. 2018, Ch. 824, Sec. 2. (AB 2845) Effective January 1, 2019.)



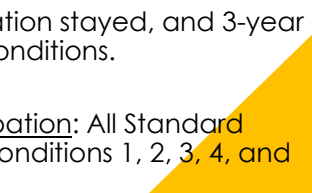
HSC 1798.200(c)(8)

Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.



1

Recommended Guidelines for Disciplinary Orders and Conditions of Probation:

- Maximum Discipline: Revocation.
 - Recommended Discipline: Revocation stayed, 60-day suspension, and 3-year probation with terms and conditions.
 - Minimum Discipline: Revocation stayed, and 3-year probation with terms and conditions.
 - Minimum Conditions of Probation: All Standard Conditions, and Optional Conditions 1, 2, 3, 4, and 10.
- 

2

Comparison to the California Medical Board:

- Conviction of drug violation, violation of drug statutes, excessive use of controlled substances, practice under the influence of narcotic(s).
 - Maximum Discipline: Revocation
 - Minimum Discipline: Revocation stayed, 60-day suspension or more, and 5-year probation.
- Illegal sales of controlled substances: Revocation.
- Prescribing to addicts: Revocation, or 60-day suspension, and 5-year probation.

3

Comparison to the Board of Registered Nursing:

- B&P Code 2762 conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of, or falsification of a record pertaining to narcotics or dangerous drugs.
- Separated into sub violations:
 - Recommend revocation when nurse was under the influence, withheld, or substituted drugs while on the job.
 - For documented participation in an ongoing rehab program but not when under the influence/ withholding, or substitution of drugs on the job: Revocation stayed, with 3-year probation.
 - For conviction of falsification of records pertaining to controlled substances: Revocation stayed, and 3-year probation.

4

Assembly Bill 2188

This bill added section 12954 to the California Government Code, part of the California Fair Employment and Housing Act found in *Cal. Government Code sections 12900-12999*.

This Act protects/safeguards the right and opportunity of all persons to seek, obtain, and hold employment or in housing accommodations without discrimination.

5

An employer cannot discriminate on the basis of:

- Age
- Marital status
- Sex
- Gender
- Gender identity
- Gender expression
- Sexual orientation
- Race
- Color
- National Origin
- Ancestry
- Religious creed
- Physical disability
- Mental disability
- Medical condition
- Genetic information
- Reproductive health decision-making
- Military status
- Veteran status

6

- Section 12954 adds an additional protection effective January 1, 2024:
 - An employer cannot discriminate in hiring, termination or any condition of employment, or otherwise penalize a person if the discrimination is based on:
 - Drug screening that found nonpsychoactive cannabis metabolites in hair, blood, urine, or other bodily fluids.
- The legislature found that metabolites of THC, while they indicate a person has consumed cannabis in the past few weeks, do not indicate impairment.
- The legislature then defined Tetrahydrocannabinol (THC) as the psychoactive component of cannabis because the presence of this substance can indicate impairment and cause psychoactive effects.

7

- An employer can employ employment/pre-employment drug screening tests that do not screen for non-psychoactive cannabis metabolites.
- An employer can make employment decisions based on the results when the test screens for THC.

8

- The statute does not restrict an employer from maintaining a drug and alcohol-free workplace as specified in section 11362.45 of the Health and Safety Code.
- The statute does not permit an employee to possess, be impaired by, or to use cannabis on the job.

9

- The statute does not apply to:
 - Applicants/employees hired for positions that require a federal government background investigation or security clearance
 - OR
 - Employees in jobs receiving federal funding, or federal licensing-related benefits, or entering into a federal contract

10

Senate Bill 700

Amended section 12954:

- Making it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis

And from

- Using information about a person's prior cannabis use obtained from the person's criminal history unless the employer is permitted to consider or inquire about that information under section 12952 or other state or federal law.

11

EMSA Central Registry System

- Requires all EMT-I, EMT-II, and EMT-P to submit fingerprint images to the authority for submission to the California DOJ for state and federal level criminal offender record information search for the following information:
 - Existence of and content of a record of State or Federal convictions
 - State or Federal arrests
 - Whether the person is free on bail or on own recognizance pending trial or appeal
 - Information on subsequent arrests

HSC 1797.117 and 1797.118

12

What is the Inquiry?

- Not a determination of employer/employee conduct under the Fair Employment and Housing Act.
- The inquiry is whether a federal or state statute or regulation was violated or whether there was an attempted violation.
- If there is a violation:
 - EMSA/ALJs/PDRB apply the disciplinary guidelines.

13

Prohibition on use of controlled substances/alcohol when on probation:

- Not a determination of employer/employee conduct under the Fair Employment and Housing Act.
- If the licensee is on probation and must abstain from use, the licensee will be prohibited from using cannabis the same as if prohibited from using alcohol.

14

The Board shall develop and implement progressive discipline to aid in considering appeals of licensure which shall include all of the following:

1. The nature and duties of a paramedic.
2. The time that has elapsed since the licenseholder's offense.
3. The nature and gravity of the offense.
4. The employer-imposed discipline for the offense.
5. The licenseholder's prior disciplinary record.
6. Mitigating evidence.

15

7. Prior warnings to the licenseholder on record or prior remediation.
8. The actual harm to the patient and the actual harm to the public.
9. Evidence of the licenseholder's rehabilitation.
10. Evidence of an expungement proceeding, if applicable.
11. The licenseholder's compliance with the terms of their sentence or a court order, if criminally convicted.
12. Aggravating evidence.
13. The licenseholder's overall criminal record.

HSC 1797.125.07(b)

16

Determining whether a violation or attempted violation has occurred is a fact-based inquiry.

17

Most cases where a (c)(8) violation is charged involve the following types of violations or attempted violations:

- Theft of medications.
- Use of medications without prescriptions in violation of HSC 11350.
- Possession of controlled substances.
- One case of violation of HSC 11359, unlawful possession of marijuana for the purpose of sale, based on home-based marijuana grow operation.

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A (c)(9) violation is charged as well for:

- Appearing under the influence at work,
- Positive drug tests, and
- Charges of driving under the influence

Many times, other violations are charged as well, such as violation of (c)(5), (c)(6), and/or(c)(11).

RECOMMENDED GUIDELINES FOR
DISCIPLINARY ORDERS AND CONDITIONS OF
PROBATION

JULY 26, 2008



**EMERGENCY MEDICAL SERVICES AUTHORITY
RECOMMENDED GUIDELINES FOR DISCIPLINARY ORDERS
AND CONDITIONS OF PROBATION**

1

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Section I: FOREWORD

The following Model Disciplinary Orders have been developed by the Emergency Medical Services Authority (EMSA) in consultation with EMS (Emergency Medical Services) constituent groups from across the state. The purpose of the Model Disciplinary Orders is to provide a consistent and equitable discipline in cases dealing with violations of the Health and Safety Code, Division 2.5, Section 1798.200.

The EMSA shall use this document as a standard in settling disciplinary matters when a respondent wishes to resolve the allegations through a negotiated settlement. However, the settlement may be on any terms the parties determine are appropriate pursuant to Section 11415.60 of the California Administrative Procedure Act.

Should the respondent invoke his/her privilege to contest the allegations through the Administrative Procedure Act, the administrative law judge shall use this document as a guide in making his/her recommendations for discipline (if needed) to the EMSA. The respondent shall be allowed representation of his/her choice through all processes of the investigation, filing of an accusation, negotiation of a settlement, and during an administrative hearing pursuant to the California Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1). Any such representation shall be at the respondent's expense.

Section II: DISCIPLINARY CONSIDERATION FACTORS

The following factors shall be considered when determining the appropriate discipline:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Prior warnings on record or prior remediation;
6. Number and/or variety of current violations;
7. Aggravating evidence;
8. Mitigating evidence;
9. Any discipline imposed by the paramedic's employer for the same occurrence of that conduct;
10. Rehabilitation evidence;
11. In case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation;

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12. Overall criminal record;
13. Time that has elapsed since the act(s) or offense(s) occurred;
14. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4.

Section III: VIOLATIONS and RECOMMENDED DISCIPLINARY ACTIONS

Health & Safety Code Section 1798.200 specifies the offenses for which the EMSA may take disciplinary action against a paramedic. When filing an accusation, EMSA may also cite additional related statutes and regulations as a basis for discipline.

These disciplinary guidelines provide progressive discipline, unless the facts and circumstances of a particular case warrant more substantive discipline. A fine is considered the least intrusive discipline that can be imposed followed by probation, suspension, and then revocation.

In determining the appropriate discipline, the EMSA or an administrative law judge shall give credit for discipline imposed by the employer and for any immediate suspension imposed by the local EMS agency for the same conduct, pursuant to Section 1798.211.

The recommended discipline should be imposed in the absence of any aggravating or mitigating evidence. The administrative law judge may propose any discipline between the minimum discipline and maximum discipline for a particular violation. When the administrative law judge recommends discipline that is less than the minimum or which exceeds the maximum, a full explanation shall be included as to the nature of the act that warrants unusual consideration. The director of the EMSA has the final determination as to the discipline to be imposed.

Section 1798.210 allows EMSA to impose an administrative fine of up to two thousand five hundred dollars (\$2,500) per violation on any licensed paramedic found to have committed any of the actions described by subdivision (c) of Section 1798.200 that did not result in actual harm to a patient. Fines may not be imposed if a paramedic has previously been disciplined by the authority for any other act committed within the immediately preceding five-year period.

The administrative fine shall not be imposed in conjunction with a suspension for the same violation, but may be imposed in conjunction with probation for the same violation except when the conditions of the probation require a paramedic's personal time or expense for training, clinical observation, or related corrective instruction.

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Disciplinary options include the following:

1. Administrative Fine of up to \$2,500 per violation- provided the violation did not result in actual harm to the patient and the paramedic had not been disciplined by the authority for any other act committed within the immediately preceding five-year period
2. Denial
3. Probation
4. Suspension
5. Revocation

A. Administrative Fines

For a minor offense that did not result in actual harm to a patient, EMSA may assess a fine only, or may assess a fine in conjunction with probation.

In assessing the fine, the authority shall give due consideration to the appropriateness of the fine with respect to factors that include the gravity of the violation, the good faith of the paramedic, the history of previous violations, any discipline imposed by the paramedic's employer for the same occurrence of that conduct and the totality of the discipline to be imposed.

The fines shall be assessed in the amount as specified below, for the following violations of the Health and Safety Code:

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Minimum	Maximum	Violation
\$2,000	\$2,500	Health and Safety Code 1798.200 (c)(1), Fraud in the procurement of any certificate or license under this division.
\$500	\$2,500	Health and Safety Code 1798.200(c)(3), Repeated negligent acts.
\$1,000	\$2,500	Health and Safety Code 1798.200 (c)(5), The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.
\$1,000	\$2,500	Health and Safety Code 1798.200 (c)(7), Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.
\$1,000	\$2,500	Health and Safety Code 1798.200 (c)(8), Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.
\$250	\$2,500	Health and Safety Code 1798.200 (c)(10), Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.
\$500	\$2,500	Health and Safety Code 1798.200 (c)(12), Unprofessional Conduct - The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 and 56.6, inclusive of the Civil Code.

Fines shall be paid within 60 days from the date of the EMSA's notice of administrative fine, unless the respondent has demonstrated a financial hardship and has entered into a formal agreement with EMSA to pay the fine within one year from the date of the EMSA's notice of administrative fine.

B. Denial, Probation, Suspension, Revocation

When used below, the numbers following the "Minimum Conditions of Probation" refer to the Optional Conditions of Probation in Section VI. These conditions may vary according to the nature and circumstances of the offense.

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1. **Fraud in the procurement of any certificate or license under this division.**
 - # Maximum Discipline: Revocation or denial.
 - # Recommended Discipline: Revocation or denial.
 - # Minimum Discipline: Revocation stayed, and 60 day suspension/denial.

2. **Gross negligence** - An extreme departure from the standard of care which, under similar circumstances would have ordinarily been exercised by a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties if confronted with a similar circumstance.
 - # Maximum Discipline: Revocation
 - # Recommended Discipline: Revocation stayed, 60 day suspension, and 3 years probation with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 3 years probation with terms and conditions.
 - # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 5, 8, 9 and 11.

3. **Repeated negligent acts** - A repeated failure to use such care as a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance.
 - # Maximum Discipline: Revocation
 - # Recommended Discipline: Revocation stayed, 30 day suspension, and 3 years probation with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 1 year probation with terms and conditions.
 - # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 5, 8, 9 and 11.

4. **Incompetence** - The lack of possession of that degree of knowledge, skill, and ability ordinarily possessed and exercised by a licensed and accredited paramedic.
 - # Maximum Discipline: Revocation
 - # Recommended Discipline: Revocation stayed, 30 day suspension, and 3 years probation with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 1 year probation with terms and

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conditions.

Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 5, 8, 9 and 11.

5. **The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.**
 - # Maximum Discipline: Revocation.
 - # Recommended Discipline: Revocation stayed, 60 day suspension, and 3 years probation with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 3 years probation with terms and conditions.
 - # Minimum Conditions of Probation: All Standard Conditions and Optional Condition: 6

6. **Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or certified copy of the record shall be conclusive evidence of such conviction.**
 - # Maximum Discipline: Revocation.
 - # Recommended Discipline: Variable depending on the nature of the crime with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 1 year probation with terms and conditions.
 - # Minimum Conditions of Probation: All Standard Conditions.

7. **Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.**
 - # Maximum Discipline: Revocation
 - # Recommended Discipline: Revocation stayed, 60 day suspension, and 3 years probation with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 3 years probation with terms and conditions.
 - # Minimum Conditions of Probation: All Standard Conditions and Optional Condition: 6.

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8. **Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.**
 - # Maximum Discipline: Revocation
 - # Recommended Discipline: Revocation stayed, 60 day suspension, and 3 years probation with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 3 years probation with terms and conditions.
 - # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 1, 2, 3, 4, and 10.

9. **Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.**
 - # Maximum Discipline: Revocation
 - # Recommended Discipline: Revocation stayed, suspension until assessment and successful completion of drug/alcohol detoxification diversion program, and 5 years probation with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 3 years probation with terms and conditions.
 - # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 1, 2, 3, 4, and 10.

10. **Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.**
 - # Maximum Discipline: Revocation
 - # Recommended Discipline: Revocation stayed, 15 day suspension, and 1 year probation with terms and conditions.
 - # Minimum Discipline: Revocation stayed, and 1 year probation with terms and conditions.
 - # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 5 and 8.

11. **Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.**
 - # Maximum Discipline: Revocation
 - # Recommended Discipline: Revocation stayed, and suspension until resolution of the physical or mental disability.

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- # Minimum Discipline: Revocation stayed, and 1 year probation with terms and conditions.
- # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 8, 9, and 10.

12. **Unprofessional Conduct-**

(A) The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance. Nothing in this section shall be deemed to prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace officer, or a peace officer who is acting in the dual capacity of peace officer and EMT-I, EMT-II, or EMT-P, from using that force that is reasonably necessary to effect a lawful arrest or detention.

- Maximum Discipline: Revocation/Denial
- # Recommended Discipline: Revocation stayed, 60 day suspension, and 3 years probation with terms and conditions.
- Minimum Discipline: Revocation stayed, and 3 years probation with terms and conditions.
- # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 7 and 10.

(B) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 and 56.6, inclusive of the Civil Code.

- Maximum Discipline: Revocation/Denial
- # Recommended Discipline: Revocation stayed, 30 day suspension, and 1 year probation with terms and conditions.
- Minimum Discipline: Revocation stayed and 1 year probation with terms and conditions.
- # Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 6 and 9.

(C) The commission of any sexually related offense specified under Section 290 of the Penal Code.

- Maximum Discipline: Revocation/ Denial
- Recommended Discipline: Revocation/Denial
- Minimum Discipline: Revocation/Denial

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Section IV: DETOXIFICATION/DIVERSION PROGRAM CRITERIA

The criteria to be considered in determining rehabilitation for alcohol/drug abuse offenses include, but are not limited to:

- Successful completion of a drug/alcohol treatment program (a minimum of 6 months duration). The treatment program may be a combined in-patient/out-patient and aftercare program. The program shall include at least the following elements:
 1. Chemical-free treatment philosophy;
 2. Individual and/or group counseling;
 3. Random, documented biological fluid testing;
 4. Participation in support groups;
 5. Education about addictive disease;
 6. Adherence to a 12-step recovery program philosophy or equivalent;
 7. Written documentation of participation in a 12-step recovery group or equivalent.

- Employment with a pre-hospital care provider, for a minimum of six (6) months, with documentation from the employer that the employer was aware of the previous drug or alcohol abuse problems. The documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed paramedic functions in a safe and competent manner.

- If the respondent is seeking reinstatement of his/her license, employment for a minimum of six (6) months with documentation from the employer that while employed, there was no evidence of alcohol or drug use.

- A minimum of one (1) year must have elapsed between the time of the second offense and the effective date of the prior order.

Section V: MITIGATING EVIDENCE

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his/her rehabilitative efforts and competency:

- A. Dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current paramedic competence. Each

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statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: **"I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge."** The statement should be signed and dated by the person making the statement;

- B. Dated letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, where appropriate. The letters should include a description of the program, the number of sessions that the respondent has attended, the counselor's diagnosis of the respondent's condition, the respondent's prognosis for recovery, the respondent's current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor;
- C. Dated letters describing the respondent's participation in support groups;
- D. Dated laboratory analyses or drug screen reports, where appropriate;
- E. Dated performance evaluation(s) from the respondent's employer;
- F. Dated physical examination or assessment report by a licensed physician;
- G. Certificates or transcripts of courses related to paramedic duties that the respondent might have completed since the date of the violation. **A paramedic whose license has been revoked does not possess a paramedic license. Therefore, the individual cannot use his/her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as a paramedic license is not used.**
- H. Evidence of community service or other educational experiences.

Section VI: LANGUAGE FOR MODEL DISCIPLINARY ORDERS

Standard Revocation Orders

Revocation - Single Cause:

License Number _____ issued to the respondent, _____, is

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revoked.

Revocation - Multiple Causes:

License Number _____ issued to the respondent, _____, is revoked pursuant to legal conclusions: _____, jointly and separately.

Standard Stay Order

Standard Stay Order:

However, such revocation is stayed and the respondent is placed on probation for _____ year(s) upon the following terms and conditions:

(List of terms and conditions.)

Standard Fine Order

An administrative fine of \$ _____ is imposed on the respondent, _____, License Number _____ for _____.

Standard Suspension Orders

Suspension - Single Cause:

License Number _____ issued to the respondent, _____, is suspended for _____.

Suspension - Multiple Causes: (Concurrent)

License Number _____ issued to the respondent, _____, is suspended for _____ pursuant to legal conclusions: _____, jointly and separately. All suspensions shall run concurrently.

Suspension - Multiple Causes: (Consecutive)

License Number _____ issued to the respondent, _____, is suspended for _____ pursuant to legal conclusions: _____, jointly and separately. All suspensions shall run consecutively.

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AND CONDITIONS OF PROBATION**

Standard Conditions of Probation

It is the responsibility of the EMSA to monitor paramedics placed on probation consistent with the terms and conditions of the probationary order.

1. Probation Compliance:

The respondent shall fully comply with all terms and conditions of the probationary order. The respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of the respondent's compliance with the terms and conditions of his/her probationary order.

The respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of the respondent.

2. Personal Appearances:

As directed by the EMSA, the respondent shall appear in person for interviews, meetings, and/or evaluations of the respondent's compliance with the terms and conditions of the probationary order. The respondent shall be responsible for all of his/her costs associated with this requirement.

3. Quarterly Report Requirements:

During the probationary period, the respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by the respondent with all the terms and conditions of his/her probation. If the respondent submits his/her quarterly reports by mail, it shall be sent as Certified Mail.

4. Employment Notification:

During the probationary period, the respondent shall notify the EMSA in writing of any EMS employment. The respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, the respondent shall submit proof in writing to the EMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of the respondent's probation.

The respondent authorizes any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

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Any and all notifications to the EMSA shall be by certified mail.

5. Notification of Termination:

The respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his/her prehospital medical care employer. The respondent must provide a full, detailed written explanation of the reasons for and circumstances of his/her termination.

Any and all notifications to the EMSA shall be by certified mail.

6. Functioning as a Paramedic:

The period of probation shall not run anytime that the respondent is not practicing as a paramedic within the jurisdiction of California.

If the respondent, during his/her probationary period, leaves the jurisdiction of California to practice as a paramedic, the respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if the respondent returns.

Any and all notifications to the EMSA shall be by certified mail.

7. Obey All Related Laws:

The respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. The respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if the respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the respondent shall submit his/her fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, the respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether the respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

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Any and all notifications to the EMSA shall be by certified mail.

8. Completion of Probation:

The respondent's license shall be fully restored upon successful completion of probation.

9. Violation of Probation:

If during the period of probation the respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license suspension/revocation. Upon the initiation of such an action, or the giving of a notice to the respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and implement actual license suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issues to be resolved at the hearing shall be limited to whether the respondent has violated any term of his/her probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, the respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

Optional Conditions of Probation

1. Abstinence from Drug Possession and Use:

The respondent shall abstain from the possession, injection or consumption by any route of all controlled substances, dangerous drugs, or any drugs requiring a prescription unless prescribed under federal or state law as part of a documented medical treatment. Within fourteen days of obtaining such a prescription, respondent shall ensure that the prescribing professional provides the EMSA a written report identifying the medication, dosage, the date the medication was prescribed, the respondent's diagnosis, and the date the medication will no longer be required. This report must be provided to the EMSA directly by the prescribing professional.

If the respondent has a lawful prescription when initially placed on probation, this same report must be provided within fourteen days of the commencement of probation.

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Any and all notifications to the EMSA shall be by certified mail.

2. Abstinence from the Use of Alcoholic Beverages:

The respondent shall abstain from the use of alcoholic beverages.

3. Biological Fluid Testing:

The respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the EMSA or its designee. Respondent may use a lab pre-approved by the EMSA or may provide to the EMSA the name and location of an independent laboratory or licensed drug/alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and drug/alcohol testing facilities. When the EMSA requests a random test, the respondent shall provide the required blood/urine sample by the time specified, or within 12 hours of the request if no time is specified. When the EMSA requests a random test, the respondent shall ensure that any positive test results are conveyed telephonically by the lab to the EMSA within 48 hours, and all written positive or negative results are provided directly by the lab to the EMSA within 10 days. The respondent shall be responsible for all costs associated with the drug/alcohol screening.

At the EMSA's sole discretion, the EMSA may allow the random drug testing to be conducted by the respondent's employer to meet the requirement of random drug testing as set forth above. The results of the employer's random drug testing shall be made available to the EMSA in the time frames described above.

4. Drug/Detoxification/Diversion Program:

Within ___ days of the effective date of this decision, the respondent shall enroll and participate in a drug/detoxification/diversion program approved by the EMSA. The respondent shall participate in the program until appropriate medical supervision determines that further treatment and rehabilitation is no longer necessary.

If the respondent voluntarily withdraws from the drug/detoxification/diversion program or the respondent is expelled from the program, such withdrawal or expulsion shall constitute a violation of probation by the respondent. The respondent shall be responsible for all costs associated with such drug/detoxification/diversion program.

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5. Educational Course Work:

Within ____ days of the effective date of this decision, the respondent shall submit to the EMSA proof of completion of _____ hours of education in areas substantially related to the offense as stated in the accusation and to the satisfaction of the EMSA.

Any educational program may include community service to reinforce the learning objectives of the educational program.

All courses must be approved by the EMSA. Within thirty-five days after completing the course work, the respondent shall submit evidence of competency in the required education. Submittal of a certificate or letter from the instructor attesting to the respondent's competency shall suffice.

Any and all notifications to the EMSA shall be by certified mail.

6. Ethical Practice of EMS:

Within ____ days of the effective date of this decision, the respondent shall submit to the EMSA, for its prior approval, a course in Ethics. The respondent must complete this course during his/her probation period.

Upon completion by the respondent of the Ethics course, the respondent shall submit proof to the EMSA that he/she fulfilled all course requirements.

Any and all notifications to the EMSA shall be by certified mail.

7. Stress/Anger Management:

Within ____ days of the effective date of this decision, the respondent shall enroll and participate in a local, court approved, stress/anger management program, which the respondent shall complete during his/her probation. Upon completion of the approved program, the respondent shall submit proof to the EMSA that he/she has fulfilled all course requirements.

Any and all notifications to the EMSA shall be by certified mail.

8. Practical Skills Examination:

Within ____ days of the effective date of this decision, the respondent shall submit to and pass a skills examination in subjects substantially related to the

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accusation based upon the U. S. Department of Transportation (DOT) and/or the National Registry of Emergency Medical Technicians (NREMT) skills examination, when applicable. If not addressed in the DOT or NREMT, an approved local standard shall be identified and utilized. The skills examination shall be administered by a board selected by the EMSA using the pre-established criteria (See Section VII: Review Board for criteria).

If the respondent fails the examination, the respondent may function as a paramedic only while under the direct supervision of a preceptor. The respondent shall not be allowed to function as a sole paramedic until the respondent passes the examination. The respondent has the option and right to repeat the examination. There shall be at least a two-week period between examinations. No more than three attempts to pass the examination shall be allowed. If the respondent fails to pass the exam after three attempts, or chooses not to retake the examination, the respondent's license shall be revoked.

9. Oral Skills Examination:

Within ____ days of the effective date of this decision, the respondent shall submit to and pass an oral exam in subjects substantially related to the accusation. The oral exam shall be administered by an examination board selected by the EMSA using pre-established criteria (See Section VII: Review Board for criteria).

If the respondent fails the examination, the respondent may function as a paramedic only while under the direct supervision of a preceptor. The respondent shall not be allowed to function as a sole paramedic until the respondent passes the examination. The respondent has the option and right to repeat the examination. There shall be at least a two-week period between examinations. No more than three attempts to pass the examination shall be allowed. If the respondent fails to pass the exam after three attempts, or chooses not to retake the examination, the respondent's license shall be revoked.

10. Psychiatric/Medical Evaluation:

Within ____ days of the effective date of this decision, and on a periodic basis as specified by a psychiatrist certified by the American Board of Psychiatry and Neurology, or other specialist as determined by the director of the EMSA, the respondent shall submit to a psychiatric evaluation. The psychiatrist must be

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approved by the EMSA prior to the evaluation. The respondent shall be responsible for all costs associated with the evaluation.

Within ____ days of the effective date of this decision, and on a periodic basis as specified by a licensed physician, or other specialist as determined by the director of the EMSA, the respondent shall submit to a medical evaluation. The physician must be approved by the EMSA prior to the evaluation. The respondent shall be responsible for all costs associated with the evaluation.

The EMSA shall have the sole discretion to determine if the respondent may continue to practice as a paramedic until such time that the psychiatrist or physician evaluates and determines that the respondent is mentally and/or physically fit to practice safely as a paramedic.

11. Performance Improvement Plan:

The respondent shall function as a practicing paramedic while on probation, except during the time when the respondent's license is suspended by a term or condition of the disciplinary order.

The respondent shall submit to the EMSA periodic Performance Improvement Plan reports compiled by his/her employer, local EMS agency, or approved education provider. These reports shall document improvement as desired in the plan in order to satisfy this condition. The Performance Improvement Plan shall be developed by the EMSA in conjunction with the respondent's employer(s), and with input from the local EMS agency(ies). Performance Improvement Plan reports shall be submitted to the EMSA every ____ days for a period of ____.

A Performance Improvement Plan may include, but not be limited to, education and/or evaluation of the respondent in areas substantially related to the accusation as follows:

1. Remedial training by a preceptor in a field or clinical setting.
2. Remedial training with performance demonstration by the respondent.
3. Policy review by the respondent.
4. Participation by the respondent in Quality Assurance/Quality Improvement review audits.

Any and all notifications to the EMSA shall be by certified mail.

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Section VII: REVIEW BOARD

The EMSA shall convene a Review Board to meet the requirements of Optional Conditions 9 and 10 of the Conditions of Probation. The board would be responsible for testing the respondent per the terms and conditions of probation. The board shall submit to the EMSA its recommendation as to whether the respondent has successfully completed the exam.

Each board shall consist of an EMS physician, a paramedic, and an EMS educator. All board members must be currently active in California in an EMS clinical or administrative capacity.

Any individual that meets the minimum criteria to serve on the board may apply to the EMSA for a position on the board. The EMSA shall review the applications for eligibility and establish a list of qualified individuals.

When it is necessary to convene a board, the EMSA shall select individuals from the list to serve on the board. The EMSA shall make reasonable attempts to convene a regional board based upon the location of the respondent. Each board member shall be required to sign a document advising that he/she does not have a conflict with the respondent (i.e. personal friend, employer, EMS oversight, etc.).

The term for any board member shall be two years. At the conclusion of the term, a board member may reapply.

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Board Member Qualifications

Physician

- Must be certified by the California Medical Board.
- Must have five or more years of experience in EMS.
- Must not have had any discipline brought against him/her by the Medical Board of California.
- Must not have any criminal convictions.

Paramedic

- Must be currently licensed by the EMSA without any restrictions.
- Must not have been disciplined by the EMSA for violations of the Health and Safety Code, Division 2.5, Section 1798.200.
- Must qualify as a field preceptor as that term is defined by EMSA regulation (Section 100149(e)(1)-(4), Chapter 4, Division 9, Title 22, California Code of Regulations).
- Must not have any criminal convictions.

Educator

- Must qualify as a course director or principal instructor for a Paramedic Training Program as that term is defined in California Code of Regulations, Title 22, Division 9, Chapter 4, Section 100149.
- Must have five or more years of experience in EMS with at least two years as an EMS educator in a primary paramedic training program.
- Must not have been disciplined by their Professional Licensing/Certification Board.
- Must not have any criminal convictions.

State of California
Board of Registered Nursing



Recommended Guidelines
for
Disciplinary Orders
and
Conditions of Probation

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Introduction



In keeping with its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse, the Board of Registered Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Nursing Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the respondent has demonstrated a capacity to practice safe nursing, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the registered nurse is suspended in order to correct deficiencies in skills, education or personal rehabilitation. (See "Actual Suspension of License" on page 27.)

Factors to Be Considered



In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

Violations and Recommended Actions



The Nursing Practice Act (Business and Professions Code, Division 2, Chapter 6) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Following are the code numbers of the offenses and the Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and regulations. (The numbers following "Minimum Conditions of Probation" refer to the Standard Probation Conditions or Optional Probation Conditions listed on pages 19-27 of this document. These conditions may vary dependent upon the nature of the offense.)

An actual suspension of licensure may also be required as part of the probation order in addition to the conditions listed below:

Therapy or counseling (Condition 19) is required if the violation resulted in a patient death.

Nursing Practice Act



2761(a)(1)

a.) Incompetence or gross negligence.

- Recommended discipline:
Revocation
- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate.
- Condition 19 if patient death occurred.

2761(a)(1)

b.) Incompetence or gross negligence.

To direct another or to personally falsify and/or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record not pertaining to controlled substances.

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate

2761(a)(2)

Conviction of practicing medicine without a license.

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate.

2761(a)(3)

Fraudulent advertising.

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate.

2761(a)(4)

Disciplinary action against health care license by another state, government agency, or licensing board.

- Recommended discipline
*Revocation or
Revocation stayed with 3 years probation*
- Minimum conditions of probation:
*1-13 and others as appropriate
(Discipline to be determined based on guidelines' recommended
discipline for underlying violation(s).)*

2761(a)

Other actions which constitute unprofessional conduct include but are not limited to:

Failure to report client abuse to the appropriate agency.

- Recommended discipline:
Revocation
- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1- 13 and others as appropriate.

Holding oneself out as any of the following without meeting the BRN standards:

- Nurse practitioner – also a violation of Section 2761(j) and 2835
 - Nurse anesthetist – also a violation of Section 2761(j) and 2829
 - Certified nurse midwife – also a violation of Section 2761(j)
 - Public health nurse – also a violation of Section 2761(j)
 - Nurse practitioner with a furnishing number – also a violation of Section 2836.3
 - Nurse midwife with a furnishing number – also a violation of Section 2746.51
 - Board-listed psychiatric mental health nurse
 - Clinical nurse specialist – also a violation of Section 2838
-
- Minimum discipline:
Revocation stayed with 3 years probation.
 - Minimum conditions of probation:
1-13 and others as appropriate

- 2761 (b) **Procuring a certificate by fraud, misrepresentation, or mistake.**
- Minimum discipline:
Revocation
- 2761 (c) **Involvement in the procurement of or assisting in a criminal abortion.**
- Minimum discipline:
Revocation stayed with 3 years probation.
 - Minimum conditions of probation:
1-13 and others as appropriate.
- 2761(d) **Violating or abetting violation of any section of the Nursing Practice Act.**
- Minimum discipline:
Revocation stayed with 3 years probation.
 - Minimum conditions of probation:
1- 13 and others as appropriate.
- 2761(e) **Furnishing false information.**
- (1) In applying for licensure:
- Minimum discipline:
Denial or revocation of license.
- (2) In applying for renewal of license:
- Minimum discipline:
Revocation stayed with 3 years probation. If the false information pertained to continuing education, then the license should be suspended until evidence of 30 hours of approved continuing education is provided. The suspension is followed by 3 years probation.
 - Minimum conditions of probation:
1-13 and others as appropriate.
- 2761(f) **Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse,** in which event the record of the conviction shall be conclusive evidence thereof. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation. (See also 490, 492, and 493).
- Recommended discipline:
Revocation
- 2761(g) **Impersonating an applicant in an examination.**
- Minimum discipline:
Revocation
- 2761(h) **Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing.**
- Minimum discipline:
Revocation
-

2761(i) Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5, Division 2 (Medical Practice Act).

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others appropriate.

2761(j) Holding oneself out as a nurse practitioner without meeting the BRN standards.

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate.

2761(k) Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse.

No evidence of potential or actual patient harm.

- Minimum discipline:
Revocation stayed with 3 years probation
- Minimum conditions of probation:
1-13 and others as appropriate.

Potential or actual patient harm evidenced.

- Minimum discipline:
Revocation

2762(a) Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others.

(1) In cases in which the respondent is selling drugs for personal gain or the respondent replaced, withheld or substituted drugs on the job:

- Minimum discipline:
Revocation.

(2) In cases of first time offense, with documented evidence of an on-going rehabilitation program:

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

2762(b)

Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired.

- Recommended discipline:
Revocation

In cases of first time offense with documented evidence of an on-going rehabilitation program:

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

2762(c)

Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs. (See also 2761(f) and 2762 (a), (b) and (e).)

(1) In cases in which the respondent was under the influence, withheld or substituted drugs on the job:

- Minimum discipline:
Revocation

(2) In cases of first time offense with documented evidence of an on-going rehabilitation program, except in cases where the respondent withheld or substituted drugs on the job:

- Minimum discipline:
Revocation stayed with 3 years probation
Minimum conditions of probation: *1-19*

(3) In cases where the conviction is for falsification of records pertaining to controlled substances:

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate

2762(d)

Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol.

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

2762(e)

Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances.

- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate

For repeated and similar acts:

- Minimum conditions of probation: *1-19*

2836.3(c)

Incompetence/gross negligence by a nurse practitioner in performing functions related to furnishing drugs or devices.

- Recommended discipline:
Revocation
- Minimum discipline:
Revocation stayed with 3 years probation
Minimum conditions of probation:
1-13 and others as appropriate

Additional Business and Professions Code Statutes



- 119(a) Displaying or causing or permitting to be displayed or having in possession any canceled, revoked, suspended, fictitious, or fraudulently altered license, or any document simulating a license or purporting to be or to have been issued as a license.
- 119(b) Lending license to any person or knowingly permitting the use thereof by another.
- 119(c) Displaying or representing any license not issued to him/her as being his/her license.
- 119(d) Failing or refusing to surrender to the issuing authority upon its lawful demand any license which has been suspended, revoked, or canceled.
- 119(e) Knowingly permitting any unlawful use of a license issued to him/her.
- 119(f) Photographing, photostating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.
- Recommended discipline for 119(a) - (f):
Revocation
 - Minimum discipline:
Revocation stayed with 3 years probation
 - Minimum conditions of probation
1-13 and others as appropriate
- 125 Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:
- (a) Allows his/her license to be used by such person.
- (b) Acts as his/her agent or partner.
- Recommended discipline:
Revocation
 - Minimum discipline:
Revocation stayed with 3 years probation.
 - Minimum conditions of probation
1-13 and others as appropriate

- 125.6 **Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.**
- Recommended discipline:
Revocation
 - Minimum discipline:
Revocation stayed with three years probation
 - Minimum conditions of probation:
1-13 and others as appropriate.
- 480(a) **Acts Disqualifying Applicant:**
(See attached Policy Statement on Denial of Licensure.)
- (1) Conviction of a crime.
 - (2) Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
 - (3) Any act which if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of license.
- 480(c) **Applicant knowingly making a false statement of fact required to be revealed in the application for such license.**
- Recommended discipline for 480(a) and (c):
Denial of licensure
- 492 **Successful completion of a court-ordered diversion program (Penal Code) or of an alcohol and drug problem assessment program (Vehicle Code) does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.**
- 493 **The record of the conviction of a crime shall be conclusive evidence only of the fact that the conviction occurred and the board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.**
- 496 **Subversion of licensing examinations.**
- Recommended discipline:
Denial of licensure, actual suspension or revocation.
- 498 **Securing license by fraud, deceit, or misrepresentation.**
- Recommended discipline:
Denial of licensure, suspension, or revocation.
- 726 **Sexual abuse, misconduct, or relations with a patient.**
- Recommended discipline:
Revocation
-

810 (a)(1)

Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

- Recommended discipline:
Revocation
- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate.

810(a)(2)

Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.

- Recommended discipline:
Revocation
- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate.

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Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.

- Recommended discipline:
Suspension or revocation

Other Situations in which Revocation is the Recommended Penalty



1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.
2. Violation of the conditions of the Board's Probation Program.
3. Substantiated evidence or convictions of physical abuse and/or sexual offenses.
4. Patient neglect by failure to provide competent nursing care.
5. Second offenses unless the respondent can demonstrate that he/she has been rehabilitated.

Cost Recovery for Revocations and Surrenders



When the order is revocation or surrender, cost recovery should be included as follows:

“If and when respondent’s license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.”

Drug/Alcohol Rehabilitation Criteria



Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are not limited to:

- Successful completion of drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program will include at least the following elements:
 - Chemical-free treatment philosophy
 - Individual and/or group counseling
 - Random, documented biological fluid screening
 - Participation in nurse (or other professionals') support group(s)
 - Education about addictive disease
 - Adherence to a 12-step recovery program philosophy, or equivalent
 - Written documentation of participation in 12-step recovery groups, or equivalent
- For registered nurse licensees, employment in nursing for a minimum of six (6) months with documentation (from the employer) that the employer was aware of the previous drug or alcohol abuse problems. Documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed nursing functions in a safe and competent manner.
- For respondents seeking reinstatement of license, employment for a minimum of six (6) months with documentation from the employer that while employed, there was no evidence of alcohol or drug use.

Mitigation Evidence



The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

- A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.
- C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.
- D) Recent, dated laboratory analyses or drug screen reports, where appropriate.
- E) Recent, dated performance evaluation(s) from respondent's employer.
- F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.
- G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. **An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used.**

Conditions of Probation and Rationale



The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Board of Registered Nursing.

PROBATIONARY TERM

Generally, the Board recommends a minimum of three (3) years probation.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

- A. Standard conditions that appear in all probation orders; and
- B. Optional conditions that are appropriate to the nature and circumstances of the particular violation.

(Numbers preceding "Conditions of Probation" refer to the probationary conditions and rationale on the following pages.)

Listing of Probation Conditions



STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-13 are required as follows:

- 1) Obey all Laws
- 2) Comply With Board's Probation Program
- 3) Report in Person
- 4) Residency or Practice Outside of State
- 5) Submit Written Reports
- 6) Function as a Registered Nurse
- 7) Employment Approval and Reporting Requirements
- 8) Supervision
- 9) Employment Limitations
- 10) Complete a Nursing Course(s)
- 11) Cost Recovery (Does not apply to Applicants)
- 12) Violation of Probation
- 13) License Surrender

OPTIONAL PROBATION CONDITIONS

Conditions 14-19 are usually required (in addition to the standard conditions 1-13) if the offense involves alcohol/drug abuse. In cases of mental illness conditions 14, 18, and 19 are recommended. Any of these optional conditions may be included if relevant to the violation.

- 14) Physical Examination
- 15) Participate in Treatment/Rehabilitation Program for Chemical Dependence
- 16) Abstain From Use of Psychotropic (Mood-Altering) Drugs
- 17) Submit to Tests and Samples
- 18) Mental Health Examination
- 19) Therapy or Counseling Program
- 20) Actual Suspension of License

Introductory Language and Standard Probation Conditions



The following introductory language and all standard probation conditions are to be included in probationary decisions/orders. For applicants, Condition 11, Cost Recovery, does not apply. For licensees, all standard probation conditions apply. (Note: See alternative introductory language for applicants and reinstatements in next section of guidelines.)



INTRODUCTORY LANGUAGE FOR ALL ORDERS –

IT IS HEREBY ORDERED that Registered Nurse License Number ____ issued to Respondent ____ is revoked. However, the revocation is stayed and respondent is placed on probation for ____ years on the following conditions.

SEVERABILITY CLAUSE –

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

***RATIONALE:** The severability clause is required for all decisions and stipulated agreements where there are Conditions of Probation, in order to avoid the possibility of all probation conditions being repealed upon appeal.*

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

***RATIONALE:** All licensees are responsible for “abiding by the law” and complying with court orders, should the licensee be subject to court ordered parole or probation. This condition emphasizes the respondent’s responsibility and it provides the Board with a means to take more immediate and severe action if another violation occurs.*

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

***RATIONALE:** Full compliance with conditions of probation demonstrates the respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.*

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

***RATIONALE:** This provides a means for the Board representatives to make periodic personal assessments of the respondent, to give guidance and direction and to require the respondent to appear before the Board, if necessary.*

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

***RATIONALE:** This ensures that respondents may not complete probation without being fully monitored for their term in California. This further assures that the Board is aware of all licensure outside of California as a professional nurse.*

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

RATIONALE: *This provides the Board with a mechanism for maintaining communication with the respondent between meetings; gathering pertinent information from the respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. This also allows coordination with other state agencies to discipline registered nurses.*

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, “engage in the practice of registered nursing” may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent’s probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

RATIONALE: *This provides the Board with an opportunity to monitor the respondent and determine if he/ she can perform the functions and duties of a registered nurse in a competent manner. It also prevents the respondent from merely “sitting out” the probation and avoiding the necessity of demonstrating competence and complying with nursing practice related probation conditions.*

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

RATIONALE: *This condition allows the Board to determine the appropriateness of a setting for which the respondent will be providing registered nursing services and to obtain reports relative to the respondent’s registered nursing competency.*

This condition additionally allows the Board to be informed of any employment, termination, or separation of the respondent from a nursing or other health care related position, e.g., as a licensed vocational nurse, respiratory

therapist, certified nursing assistant or home health aide. It includes reporting of employment in health care related services not regulated by the state, e.g., surgical technician or cardiac catheterization technician.

The condition also provides the Board with a mechanism for ensuring that the employer providing nursing or other health care-related services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

RATIONALE: This allows the Board to require appropriate supervision and/or collaboration, to monitor the respondent's registered or advanced practice nursing competency and thus protect consumer safety. The level of supervision or need for advanced practice collaboration will be determined by the Board at probation meetings.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

RATIONALE: *The condition prevents the respondent from engaging in the practice of registered nursing in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances. If the respondent is working through a private duty or temporary placement arrangement, there is no assurance that the contracting facility or contracting family is aware of the nurse's probation. Home health agencies are licensed by the state, and are staffed by registered nurse supervisors. On a case-by-case basis, respondents may be permitted to provide home care under specified conditions. RNs disciplined by the Board may not teach approved CE courses pursuant to Section 1457(a)(1)(A), Title 16, California Code of Regulations.*

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

RATIONALE: *This condition permits the Board to require the respondent to remediate deficiencies in knowledge which affected or may affect his/her practice of registered nursing. This is necessary in gross negligence or incompetence as well as alcohol/drug abuse cases.*

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

Optional Probation Conditions



(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

***RATIONALE:** This condition permits the Board to require the respondent to obtain appropriate treatment for physical problems/disabilities which could affect registered nursing practice. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse. This condition protects the public if the physical examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the physical examination requirement.*

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment, within a specified time period, for problems which could affect her/his registered nursing practice and provides for continued involvement in a support system. The Board supports the need for participation in an ongoing recovery program for a successful recovery from chemical dependency or substance abuse.*

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

RATIONALE: *Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.*

(17) SUBMIT TO TESTS AND SAMPLES - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as

the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

***RATIONALE:** This condition provides documentation that the respondent is substance or chemical free. It provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol, and/or dangerous drugs when the respondent appears to be in violation of the conditions of probation or appears to be under the influence of mood altering substances. This condition protects the public by giving the Board the discretion to suspend respondent from practice based on the use of any substance that is not legally authorized. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the drug screening requirement.*

(18) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to

obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

RATIONALE: *This condition permits the board to require the respondent to obtain appropriate treatment and counseling for mental health problems which could affect registered nursing practice and/or could lead to relapse of a chemical dependency problem. This condition protects the public if the mental health examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the mental health examination requirement.*

(19) THERAPY OR COUNSELING PROGRAM - Respondent, at his/her expense, shall participate in an on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment and counseling for mental health or chemical dependency problems which could affect her/his nursing practice.*

(20) ACTUAL SUSPENSION OF LICENSE - Respondent is suspended from the practice of registered nursing for ____ months (period of time not to exceed one year) beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

RATIONALE: *Business and Professions Code Section 2759(c) gives the Board of Registered Nursing authority to: "Suspend licensee's right to practice nursing for a period not exceeding one year" as a mode of discipline for registered nurses found guilty of violating the Nursing Practice Act.*

It is the intent of the Board of Registered Nursing to assure safe nursing practice and rehabilitate rather than to punish. As part of probation, the public may be better protected if the registered nurse is suspended from the practice of nursing.

Recommended Language for Applicants and Reinstatements



In order to provide clarity and consistency in its decisions, the Board of Registered Nursing recommends the following language in proposed decisions or stipulated agreements for exam applicants, endorsement applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

- **Exam applicants who are placed on probation:**

“The application of respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:”

- **Endorsement applicants who are placed on probation:**

“The application of respondent _____ licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:”

- **Reinstatement of licensure with conditions of probation:**

“The application of respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:”

It is important to note that in many cases, petitioners for reinstatement have not practiced registered nursing in the State Of California for eight years. They must retake the licensing exam before they are eligible for licensure per Section 2811 of the Business and Professions Code. This information must be provided to the Administrative Law Judge so that he/she can include: “Upon successful completion of the licensure examination, a license shall be issued to respondent.”

In addition to the examination requirement, it may be appropriate to require completion of comprehensive education courses prior to resuming practice. Recommended language: “The respondent shall enroll in and successfully complete a refresher course or equivalent set of courses as approved by representatives of the Board. The respondent is suspended from practice until the required course work is successfully completed, but may use his/her license for the limited purpose of completing clinical requirements of the required coursework.”

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan must be included in the reinstatement and decision.

Time Frames for Petitions for Reinstatement and Modification of Penalty



Pursuant to Business and Professions Code, Section 2760.1(a), time frames for petitions for reinstatement and modification of penalty are as follows:

- At least three years for reinstatement of a license revoked for unprofessional conduct. (The board may, in its sole discretion, specify in its order a lesser period, but not less than one year.)
- At least two years for early termination of a probation period of three years or more.
- At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

Recommended Language for Cost Recovery for Revocations and Surrenders



When the order is revocation or surrender, cost recovery should be included as follows:

“If and when respondent’s license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.”

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POLICY STATEMENT ON DENIAL OF LICENSURE

The California Board of Registered Nursing protects the public by screening applicants for licensure in order to identify potentially unsafe practitioners. Statutory authority for denial of licensure is set out in Business and Professions Code Sections 480-487, 492, 493, 496, 810, 820-828, 2750-2765, and 2795-2797.

The law provides for denial of licensure for crimes or acts which are substantially related to nursing qualifications, functions, or duties. A crime or act meets this criterion if, to a substantial degree, it evidences present or potential unfitness to perform nursing functions in a manner consistent with the public health, safety, or welfare (California Code of Regulations, Section 1444).

The Board may deny licensure on the basis of:

- Conviction of crime substantially related to the practice of nursing.
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another.
- Any act which is grounds for revocation of a license.
- Making a false statement on the application for license.
- Breach of examination security.

Convictions

The Board considers most convictions involving sex crimes, drug crimes, and crimes of violence to be substantially related to nursing practice. Board regulations list examples of such crimes or acts to include, but not be limited to:

- Conviction of child abuse.
- Violation of Nursing Practice Act.
- Conviction as a mentally disordered sex offender.
- Crime or act involving narcotics, dangerous drugs, or dangerous devices.
- Conviction of assault and/or battery.

Rehabilitation

If the Board determines that an act or crime is substantially related to the practice of nursing, then it is the responsibility of the applicant to present sufficient evidence of rehabilitation.

When considering denial of license, the Board takes into account the following criteria to evaluate the rehabilitation of the applicant. (California Code of Regulations, Section 1445).

1. Nature and severity of the acts or crimes.
2. Additional subsequent acts.
3. Recency of acts or crimes.
4. Compliance with terms of parole, probation, restitution, or other sanctions.
5. Evidence of rehabilitation submitted by applicant.

The Board has developed the following list of suggested evidence of rehabilitation for applicants whose licensure is in question.

It should be noted that the board applies the same denial criteria for applications for interim permits and temporary license as it uses for permanent licensure.

In summary, the Board of Registered Nursing screens applications fairly but cautiously, applying the above criteria. Schools of nursing are encouraged when counseling prospective nursing students to make them aware that there could be potential licensure problems due to serious acts or convictions as described above. In this manner, students have the opportunity to explore other career options prior to investing substantial time in a nursing program if it appears that a prior serious act or conviction may jeopardize licensure due to its substantial relationship to the practice of nursing.

EVIDENCE OF REHABILITATION

At the time of application for licensure, the burden of proof lies with the applicant to demonstrate sufficient competent evidence of rehabilitation to establish fitness to perform nursing functions in a manner consistent with public health, safety, and welfare. The following list itemizes types of evidence which the applicant should consider providing to the Board. All items should be mailed directly to the Board by the individual or agency who is providing information about the applicant.

1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
2. Letter from applicant describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
3. Letters of reference from nursing program instructors concerning attendance, participation, and performance in nursing program.
4. Letters of reference from past and/or current employers.
5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of the registered nursing profession for the applicant.
7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
10. For endorsement applicants, copies of:
 - a. Formal accusation and determination of other state,
 - b. Copies of evidence presented to other state in order to obtain reinstatement of license or reduction or penalty,
 - c. Terms of probation and evidence of current compliance if currently on probation in another state.

STATUTORY AUTHORITY FOR DENIAL OF LICENSURE
(Summarized Version of Business & Professions Code)

Grounds for Denial

- 480 (a) Board may deny a license on the basis of:
- (1) Conviction of a crime, after time for appeal, irrespective of a subsequent order under Section 1203.4 of the Penal Code.
 - (2) Any act involving dishonesty, fraud or deceit with intent to substantially benefit self or another, or substantially injure another.
 - (3) Any act which is grounds for suspension or revocation of registered nurse's license.
- (b) May not deny license solely on basis of felony conviction if there is certificate of rehabilitation. (Penal Code 4852.01)
- (c) May deny license if applicant knowingly made false statement of fact required in application.

Criteria for Related Crimes Required

- 481 Board must have criteria to assist in considering denial, revocation, suspension of license in order to determine whether a crime or act is substantially related to nursing qualifications, functions, or duties. (BRN criteria specified in Section 1444 of California Code of Regulations).

Criteria for Rehabilitation Required

- 482 Board must have criteria to evaluate rehabilitation when considering (a) denial or (b) suspension or revocation of license. Board must consider all competent evidence of rehabilitation furnished by applicant or licensee. (Section 1445 of California Code of Regulations).

Attestations of Good Moral Character Not Required

- 484 No applicant can be required to submit attestations of good moral character.

Procedure for Board Upon Denial

- 485 Upon denial the Board must (a) serve a statement of issues or (b) notify the applicant of the denial stating the reasons and the right to a hearing. The right to a hearing is waived if a written request is not received within 60 days.

Reapplication After Denial

- 486 Upon denial the Board must inform the applicant of the earliest date for reapplication, state that all competent evidence of rehabilitation will be considered upon reapplication, and send a copy of the criteria for rehabilitation.
- 487 If a hearing is requested it must be conducted within 90 days of request, except for OAH extensions or at applicant's request.
- 492 Successful completion of any diversion program under the Penal Code or successful completion of an alcohol and drug problem assessment program under the Vehicle Code does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.
- 493 The record of the conviction of a crime shall be conclusive evidence of the fact that the conviction occurred and the Board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.

Violations of Exam Security

- 496 Board may deny, suspend, revoke, or restrict license on grounds that applicant for licensure subverted or attempted to subvert administration of examination.

REGULATIONS RELATING TO LICENSE DENIAL
(Summarized Version of California Code of Regulations)

1444. Substantial Relationship Criteria

A crime or act is considered substantially related to the practice of nursing if, to a substantial degree, it evidences present or potential unfitness of a registered nurse to perform nursing functions in a manner consistent with the public health, safety, or welfare.

Such acts or crimes include, but are not limited to:

- (a) Conviction of child abuse.
- (b) Violation of Nursing Practice Act.
- (c) Conviction as a mentally disordered sex offender.
- (d) Crime or act involving sale, gift, administration, or furnishing of narcotics, dangerous drugs, or dangerous devices.
- (e) Conviction for assault and/or battery.

1445. Criteria for Rehabilitation

- (a) When considering denial of license, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and his/her present eligibility for a license.
 - (1) Nature and severity of acts or crimes.
 - (2) Evidence of any additional, subsequent acts which also could be considered grounds for denial.
 - (3) Time that has elapsed since commission of acts or crimes.
 - (4) Extent to which applicant has complied with terms of parole, probation, restitution, or other sanctions.
 - (4) Evidence of rehabilitation submitted by applicant.

Bagley-Keene Open Meeting Act

Presented to the Paramedic Disciplinary Review Board
March 7, 2024

1

Purpose and Policy

- 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.
-

2



Purpose and Policy

- ❑ 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.
-

3



California Open Meeting Laws


- ❑ The Ralph M. Brown Act: Government Code Section 54940.5, et seq. Enacted 1953. Covers "local agencies" which are defined as: "[A] county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency."
 - ❑ The Bagley-Keene Open Meeting Act: Government Code Sections 11120, et seq. Enacted 1967. Covers "state bodies" which are defined as "[e]very 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."
-

4



Bagley-Keene in a Nutshell

A majority of members of a state body shall not meet, either serially or all together, in one place, to address issues under the body's jurisdiction.



5



State Bodies

Types of State Bodies:

- Advisory Bodies
 - Created by the Legislature
 - Created by formal action of another body
 - If fewer than two members, not covered by Bagley-Keene
-

6



State Bodies

- ❑ Delegated Body
 - Power to act has been delegated by another body
 - ❑ Commissions Created by the Governor
 - Via Executive Order
 - ❑ Body Determined by Membership
 - A member in their official capacity serves as a representative on another body which is funded in whole or in part by the member's state body.
-

7



When Does Bagley-Keene Apply?

→ Always! ←

- ❑ From the time of appointment, even though service on the body has not commenced, until the time service has completed.
 - 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.
-

8



What is a Meeting?

- ❑ 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.
 - ❑ 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.
-

9



Considerations & Exemptions

- ❑ Public Contact
 - It is ok to communicate with members of the public.
 - Problems arise when the public individual contacts a quorum of members.
 - Safe harbor – if the contact has not been solicited or orchestrated
 - Policy consideration – is such contact outside of a properly noticed meeting advisable?
-

10

Considerations & Exemptions

- Social Gatherings / Conferences and Retreats
 - Purely social gatherings are exempt from Bagley-Keene; however, topics within the jurisdiction of the state body are not to be discussed.
 - Conferences must be open to the public and involve subject matter of general interest to persons or bodies in a given field.
 - Topics within the jurisdiction of the state body should still not be discussed.
 - Conferences such as strategic planning sessions are not exempt.

11

Notice & Agenda Requirements

- Notice and the agenda of a meeting must be made available at least 10 days prior to the meeting.
 - Must be sent to persons that have requested it
 - Must also be posted on the internet
 - Must state time and place of the meeting
 - Include name, phone number, and address of contact person
 - Must comply with the Section 202 of the ADA to be available in alternative formats
 - Location must also be accessible
 - Must include a brief description of each item of business to be transacted or discussed
 - Applies to both open and closed meetings
- The notice and agenda must provide sufficient information so as to allow individuals to decide if they want to spend the time (and money) to attend the meeting to provide input.

12



Types of Meetings

- Regular
 - Those occurring under normal, ordinary circumstances, with proper 10-day notice
 - Two circumstances where agenda items can be added after the 10-day notice for a regular meeting has posted:
 - Immediate action
 - Requires 48 hours notice
 - Where the topic to be added requires immediate action and came to the attention of the body after the meeting notice was posted.
 - Requires a 2/3 vote or unanimous vote if 2/3 of the members are not present
 - The body must make a specific finding that the 10-day notice would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for such finding.
 - Emergency
 - Extremely rare instances where there exists a crippling disaster or work stoppage that would severely impair public health and safety.
-

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Types of Meetings

- Special
 - Limited purposes - Pending litigation, legislation, licensing matters, certain personnel actions, real estate transactions
 - 48-hour notice required
 - Provide notice to newspapers of general circulation, TV and radio stations
 - Factual basis for findings of hardship, public interest must be provided
 - 2/3 vote with articulable facts in support
 - Emergency
 - Very rare - crippling disaster or work stoppage would severely impair public health and safety
 - 1 hour notice of open meeting
-

14



Public Participation

- No conditions may be imposed for public attendance at a meeting
 - Sign in sheets
 - While not prohibited by the Act, notice must be clearly given that signing in is voluntary
 - Likewise, an individual does not need to self-identify in order to speak
-

15



Public Participation

- Building security
 - Security measures require identification to gain admittance to a government building are permitted so long as the information is not shared by security personnel with the state body
 - Members of the public are entitled to record and/or broadcast meetings unless to do so would constitute a persistent disruption
 - Place and manner of meeting must be non-discriminatory
 - No fee for attendance may be charged
-

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Teleconferences

- Must provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, remotely address by the body, or attend the meeting
 - Posted agenda must include:
 - Teleconference telephone number
 - Internet website or online platform
 - Physical address for each teleconference location
 - Access must be the same for the public as for the members
-

17



Teleconferences

- Public participation must be ADA compliant
 - A member of the body must be physically present at each noticed teleconference location
-

18



Alternative Teleconference Meeting Effective January 1, 2024

- Majority of members must be physically present at the same publicly noticed location
 - Other members in excess of the majority may either:
 - Appear remotely from private locations, or
 - Via a publicly noticed location
-

19



Alternative Teleconference Meeting Effective January 1, 2024

- Remote location appearance requirements:
 - Location of remotely appearing board member(s) shall not be publicized
 - Remotely appearing board member must disclose any other individuals 18 years or older present in the room with them and the general nature of the relationship with any such individuals.
-

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Alternative Teleconference Meeting Effective January 1, 2024

- Narrow Exception to Requirement that majority be present at a single site:
 - If less than a majority are present at a single site, a member attending from a private remote site can count toward the majority needed to hold the meeting if:
 - The member has a disability that cannot otherwise be reasonably accommodated except through remote participation
-

21



Alternative Teleconference Meeting Effective January 1, 2024

- The member must notify the board at the beginning of the meeting or earlier if possible and
 - Give a general description of not more than 20 words that does not divulge any confidential medical information of the need to participate remotely
 - The board votes to approve the remote appearance and allow the member to count toward the majority needed to hold a meeting
-

22



Teleconferences

- Members must appear on screen
 - Votes are to be taken by rollcall
 - Operative until January 1, 2026
-

23



Access to Records

- The public is entitled to have access to records of the state body
 - Materials provided prior to or during the meeting must be made available to members of the public
 - The California Public Records Act applies to state body records
 - If a record is exempt from disclosure under the CPRA then the record need not be disclosed to members of the public
-

24



Closed Sessions

Only allowed under limited circumstances:

- Personnel
 - Only designated employees of the state body
 - Board members are not employees
 - Pending Litigation
 - But only if the discussion in open session would prejudice the position of the agency in the litigation
 - Attorney-client privilege
-

25



Closed Sessions

- Deliberative Exception**
 - To Deliberate on decisions in a proceeding under the Administrative Procedures Act
 - Real Property Transactions
 - Security Exception
 - Criminal, terrorist threat
-

26



Closed Session Procedure

- Must be listed on the properly noticed agenda
 - Items to be considered in closed session must be properly listed on the agenda with the appropriate statutory provision authorizing the closed session
 - Prior to convening in closed session, the state body must publicly announce those items that will be considered
-

27



Closed Session Procedure

- After the completion of the closed session the body must reconvene in public open session
 - Report of action only required when decision to hire or terminate an individual
 - Minutes are required but are confidential and disclosable only to the board or a reviewing court
-

28



Remedies for Violation of the Act

- Decision of body may be overturned
 - Violations may be stopped or prevented
 - Costs and fees may be awarded
 - Misdemeanor penalties
-

29



Thank You For Your Time

Questions?



30



C A L I F O R N I A

DEPARTMENT OF JUSTICE

***BAGLEY-KEENE
OPEN MEETING ACT
GUIDE***

2023

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INTRODUCTION

California's Constitution gives people the right to access information about public business. (Cal. Const., art. I, § 3, subd. (b)(1).) For that reason, the meetings of public bodies must be open to public scrutiny. (*Id.*) To advance this policy, the Legislature enacted the Bagley-Keene Open Meeting Act (Bagley-Keene Act, or Act), intending that actions of state agencies be taken openly and that agency deliberation be conducted openly. (Gov. Code, § 11120; see Gov. Code, §§ 11120-11133].)¹ The Bagley-Keene Act protects the public's opportunity not only to observe, but also to participate in, the decision-making process of state bodies. (See *California State Employees' Assn. v. State Pers. Bd.* (1973) 31 Cal.App.3d 1009, 1013.) Thus, in California, state bodies generally deliberate at meetings that are open to the public. (See *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.* (2001) 87 Cal.App.4th 862, 867.) The Act creates exceptions for closed-door deliberations in limited circumstances.

When a state body makes decisions, the Act's provisions on public access and participation generally apply to that body's decision-making process. In contrast, when an individual state official makes decisions, the Act's public access and participation provisions do not apply, allowing for streamlined decision-making. In deciding whether to entrust a particular decision to a state body or to an individual, the Legislature implicitly decides which public interests—public access and participation, or streamlined decision-making—are more important in that context.

In general, meetings of state bodies must be open to the public. This means that state bodies must give the public an opportunity to attend and to speak at meetings. Under certain circumstances, state bodies may meet in closed sessions that exclude the public. (See Closed-session exceptions, *infra*.) Regardless, state bodies must give advance notice of the time and place of meetings, and the specific topics or decisions that the state bodies will consider at the meetings.

This Guide offers a road map of the Bagley-Keene Act's open-meeting rules. Along the way, it cites certain code sections of the Act. It also cites judicial and Attorney General opinions on open meetings, including ones involving the Ralph M. Brown Act (Brown Act), which applies to local agencies. (See Gov. Code, § 54950 et seq.) Because the Bagley-Keene Act closely

¹ All statutory references are to the Government Code unless otherwise stated.

parallels the Brown Act, “these statutes are construed in the same way absent a clear linguistic difference calling for a different result.” (103 Ops.Cal.Atty.Gen. 42, 44 (2020); *North Pacifica LLC v. California Coastal Com.* (2008) 166 Cal.App.4th 1416, 1434 [Brown Act provides a “virtually identical open meeting scheme” to Bagley-Keene Act].

This Guide is neither an exhaustive source of applicable legal authorities nor an exhaustive analysis of them. The Act and applicable decisional authority may change after publication of this Guide. This Guide is not a substitute for advice from an attorney. This Guide also appears on the Attorney General’s website at <https://oag.ca.gov>.

This Guide has four parts. First, the Guide discusses the entities and gatherings covered by the Act. Next, the Guide describes the requirements for compliance, detailing the rules for notices and agendas; public access and participation; access to records; and rules for teleconference and videoconference meetings. The Guide then discusses closed-session exceptions and procedures. Last, the Guide describes the potential consequences of violating the Act, including the possible penalties and available remedies.

I. MEETINGS SUBJECT TO ACT

To be subject to the Bagley-Keene Act, a “state body” must conduct a “meeting.” (Gov. Code, § 11123, subd. (a).)

A. State bodies

The Act governs members of every “state body.” (Gov. Code, § 11127.)² A state body exists under the Act if it is (1) a multimember body such as a state board or state commission, (2) created by one of five specified methods, and (3) not statutorily excluded.

² The open-meeting rules apply not only to incumbent members, but also to newly appointed or elected members who have not yet assumed office. (Gov. Code, § 11121.95.) Members-to-be should avoid private deliberations with incumbent members so as not to violate these open-meeting rules. Each state body must provide a copy of the Act to each member upon appointment or assumption of office. (Gov. Code, § 11121.9.)

1. Multi-member body

A state body must have two or more members. (Gov. Code, § 11121.) Therefore, state departments controlled by a single director are not state bodies for purposes of the Act.

2. Formed in one of five ways

Besides having two or more members, a “state body” under the Act must be formed or operated in one of five ways.

a. Created by statute

The Act governs state multimember bodies created by statute or required by statute to conduct official meetings. (Gov. Code, § 11121, subd. (a).) The Act extends not only to statutory bodies with operative powers but also to those with advisory functions. (See 85 Ops.Cal.Atty.Gen. 145, 148 (2002) [clinical advisory panel created by statute is state body subject to Act even though it has only a limited advisory role].)

b. Created by executive order

The Act governs commissions created by executive order. (Gov. Code, § 11121, subd. (a).) An executive order is a directive from the Governor to subordinate executive officers concerning the enforcement of law. (See 63 Ops.Cal.Atty.Gen. 583, 584 (1980).) A state body created by an executive officer other than the Governor is not subject to the Act unless it falls within the definition of another type of state body subject to the Act. (See 75 Ops.Cal.Atty.Gen. 263, 268-270 (1992) [private citizen task force created by State Insurance Commissioner is not state body created by executive order for purposes of Act].)

c. Created as a delegated body

The Act governs a multimember body, such as a board, commission, or committee, that exercises any authority delegated to it by a state body governed by the Act.³ (Gov. Code,

³ The lawfulness of particular delegations of power is beyond the scope of this Guide. Not all state bodies have statutory authority to delegate discretionary power, for example. (See, e.g., 90 Ops.Cal.Atty.Gen. 89, 98 (2007).)

§ 11121, subd. (b).) A classic example is an executive committee with delegated authority to act on a state body's behalf between meetings. A delegated body may also consist of a governing board of a non-profit entity exercising authority delegated by a state body. (See *Epstein v. Hollywood Entertainment Dist. II Business Improvement Dist.* (2001) 87 Cal.App.4th 862, 869-873.) Consistent with the statutory definition of a state body, a delegated body must include two or more members. Thus, if a state body delegates authority to only a single person, such as a chair or an executive director, the individual is not a state body for purposes of the Act. (75 Ops.Cal.Atty.Gen. 263, 268-269 (1992).)

d. Created as an advisory body

The Act governs any advisory body composed of three or more members that a state body or one of its members creates by formal action. (Gov. Code, § 11121, subd. (c).) An advisory body of just two members is therefore not a state body subject to the Act. A member of an advisory body could be a state body member, a staff member, or a member of the public. (See Gov. Code, § 11121, subd. (c) [not limiting who may serve on advisory body].) Unlike a delegated body, an advisory body does not exercise discretionary authority on its own, but instead advises the parent body. An advisory body created by a single department head is not a state body subject to the Act, unless a state body, statute, or executive order by the Governor directed the department head to create the advisory body. (75 Ops.Cal.Atty.Gen. 263, 268-269 (1992).)

For purposes of creating such advisory bodies, “formal action” may include a vote adopting a resolution, as well as other types of official action creating an advisory body. For example, one court broadly construed a similar Brown Act provision to encompass the myriad of ways to create an advisory body, such as a city council's designation of its members to serve on a new advisory group. (*Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 805 & fn. 5.) If a state body directs staff to create an advisory body, it has taken formal action to create the advisory body even if it does not select the body's members. (*Frazer v. Dixon Unified School Dist.* (1993) 18 Cal.App.4th 781, 792-793.) Advisory bodies do not include a group of state

body employees meeting with industry representatives to exchange ideas where no state body member is present and where, at the state body's direction, the employees compile information, consider possible alternatives, and formulate proposals for the state body's consideration. (89 Ops.Cal.Atty.Gen. 241, 246-247 (2006).)

e. Supported and represented by a state body

The Act governs public or private bodies where a state body member serves as the state body's official representative on the body and the body receives funding from the state body. (Gov. Code, § 11121, subd. (d).) For example, when a member of a university student organization represented that organization on the board of a private non-profit association, and the student organization provided funding to the non-profit, the non-profit was a state body subject to the Act. (65 Ops.Cal.Atty.Gen. 638, 643-644 (1982).)

3. Not excluded by statute

If specifically excluded by statute, a multimember body formed in one of these five ways is *not* considered to be a "state body" subject to the Act. (Gov. Code, § 11127.) The Act does not apply to the Legislature or to the state courts. (Gov. Code, § 11121.1, subds. (a), (c).)⁴ Local bodies covered by the Brown Act are not subject to the Bagley-Keene Act. (Gov. Code, § 11121.1, subd. (b); see *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545, 549-550 [local housing authority]; 73 Ops.Cal.Atty.Gen. 1, 3-4 (1990) [regional open space district]; 71 Ops.Cal.Atty.Gen. 96, 96-99 (1988) [air pollution control district].) Other particular bodies and categories of meetings may also be exempted from the Act. (See, e.g., Gov. Code, § 11121.1, subds. (d) [exempting certain meetings regarding employee bargaining in higher education], (e) [exempting Cancer Advisory Council], (f) [exempting Credit Union Advisory Committee]; Health & Saf. Code, § 51615, subd. (b) [exempting certain actions of California Housing Finance Agency Board].)

⁴ The Legislature and the judicial branch, however, may be subject to other public access laws. (See, e.g., Gov. Code, § 9027 et seq. [requiring open meetings for legislative committees]; *People v. Scott* (2017) 10 Cal.App.5th 524, 529-530 [recognizing a criminal defendant's constitutional right to a public trial].)

B. Meetings

A meeting occurs when (1) a majority of a state body (2) gathers to hear, discuss, or deliberate on (3) an item under its subject matter jurisdiction. (Gov. Code, § 11122.5, subd. (a).)

1. Majority of a state body

The Act applies when a majority of a state body congregate, either at or outside an open and noticed meeting. A majority of a state body may also be present in two less-apparent scenarios. One scenario involves a “serial” meeting—a meeting resulting from multiple separate private contacts among members that together amount to majority consideration of the body’s business. Another scenario occurs through a meeting by a majority of a subsidiary state body, such as a committee or subcommittee, even though a majority of the parent state body is not present. These two scenarios, which result in a state-body majority, are described below.

a. Serial meetings

A serial meeting comprises several communications, each among less than a majority of a state body, which taken together involve a majority. Specifically, the Act provides, “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.” (Gov. Code, §§ 11122, 11122.5, subd. (b)(1); 103 Ops.Cal.Atty.Gen. 42, 51-52 (2020); see *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 523-524 [prohibited serial meeting occurred when a majority of a body circulated, reviewed, and signed a proposal outside of a public meeting].) With this provision, the Act prohibits attempts to circumvent its open meeting requirements through serial meetings. The restriction on serial meetings extends to all communications technologies (e.g., email, mobile phones, instant messaging, text messaging, social media, blogs). (See Gov. Code, § 11122.5, subd. (b)(1).) Consequently, a majority of a state body may not separately communicate by electronic means to deliberate on a topic under the state body’s jurisdiction. (103 Ops.Cal.Atty.Gen. 42, 52 (2020); see 84 Ops.Cal.Atty.Gen. 30, 32-33 (2001).)

Serial meetings may occur within a state body either through (1) sequential contacts among the body's members, or (2) one member's selective communications with multiple members. In the sequential scenario, a communication chain starting with contact from member A to member B who then communicates with member C is a serial meeting of the three-member majority of a five-member state body. (See *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 376-377 [collective deliberation through letters or telephone calls from one local body member to the next would violate open-meeting rules].) In the selective scenario, a serial meeting occurs when member A acts as the hub of a wheel and communicates directly with selected spokes (members B and C). (See, e.g., *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 101-102.)

Serial meetings may also occur indirectly through go-betweens or delegates who are not state body members, in the same two ways that they may occur directly—sequentially or selectively. When member A's delegate communicates with member B's delegate, who then communicates with member C's delegate, a serial meeting has occurred if the delegates then transmit the communications to these members or act on the members' behalf. Alternatively, when a non-member acts as the hub of a wheel and communicates individually with selected spokes (members A, B, and C), the members have engaged in a serial meeting. (See *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 105 [attorney representing local body polled individual members before meeting].) For example, when the trustees of a community college met individually with a mediator during settlement negotiations, a court determined that the trustees had engaged in serial meetings with an intermediary (the mediator), in violation of open-meeting rules. (*Page v. MiraCosta Community College Dist.* (2009) 180 Cal.App.4th 471, 503.)

Conversely, an individual state body member may communicate with another member or any other person as long as the communication does not amount to deliberation by a majority of the state body. (Gov. Code, § 11122.5, subd. (c)(1), see, e.g., *Communicating privately with the public, infra.*) Thus, where a member of the public sends an email message to the entire state body and other members of the public, and one state body member replies by email solely to the sender and the other members of the public, this email exchange is not deliberation by a majority of the state body. (103 Ops.Cal.Atty.Gen. 42, 53-54 (2020).) The serial meeting prohibition also does

not prevent state body members from planning upcoming meetings by discussing times, dates, locations, and order of agenda items but only if such planning communications do not include substantive discussion of agenda items. (See generally 84 Ops.Cal.Atty.Gen., 30, 32-33 [open meeting requirements apply only to “substantive discussions” among a majority of a body].)

b. Less than majority gatherings

Large state bodies often create several smaller state bodies, such as subcommittees, that are subject to the Act. (Gov. Code, § 11121, subd. (b), 11127.) A gathering of less than a majority of a parent body may result in a subcommittee meeting subject to the Act. For example, a private gathering of three state body members, although less than a majority of a nine-member parent state body, may be a majority of one of its smaller five-member subcommittees. Such a gathering may violate the Act as an inadvertent meeting of the subcommittee.

To avoid inadvertent violations, state body members may choose to follow a “rule of two.” (See Gov. Code, § 11122.5, subd. (c)(1).) Under this practice, a state body member should not discuss any matter under the state body’s jurisdiction with more than one other state body member, thus avoiding a majority in most cases. This practice, however, would not work for three-member state bodies, because two members would make a majority. The point to remember is this: A non-majority of a larger state body still may make up a majority of its smaller state body—such as a committee or subcommittee.

2. Hear, discuss or deliberate

The Act applies when a majority of a state body gathers to hear, discuss, or deliberate a matter. To hear, discuss or deliberate, a state body need not vote. Deliberation includes “not only collective decision making, but also the collective acquisition and exchange of facts preliminary to the ultimate decision.” (*216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 860, 877, internal quotation marks omitted; accord, 103 Ops.Cal.Atty.Gen. 42, 52, fn. 54 (2020).) Deliberation encompasses information gathering, analysis, debate, and negotiation, as well as decision-making. (See *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal.App.2d 41, 47-48 [“[t]o ‘deliberate’ is to examine, weigh, and reflect upon the

reasons for or against the choice,” including “the ascertainment of facts”].) Information gathering includes staff briefings, pre-meeting conferences, informal studies, training, facility tours, investigations, and fact-finding sessions. (See, e.g., *Frazer v. Dixon Unified School Dist.* (1993) 18 Cal.App.4th 781, 795-797 [information session with prospective contractors]; *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 101-103 [series of one-on-one telephone conversations with agency attorney]; *Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 233–234 [gathering to discuss qualifications of prospective consultants]; 94 Ops.Cal.Atty.Gen. 33, 36-37 (2011) [facility tour]; 42 Ops.Cal.Atty.Gen. 61, 68 (1963) [pre-meeting briefing sessions].)

3. Item within the state body’s subject matter jurisdiction

The Act applies when a majority deliberates “upon any item that is within the subject matter jurisdiction of the state body.” (Gov. Code, § 11122.5, subd. (a).) An “item” is not limited to an item on a public meeting agenda, but includes any “separate, distinct topic” that the majority may consider within its subject matter jurisdiction. (103 Ops.Cal.Atty.Gen. 42, 45 (2020).) Were this not the case, a state body could “circumvent the Act by deliberating on or deciding a matter affecting the public that is not yet, or may never be, placed on an agenda—while excluding the public from participation.” (*Ibid.*) As for the term “subject matter jurisdiction,” it simply means that the body has the authority to hear the matter. (*Id.* at p. 45.) Thus, a state-body majority’s discussion of a topic relating to the state body is a “meeting” that triggers the Act’s requirements. (*Id.* at p. 43 [discussion of how to comply with the Act is a matter within the state body’s subject matter jurisdiction]; 78 Ops.Cal.Atty.Gen. 224, fn. 2 (1995) [discussion of a member’s personal life is a matter outside the state body’s subject matter jurisdiction].)

C. Communications or gatherings that are not meetings

As described above, a communication or gathering of state body members is not a meeting subject to the Act if it does not involve a majority of a state body, deliberation among its members, or consideration of an item under its jurisdiction. Some gatherings are expressly exempt from the Act. In addition, under case law, some communications are not subject to the Act’s notice and open-meeting requirements.

1. Communicating privately with the public

Generally, private communications between a member of the public and an individual state body member is not a meeting subject to the Act if a majority of the state body has not deliberated. (Gov. Code, § 11122.5, subd. (c)(1); 103 Ops.Cal.Atty.Gen. 42, 51-54 (2020).) Even if the member of the public meets individually but separately with enough members to constitute a majority of the state body, such separate communications are still not a meeting. But if the member of the public acts as a go-between or delegate (see Serial meetings, *supra*) or a majority of the state body otherwise use these private communications to deliberate indirectly among themselves, the communications become a serial meeting prohibited by the Act. (Gov. Code, § 11122.5, subds. (b)(1), (c)(1); 103 Ops.Cal.Atty.Gen., 42, 53-54 (2020); *Page v. MiraCosta Community College Dist.* (2009) 180 Cal.App.4th 471, 503.)

2. Obtaining information from staff

A private communication between a state body member and a staff member to obtain information on a matter under the state body's jurisdiction is not a meeting subject to the Act if the staff member does not communicate to state body members the comments or position of any other member. (Gov. Code, § 11122.5, subd. (b)(2).) This staff briefing exception allows state body members to get the information they need to prepare for a meeting by allowing staff to answer their questions. Under this safe-harbor exception, staff may communicate privately with only one member at a time, without communicating the comments or position of any other member.

The staff briefing exception does not apply when a two-member subcommittee that does not qualify as a state body under the Act meets with a staff member to obtain information. Such communications, however, are not prohibited serial communications (see Serial meetings, *supra*) unless the staff member communicates the comments or position of the two-member subcommittee to other members of the larger parent body.

3. Receiving written advice from legal counsel

A one-way communication of written legal advice to state body members is not a meeting subject to the Act. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 381.) A member's solitary

review of legal advice received by a majority of a state body may occur outside of an open meeting. The exception does not apply if the members privately discuss the content of the legal advice with each other. Such a discussion would amount to deliberation, which would qualify the discussion as a meeting under the Act. (But see Closed-session exceptions, *infra* [legal advice relating to litigation strategy may be provided to a majority of a state body in closed session].)

4. Attending a public conference

A state-body majority's attendance at a conference or similar gathering is not a meeting subject to the Act if three conditions are met. First, the conference must be open to the public.⁵ Second, the conference must cover a topic of general interest to the public or to public entities like the state body. Third, the state body members must not deliberate with each other on specific business under the state body's jurisdiction except as part of the scheduled public program. (Gov. Code, § 11122.5, subd. (c)(2)(A).) For example, under this exception, a state body member may participate on a panel by generally discussing a topic under the state body's jurisdiction even if a majority of other state body members are present at the conference. But state body members should avoid private discussions with other members about upcoming agenda items. Also, if the conference only focuses on the laws or issues of a particular body it would not be exempt under the Act.

5. Attending a public meeting of another entity

When the majority of a state body attends a noticed or publicized public meeting that another public or private entity holds on a topic of statewide concern, no separate meeting of the state body has occurred. But a majority of a state body may not deliberate with each other at the entity's meeting on a matter under the state body's jurisdiction except as part of the scheduled meeting program. (Gov. Code, § 11122.5, subds. (c)(3), (c)(4).)

⁵ The Act does not require free admission for a conference to be considered open to the public; conference organizers may charge for admission. (See Gov. Code, § 11122.5, subd. (c)(2)(B).)

6. Attending a standing committee meeting

A majority of a state body may attend open and noticed meetings of a state body's standing committees but only if the members who are not on the standing committee attend as mere observers. (Gov. Code, § 11122.5, subd. (c)(6).) A standing committee is "[a] committee that is established for ongoing business, that continues to exist from session to session, and that is usu[ally] charged with considering business of a certain recurring kind." (Black's Law Dict. (11th ed. 2019) p. 342, col. 1; see 79 Ops.Cal.Atty.Gen. 69, 72 (1996).) A "standing committee" does not include a limited-term subcommittee, or an ad hoc committee charged with accomplishing a specific task in a short timeframe. (79 Ops.Cal.Atty.Gen. 69, 73 (1996).) Attending as an observer means that a member may watch and listen, but may not ask questions, make statements, or sit at the dais with the standing committee members. (See 81 Ops.Cal.Atty.Gen. 156, 159-160 (1998).) Participation by state body members who are not on the standing committee may only occur at a public meeting of the larger parent body.

7. Attending a social or ceremonial gathering

A social or ceremonial gathering, attended by a majority of a state body, is not a meeting subject to the Act, as long as the state body members do not deliberate with each other at the event on specific business under the state body's jurisdiction. (Gov. Code, § 11122.5, subd. (c)(5).) In contrast, a luncheon attended by a majority of a state body is a meeting subject to the Act when the members discuss agency business. (103 Ops.Cal.Atty.Gen. 42, 43-48 (2020); see *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal.App.2d 41, 45, 50-51.)

II. OPEN MEETING PROCEDURES

A. Notice and agenda

The Act has rules for both the timing and the content of the notice and agenda for a state body's meeting. The rules give advance information to the public regarding the state body's planned business, so that those who are interested may attend the meeting or take other action. (103 Ops.Cal.Atty.Gen. 42, 49 (2020).) At the same time, the Act has exceptions to these rules.

1. Timing of notice and agenda

A state body subject to the Act must give advance public notice of its meetings, including a specific agenda of the items it will consider at each meeting. At least 10 calendar days before a regular meeting, the state body must send the notice and agenda to any person who requests it, and post it on its website.⁶ (Gov. Code, § 11125, subd. (a); see 78 Ops.Cal.Atty.Gen. 327, 330-331 (1995).) The notice deadline is calculated in calendar days, not business days. (Gov. Code, § 11125, subd. (a).) Holidays falling within the 10-day period do not result in more time to post a meeting notice. (Gov. Code, § 6800.) Thus, if a notice deadline falls on a holiday or other nonbusiness day and if a state body cannot post a notice on that day, the state body should post the notice earlier.

2. Contents of notice and agenda

A notice must include administrative information about the meeting, consisting of: (1) the meeting's time and place; (2) contact information for the person who can answer questions about the meeting; (3) the state body's website address; and (4) information on how persons with a disability may ask for accommodations. (Gov. Code, § 11125, subds. (a), (f); § 11125.4, subd. (b).) If asked, a state body must provide the notice in alternative formats that comply with the federal Americans with Disabilities Act. (Gov. Code, § 11125, subd. (f); see 42 U.S.C. § 12132; 28 C.F.R. § 35.160.)

A notice must also include substantive information about the meeting, including an agenda describing each item of business that the state body will consider at the meeting. (Gov. Code, § 11125, subd. (b).) The description of each agenda item generally need not exceed 20 words, but it must give the average person enough information to decide whether to attend or participate in the meeting. (Gov. Code, § 11125, subd. (b); 67 Ops.Cal.Atty.Gen. 84, 88 (1984).) The public should not have to be "clairvoyant or have had collateral information" to understand a state body's

⁶ The Act does not define the term "regular meeting," although the term appears several times in the Act. (See, e.g., Gov. Code, §§ 11126, subds. (a), (c)(18)(B), 11128, 11128.5.) By inference, a regular meeting is any meeting other than a special meeting or emergency meeting. It is a meeting of the body conducted under normal or ordinary circumstances at a time set by law or regulation. (See Gov. Code, § 11128.5.)

intended action. (67 Ops.Cal.Atty.Gen., *supra*, at p. 88.) The description must not be misleading and should convey the whole scope of a matter. (*Ibid.*)

“Action taken” means a collective decision, a collective commitment or promise to make a positive or negative decision, or an actual vote, by state body members upon a motion, proposal, resolution, order, or similar action. (Gov. Code, § 11122.). An action item does not include “mere discussion.” (103 Ops.Cal.Atty.Gen. 42, 49 (2020).) Normally, a state body should avoid labeling an item on the agenda as “discussion” or “action” unless it limits itself to that description at the meeting. (*Id.* at p. 50.)

Notice and agenda rules also apply to closed sessions. For closed session items, the agenda must show that the state body will meet in closed session on that item, describe generally the topic of the closed session, and cite the statutory authority for the closed session. (Gov. Code, § 11125, subd. (b); see Closed session procedures, *infra*.)

A state body ordinarily may not deliberate or act upon on any item not described, or inadequately described, on the agenda. (Gov. Code, §§ 11125, subd. (a), 11125.3.) Several cases illustrate this precept. In *Moreno v. City of King*, for example, the court held that the description “Public Employee (employment contract)” did not give adequate notice of a closed session to consider an employee’s dismissal. ((2005) 127 Cal.App.4th 17, 26-27.) In *Carlson v. Paradise Unified School District*, the agenda description “Continuation school site change” did not give adequate notice that a school district intended to close not only its high school continuation program but also its elementary school program. ((1971) 18 Cal.App.3d 196, 200.) In *San Joaquin Raptor Rescue v. County of Merced*, an agenda item to consider approving a project to subdivide a parcel did not give proper notice that a planning commission would also consider the adoption of a mitigated negative declaration for the project. ((2013) 216 Cal.App.4th 1167, 1176-1179.) And *Hernandez v. Town of Apple Valley* held that a town council agenda item to put an initiative approving a commercial development on a special election ballot did not give adequate notice that the town council also intended to approve the acceptance of a gift from the developer to pay for the special election. ((2017) 7 Cal.App.5th 194, 207-209; see also 67 Ops.Cal.Atty.Gen. 84, 85-88 [the State Board of Food and Agriculture failed to give proper notice by voting for a resolution opposing congressional designation of the Tuolumne River as a “Wild and Scenic River” and the

“Tuolumne River Canyon” as a “wilderness area” where the agenda had stated only that the board would consider “Tuolumne River San Joaquin River Flood Control Problem”].)

By contrast, technical errors or immaterial omissions in a meeting agenda will not prevent the state body from acting if the agenda discloses the essential nature of the matters the body will consider. (*Olson v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 520; *San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637, 644-645.) The description requirement applies to both discussion items and action items. (Gov. Code, § 11125, subd. (b).)

During a meeting, state body members may engage in limited conversations not appearing in the agenda, such as reporting on personal activities or interacting with public speakers and staff for informational or procedural purposes, including asking to add a business matter to a future agenda. They may not, however, deliberate on any substantive policy matter not on the agenda. (See 84 Ops.Cal.Atty.Gen. 30, 32-33 (2001) [the Brown Act applies to “substantive discussion” among a majority of a body].)

Anyone may request a free copy of the notice and agenda for any meeting of a state body. (Gov. Code, §§ 11125, subd. (d), 11126.7.) A state body must keep a mailing list of the requestors and update the list at least once per year. (Gov. Code, § 14911.) To update the list, the state body may send a postcard or letter to each person on the list. If the person fails to respond, the state body may remove them from the list. While the Act does not expressly address the option of electronic delivery, it does not restrict a state body from providing electronic notice to those who request it.

3. Notice and agenda exceptions

The Act has limited exceptions to the notice and agenda rules for meetings. These exceptions fall into the following categories: adding an agenda item past the deadline for notice, holding a special meeting, calling an emergency meeting, adjourning a meeting, and continuing a public hearing.

a. Adding agenda item past deadline

Normally, a state body must provide a written notice of its agenda at least 10 calendar days before the meeting. (Gov. Code, § 11125, subd. (a).) In two circumstances, a state body may add an item to a regular meeting agenda in fewer than 10 calendar days before the meeting. (Gov. Code, § 11125.3.) First, it may add a matter to the agenda when a majority of a state body concludes that the matter qualifies for an emergency meeting, as described below. (Gov. Code, § 11125.3, subd. (a)(1); see Gov. Code, § 11125.5.) Second, it may add a matter to the agenda by a two-thirds vote at the meeting (or if less than two-thirds are present, by a unanimous vote of those present) if the state body determines a need exists to take immediate action. The need for immediate action must come to the state body's attention after it has distributed and posted the agenda under the 10-day notice rule. (Gov. Code, § 11125.3, subd. (a)(2).) When adding an item to the agenda, the state body must give notice of the new agenda item to its members, persons on its mailing list, and all national press wire services. It must post the revised agenda on its website, as soon as practicable, but no later than 48 hours before the meeting. (Gov. Code, § 11125.3, subd. (b).)⁷

b. Holding a special meeting

A state body may hold a "special meeting" on no less than 48-hours' notice for specified purposes upon a finding that following the 10-day notice rule would impose a substantial hardship on the state body, or that protecting the public interest calls for immediate action. (Gov. Code, § 11125.4, subd. (a).) A special meeting may be held only for the following purposes: consideration of pending litigation or proposed legislation; issuance of a legal opinion; disciplinary action involving a state officer or employee; the purchase, sale, exchange, or lease of real estate; licensing examinations and applications; and certain other decisions specified in the Act. (Gov. Code, § 11125.4, subd. (a).)

To hold a special meeting, the state body must prepare and distribute a notice and an agenda of the meeting to its members, persons on its mailing list, and all national press wire services, and

⁷ The 48-hour period may include weekend hours. (78 Ops.Cal.Atty.Gen. 327, 330-331 (1995).)

post the agenda on its website as soon as practicable but no later than 48 hours before the meeting. (Gov. Code, § 11125.4, subd. (b).)

At the start of the special meeting, the state body must make a finding on the record that following the 10-day notice rule would impose a substantial hardship on the state body or that protecting the public interest calls for immediate action. (Gov. Code, § 11125.4, subd. (c).) The finding must articulate the facts creating the hardship or the impending harm to the public interest. The state body must adopt the finding by two-thirds vote (or if less than two-thirds are present, a unanimous vote), and must post the finding on its website. If the state body fails to adopt the finding, the special meeting is over and the state body may not consider or act upon the agenda item. If the state body adopts the finding, it may only consider the item on the agenda and may conduct no other business at the special meeting. (Gov. Code, § 11125.4, subd. (b).)

c. Calling an emergency meeting

A state body may call an emergency meeting without following the 10-day notice rule for regular meetings or the 48-hour notice rule for special meetings, when prompt action is necessary due to an “emergency situation” caused by “the disruption or threatened disruption of public facilities.” (Gov. Code, § 11125.5, subd. (a).) An emergency includes a crippling disaster or work stoppage that severely impairs public health or safety. (Gov. Code, § 11125.5, subds. (a), (b).) The state body must post the emergency meeting’s notice and agenda on its website as soon as practicable. The state body’s presiding officer must notify the news organizations on its mailing list of the emergency meeting by telephone at least one hour before the meeting. If telephone services are down, the presiding officer may give notice as soon as possible after the meeting, with a report on any action taken at the meeting. (Gov. Code, §§ 11122, 11125.5, subd. (c).)

At the start of the emergency meeting, the state body must determine that an emergency exists. (Gov. Code, § 11125.5, subd. (b).) As soon as possible after the meeting, the state body must post in a public place, and on its website, the meeting minutes, a list of persons who received the meeting notice or whom the presiding officer tried to notify, the roll call vote, and any action taken. This information must be posted for at least 10 days. (Gov. Code, § 11125.5, subd. (d).)

d. **Adjourning a meeting**

A state body may postpone (“adjourn”) a noticed regular or special meeting to a different time or place without requiring another 10-day notice for the future regular meeting or another 48-hour notice for the future special meeting. The adjournment order must state the time and place of the future meeting. Less than a quorum of the state body may adjourn a meeting. If no state body member attends a meeting, a clerk or secretary may adjourn the meeting and state the time and place of the future meeting. (Gov. Code, § 11128.5.)

If a state body or state body member adjourns a meeting, the state body must conspicuously post the adjournment order near the door of the place of the adjourned meeting within 24 hours after the time of adjournment. (§ 11128.5.) A state body may post the adjournment order on its website, but is not required to do so.

If a clerk or secretary declares a meeting adjourned, they likewise must conspicuously post the adjournment notice near the door of the place of the adjourned meeting within 24 hours after the time of adjournment. Additionally, the clerk or secretary must deliver the adjournment notice to the persons on the state body’s mailing list and to all national press wire services, and must post the notice on the state body’s website, all as soon as practicable, but in no event less than 48 hours before the future meeting. (Gov. Code, §§ 11125.4, subd. (b), 11128.5.)

Because the later meeting is simply a postponement of the original, adjourned meeting, the original agenda applies to the postponed meeting. Nothing in the Act prevents a state body from canceling a scheduled or noticed meeting at any time without adjournment. Although not required, a state body may wish to distribute and post a notice of cancellation. Once a state body cancels a meeting, it must comply with the regular 10-day notice and agenda requirements for a subsequent meeting. (See Timing of notice and agenda, *supra*.)

e. **Continuing a public hearing**

When a state body conducts a public hearing at a noticed meeting, it may continue the hearing to a future time and place without giving another meeting notice. (Gov. Code, §§ 11128.5, 11129.) To continue the hearing, the state body must conspicuously post the continuance order

near the door of the place of the continued hearing within 24 hours after the hearing. If the state body continues the hearing to a time fewer than 24 hours after the meeting, then it must post the continuance order immediately after the hearing. (Gov. Code, § 11129.) The state body may post the continuance order on its website, but is not required to do so.

B. Rights of the public at an open meeting

Besides complying with notice and agenda requirements, a state body must make sure that its meetings are open and transparent to the public. This section sets forth the Act's open-meeting rules that protect these rights. It then discusses exceptions that allow state bodies to hold meetings that are closed to the public in specified circumstances.

1. Public attendance at meetings

Generally, the public is entitled to attend meetings (other than authorized closed sessions) with minimal restrictions. (See Gov. Code, § 11123, subd. (a); see, e.g., 68 Ops.Cal.Atty.Gen. 65, 68-71 (1985) [right of the public to attend meeting of a state body would be violated by the election of officers by secret ballot, mail ballot, or proxy].) Meeting locations must be accessible to all members of the public, including persons with disabilities. (Gov. Code, §§ 11123.1, 11131.) No state body may prohibit public attendance at a meeting because of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental or physical disability, medical condition, genetic information, marital status, or sexual orientation. (Gov. Code, §§ 11131, 11135, subd. (a).) A state body may not charge a fee to attend a meeting subject to the Act. (Gov. Code, § 11131.) Individuals may attend meetings without identifying themselves. If a state body posts or circulates an attendance list, register, questionnaire, or other similar document at a meeting, the document must state that filling it out is voluntary. (Gov. Code, § 11124.)

The public may record and broadcast a meeting with an audio or video recorder unless the state body reasonably determines that the noise, light, or view obstruction from the recording or broadcast would be a persistent disruption to the meeting. (Gov. Code, § 11124.1, subds. (a), (c); see Gov. Code, §§ 6090, 6091; *Nevens v. City of Chino* (1965) 233 Cal.App.2d 775, 779.)

The public may not bring a firearm or other weapon to a meeting. (Pen. Code, § 171b.) If a person willfully disturbs a meeting, the state body may remove that person from the meeting. If the removal fails to restore order, the state body may clear the whole meeting room. After clearing the room, the state body may set up a process for readmitting persons who did not participate in the willful disturbance. The body must readmit press or news media who did not participate in the disturbance. (Gov. Code, § 11126.5.)

2. Public participation at meetings

Generally, the public is entitled to speak at meetings with few restrictions. (Gov. Code, § 11125.7, subd. (a); see, e.g., Gov. Code, § 11125.7, subds. (e), (f), (g), (h) [exempting from this rule include closed sessions, certain administrative adjudications, California Victim Compensation Board hearings, and Public Utilities Commission adjudicatory hearings].) At a meeting, a state body must give the public an opportunity to comment on each agenda item before voting on the item. (Gov. Code, § 11125.7, subd. (a).) Allowing public comment on each item immediately before the body considers the item ensures the body “has a clear and complete understanding of the public concern” regarding the item. (*Olson v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 528.) Limiting public comment on agenda items to just one specific designated time rather than multiple times throughout the meeting before each agenda item “may defeat this purpose.” (*Ibid.*)

A state body may also include on its meeting agenda (except an emergency-meeting agenda) an opportunity for the public to comment generally on any other topic under its jurisdiction even if that topic does not appear on the agenda. (Gov. Code, § 11125.7, subd. (a).) But the state body may not otherwise deliberate on any matter not specified on the agenda. (Gov. Code, §§ 11122.5, 11125, 11125.3.)

To preserve robust public debate on governmental issues, during public comment the public is entitled to criticize a state body’s programs, policies, services, acts, or omissions. (Gov. Code, § 11125.7, subd. (d).) A state body, however, may prohibit the public from commenting on topics not under its jurisdiction. (78 Ops.Cal.Atty.Gen. 224, 230 (1995).) A state body also may adopt reasonable procedures to limit the time allocated to each topic and each speaker. (Gov.

Code, § 11125.7, subd. (b); *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150, 170-177.) Whether a time limit is reasonable depends on the circumstances of each meeting, including the time allocated to the meeting, the number and complexity of each agenda item, and the number of persons wishing to comment. (75 Ops.Cal.Atty.Gen. 89, 92 (1992).) When a state body limits time for public comment, it must allow twice the allotted time to non-English speakers who address the state body through a translator. (Gov. Code, § 11125.7, subd. (c)(1).)

Public participation is not mandatory in certain administrative proceedings held under the Administrative Procedure Act. (Gov. Code, § 11125.7, subd. (f); but see 80 Ops.Cal.Atty.Gen. 247, 252 (1997) [because the State Board of Equalization is not statutorily exempted from public comment, members of the public, including employees of public agencies, have the right to address the board at a taxpayer's appeal hearing].) Further, the public is not entitled to a second opportunity to comment on an agenda item when a committee composed exclusively of members of the state body considered the item at a meeting during which the public had an opportunity to comment on the item, unless the item substantially changed since the committee meeting. (Gov. Code, § 11125.7, subd. (a).)

When a state body deliberates on whether to notice an item for a future meeting, it may exclude the public from that discussion. (See *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors* (2005) 129 Cal.App.4th 205, 209-210.)

3. Public access to meeting records

When persons distribute writings to a majority of a state body in connection with matters subject to consideration at a public meeting of the state body, the writings are public records that are generally disclosable under the California Public Records Act. (Gov. Code, § 11125.1; see generally Gov. Code, § 7920.000 et seq.) Such writings include notices and agendas, agenda packets, memos or reports prepared by or at the direction of staff, memos or written comments prepared by state body members, and support or opposition letters from the public. (Gov. Code, §§ 11125.1, subd. (f), 7920.545.) A state body's recording of an open meeting is a public record subject to inspection but may be destroyed after 30 days. (Gov. Code, § 11124.1, subd. (b).) If a state body prepares a transcript of the recording, the transcript is a public record subject to

disclosure. (64 Ops.Cal.Atty.Gen. 317, 321 (1981).) The state body must also make the records available at the meeting itself if the body or one of its members prepares them. Upon request, the records must also be provided in alternative formats complying with the Americans with Disabilities Act. (Gov. Code, § 11125.1, subd. (b); see generally 42 U.S.C. § 12101 et seq.) The state body may charge fees for copies of public meeting records, limited to the direct costs of duplication. (Gov. Code, §§ 11125.1, subd. (e), 11126.7.)

Some meeting records may be confidential even if distributed to a majority of a state body. (See, e.g., Gov. Code, § 11125.1, subd. (a) [incorporating certain disclosure exemptions provided in California Public Records Act]; *General American Transportation Corp. v. State Bd. of Equalization* (1987) 193 Cal.App.3d 1175, 1179-1180 [recognizing incorporation of disclosure exemption into both Act and California Public Records Act].)

4. Public monitoring of votes taken at meetings

A state body must publicly report any action taken, and the vote or abstention of each state body member present for the action. (Gov. Code, §§ 11122, 11123, subd. (c).) Taking action through “roll call vote or a specific tally” helps to satisfy this vote reporting requirement by identifying each member’s vote or abstention. (See *New Livable Cal. v. Assn. of Bay Area Governments* (2020) 59 Cal.App.5th 709, 712, fn. 2.) This procedure allows each member’s vote or abstention to be publicly reported in the state body’s official meeting minutes or other written summary of the body’s decisions.

C. Teleconference meetings

The Act includes special rules for teleconference meetings.⁸ (Gov. Code, § 11123, subd. (b)(1).) A “teleconference meeting” occurs when a state body members participate at different locations accessible to the public and communicate with each other electronically through audio, or audio and video. (Gov. Code, § 11123, subd. (b)(2).) A teleconference location is a location at

⁸ During the COVID-19 State of Emergency, the Governor temporarily suspended some teleconference requirements under the California Emergency Services Act. (Gov. Code, § 8550 et seq.) On September 13, 2023, the Legislature temporarily reinstated the emergency teleconference rules. (Gov. Code, § 11133.) The emergency teleconference rules expire on December 31, 2023.

which a state body member is physically present while participating in the teleconference meeting. (Gov. Code, § 11123, subd. (b)(1)(F).) A teleconference meeting may be a regular, special, or emergency meeting, including closed sessions during a regular or special meeting. (Gov. Code, § 11123, subd. (b)(1)(E).) The general teleconference meeting rules apply to all state bodies, and alternative rules apply to state bodies with only advisory powers.

1. Teleconference rules for decision-making bodies

A teleconference meeting for state bodies with the power to render decisions must comply with the Act's general open-meeting and notice rules, and with the following additional teleconferencing rules: (1) the meeting's notice and agenda must identify all teleconference locations; (2) the state body must post agendas at all teleconference locations; (3) each teleconference location must be accessible to all members of the public, including those with disabilities; (4) the meeting, other than a closed session, must be audible to the public at all teleconference locations; (5) the public must have an opportunity to speak to the state body at all teleconference locations; and (6) all votes must be by roll call. (Gov. Code, § 11123, subd. (b)(1).)

If a state body holds a teleconference meeting, it must do so in a way that protects the rights of the public and any party appearing before the state body. (Gov. Code, § 11123, subd. (b)(1)(C).) Occasionally, the notice for a teleconference meeting may announce a teleconference location, but a state body member might fail to attend from the remote site on the day of the meeting because of an illness or scheduling conflict. In that situation, the remote site must nonetheless remain open and be available to the public so that the public may participate in the meeting electronically from the remote site. Similarly, the state body must still comply with the other requirements for teleconference locations, including posting the agenda at the remote site, giving the public at the remote site an opportunity to speak directly to the state body, and taking action by roll call vote. (Gov. Code, § 11123, subd. (b)(1).)

If individuals other than state body members—staff or the public—participate in a meeting electronically, this does not, by itself, result in a teleconference meeting. Thus, for example, a guest speaker may appear at a meeting by telephone or by videoconference without triggering the teleconference rules. A state body also may offer more locations at which the public may observe

or participate in a meeting electronically without triggering a teleconference meeting. (Gov. Code, § 11123, subd. (b)(2).)

2. Teleconference rules for advisory bodies

State advisory bodies may hold teleconference meetings in the same way as decision-making bodies. Alternatively, the Act has special teleconference rules for advisory bodies. An advisory body may choose to follow either the regular teleconference rules or the special teleconference rules, but not both.

The special teleconference rules for advisory bodies allow a member of a state advisory body appear and participate in a public meeting remotely without appearing at an open teleconference location. (Gov. Code, § 11123.5.) The state advisory body need not disclose the location of the member appearing remotely. (Gov. Code, § 11123.5, subd. (c).) For the special teleconference rules to apply, a quorum of the advisory body must be present at the primary physical location designated in the agenda. Members attending remotely do not count towards a quorum. (Gov. Code, § 11123.5, subd. (e).) The state advisory body must provide a 24-hour notice on its website and to persons on its email mailing list if a member will appear remotely under the special teleconference rules. (Gov. Code, § 11123.5, subd. (c).) The 24-hour notice must also describe how the public may participate in the meeting remotely. (Gov. Code, § 11123.5, subd. (f).) The minutes of the meeting must identify those members who attended the meeting remotely. (Gov. Code, § 11123.5, subd. (b).)

III. CLOSED SESSIONS

A. Closed-session exceptions

A state body may hold a closed session not open to the public, but only for reasons expressly authorized by statute. (Gov. Code, § 11132; 85 Ops.Cal.Atty.Gen. 145, 149 (2002).) During an authorized closed session, a state body may deliberate and vote. (See *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 186; *Lucas v. Board of Trustees* (1971) 18 Cal.App.3d 988, 991-992.) The Act sets forth circumstances authorizing closed sessions. (Gov. Code, §§ 11126, 11126.2, 11126.4.) Agency-specific statutes may also authorize

closed sessions. (See, e.g., Bus. & Prof. Code, §§ 827, 1696, 1966.3, 2664, 2770.10, 3534.2, 4869.) Under the California Constitution, all closed-session exceptions must be narrowly construed. (Cal. Const., art. I., § 3, subd. (b)(2).) When authorized, a closed session must comply with specific procedures. (Gov. Code, § 11126.3; *Southern Cal. Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 800.)

All the closed-session exceptions in the Act and in other laws are too numerous to mention in this Guide, but seven common exceptions are discussed below.

1. Personnel matters

The personnel exception lets a state body meet in closed session to consider certain personnel matters. (Gov. Code, § 11126, subd. (a).) The exception allows the state body to discuss sensitive matters freely while shielding the employee from public embarrassment. (*Travis v. Board of Trustees of Cal. State University* (2008) 161 Cal.App.4th 335, 342, 346.)

The personnel exception applies to two types of personnel matters. The first type is the appointment, employment, or performance evaluation of an employee. (Gov. Code, § 11126, subd. (a)(1); see *Travis v. Bd. of Trustees of Cal. State University, supra*, 161 Cal.App.4th at p. 347 [personnel exception includes discussion regarding an employee's return after leave of absence].) If a state body meets in closed session to consider the performance evaluation of an employee, the evaluation may, but need not, be a formal comprehensive periodic review. (See *Duval v. Bd. of Trustees* (2001) 93 Cal.App.4th 902, 909.) The evaluation or review may consider even a single instance of job performance. (*Ibid.*) A state body may also meet in closed session to consider the process for evaluating a particular employee's job performance. (*Ibid.*)

The second type of matter falling under the personnel exception is a hearing on a complaint or charge against an employee from any source. (Gov. Code, § 11126, subs. (a)(1), (a) (2).) A state body may meet in closed session to consider dismissing or disciplining an employee, unless the employee asks that the matter be heard publicly. To hold a closed session to consider disciplinary action or dismissal, the state body must give written notice at least 24 hours in advance to the employee. (Gov. Code, § 11126, subd. (a)(2); see *Moreno v. City of King* (2005)

127 Cal.App.4th 17, 28-29; *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 682.) The notice must advise the employee of their right to a public hearing. Failure to give the required notice to the employee voids any closed session action to discipline or dismiss the employee. (Gov. Code, §§ 11122, 11126, subd. (a)(2).)

Not all personnel matters may be considered in closed session. The exception does not apply to general personnel decisions, such as the creation of a new position, or specification of the duties of an employee position in the abstract. (See 63 Ops.Cal.Atty.Gen. 153, 156-157 (1980).)

The exception for personnel matters is limited to decisions affecting employees only. The term “employee” includes civil service employees, as well as employees, staff, executive directors, or other statutory officers exempt from civil service under the state Constitution. (Gov. Code, § 11126, subd. (b); see Cal. Const., art. VII, § 4, subd. (e); and see, e.g., 89 Ops.Cal.Atty.Gen. 187, 189-192 (2006) [Prison Industry Board had no authority to create executive officer position as exempt from civil service because it already had created a general-manager position exempt from civil service].) Conversely, “employee” does not include any person elected or appointed to a public office, such as a state body member. (Gov. Code, § 11126, subd. (b).) The term “employee” does not include independent contractors. (*Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 236-237.) Thus, a state body may not meet in closed session to discuss an outside vendor or consultant under contract. The personnel exception also does not apply to employees who report to a different entity. (85 Ops.Cal.Atty.Gen. 77, 80 (2002).)

The exception does not give an employee the right to demand a closed session on a personnel matter. (*Leventhal v. Vista Unified School Dist.* (S.D.Cal. 1997) 973 F.Supp. 951, 958.) Rather, a state body may discuss a personnel matter at a closed session or an open session at the body’s discretion. But an employee does have the right to a public hearing on a disciplinary or dismissal matter. (Gov. Code, § 11126, subd. (a)(2).) If an employee asserts this right, the state body must listen to the information, evidence, and issues during the open meeting, but may meet in closed session to discuss and vote on the matter. (Gov. Code, § 11126, subd. (a)(4).) During a witness examination in an open meeting or closed session on a personnel matter, a state body may exclude other witnesses. (Gov. Code, § 11126, subd. (a)(3).)

After the closed session, the state body must publicly report in open session any final action and the roll call vote to appoint, employ, or dismiss an employee. (Gov. Code, §§ 11122, 11125.2.) If the state body takes no action on the personnel matter, it need not so report in open session. (See 89 Ops.Cal.Atty.Gen. 110, 116 (2006).)

2. Pending litigation

The Act allows a state body to consult with its attorney about pending litigation in closed session when discussing the matter in open session would prejudice the state body's position. (Gov. Code, § 11126, subd. (e)(1).) The pending-litigation exception protects frank communications between a state body and its legal counsel. The attorney must be present and participating, in person or by telephone, during the entirety of the closed session. (See Gov. Code, § 11126, subd. (e)(1).)

During the closed session, the state body may only consider the pending litigation. Litigation means any adjudicatory proceeding before a court, administrative body, hearing officer, or arbitrator. (Gov. Code, § 11126, subd. (e)(2)(A), (e)(2)(C)(iii).) Litigation is pending when a state body is a party to existing litigation, has substantial exposure to litigation based on existing facts or circumstances, or wishes to explore initiating litigation. (Gov. Code, § 11126, subd. (e)(2)(A)-(C).) An example of substantial exposure to litigation is the receipt of a demand letter or some other type of threat of litigation against the state body. (See Gov. Code, § 54956.9, subs. (d), (e), (h) [listing other qualifying circumstances under the parallel pending-litigation exception of the Brown Act]; 69 Ops.Cal.Atty.Gen. 232, 235-238 (1986).)

Certain parameters govern the state body's discussions during a closed session on pending litigation. The state body may receive legal advice about litigation and deliberate on litigation strategy. The state body may also discuss settlement options, including the strengths and weaknesses of its case and the upper and lower limits of its settlement authority. (*Southern Cal. Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 799-801.) But it may not meet in closed session to negotiate a settlement directly with an opposing party or the opposing party's counsel. (See *Page v. MiraCosta Community College Dist.* (2009) 180 Cal.App.4th 471, 502.) A state body may not use a settlement agreement adopted in closed session to vote on a related matter that would

otherwise require an open meeting. (*Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 186.)

A state body must comply with three procedural steps when holding a closed session under the pending-litigation exception. First, the state body's legal counsel must send to the state body a legal memorandum stating the reason and authority for the closed session. If feasible, legal counsel must send the memorandum before the closed session, but no later than one week after the closed session. The memorandum must state the title of the relevant case if available. If the litigation has not yet started, the memorandum must describe the existing facts and circumstances forming the basis for the anticipated litigation. (Gov. Code, § 11126, subd. (e)(2)(C)(ii).) The memorandum is exempt from disclosure under the California Public Records Act, but only until the litigation has finally resolved. (Gov. Code, §§ 7927.205, 11126, subd. (e)(2)(C)(ii); see 71 Ops.Cal.Atty.Gen. 235, 237 (1988).) Disclosing the memorandum stating the reason and authority for the closed session will not waive any attorney-client privilege. (Gov. Code, § 11126, subd. (e)(2)(C)(iv).)

Second, a state body must comply with the usual notice requirements for closed sessions. (See Closed-session procedures, *infra*.) In this regard, the meeting agenda must show the state body will hold a closed session, identify generally the topic of the closed session, and cite the statutory authority for the closed session. (Gov. Code, § 11125, subd. (b).) Further, if the litigation has already started, the agenda must either state the case name, or state that disclosing the name would jeopardize the body's ability to effect service of process or settle the case to its advantage. (Gov. Code, § 11126.3, subds. (a), (c); see also Gov. Code, § 54954.5, subd. (c).) If a meeting agenda has a closed session item for pending litigation, and other pending litigation arises during the 10-day notice period, the state body may confer with legal counsel in closed session on the new litigation, but only if postponement would prevent the state body from complying with a legal deadline. (Gov. Code, § 11126.3, subd. (d).)

Third, a state body must hold an open meeting before convening in closed session to discuss pending litigation. During the open meeting, it must announce its intent to meet in closed session to confer with legal counsel on pending litigation. If the litigation has already started, it must publicly state the case name, or state that disclosing the name would jeopardize the body's ability

to effect service of process or settle the case to its advantage. (Gov. Code, § 11126.3, subd. (d); see *Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1082-1083.)

Nothing in the Act requires a state body to report on any closed session action on pending litigation. (See Gov. Code, § 11126.3.) The information discussed during the closed session is confidential; state body members may not publicly comment on this information or disclose it to others. (86 Ops.Cal.Atty.Gen. 210, 212 (2003); see *Kleitman v. Super. Ct.* (1999) 74 Cal.App.4th 324, 332; 80 Ops.Cal.Atty.Gen. 231, 240-241 (1997).)

The pending-litigation exception authorizing a closed session applies to a narrower set of topics than what is covered by the attorney-client privilege. A private communication between a state body and its attorney may be protected by the attorney-client privilege, but not relate to pending litigation, and thus not be the proper subject of a state body's deliberation in closed session. (Gov. Code, § 11126, subd. (e)(2).) If a state body needs confidential legal advice on a matter, even if unrelated to pending litigation, legal counsel may deliver one-way written legal advice to the state body. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 381.) The advice letter will be exempt from disclosure under the California Public Records Act as a privileged attorney-client communication. (Gov. Code, §§ 7927.705; 11125.1, subd. (a).) But discussion among members about the advice letter will be subject to the Act's open-meeting requirements.

3. Licensing examinations

The licensing-examination exception is for state bodies that license businesses and professionals. Under the exception, state licensing bodies may prepare, approve, grade, or administer licensing examinations in closed session. (Gov. Code, § 11126, subd. (c)(1); see, e.g., Bus. & Prof. Code, § 6026.7, subd. (c) [allowing the State Bar to hold closed sessions for law licensing purposes].) A state body may consider the actual content of an examination in closed session, but it must plan the general logistics of administering the examination at an open meeting. (See Gov. Code, § 11126, subd. (c)(1).)

4. Administrative adjudications

The deliberations exception lets a state body meet in closed session to review and discuss an administrative law judge's proposed decision in quasi-judicial proceedings of the Office of Administrative Hearings. (Gov. Code, § 11126, subd. (c)(3); *Cooper v. Board of Medical Examiners* (1975) 49 Cal.App.3d 931, 948-949.) Alternatively, under the Administrative Procedure Act, state body members may vote on a proposed decision by mail or phone or other electronic means without engaging in collective deliberations before making their decision. (Gov. Code, § 11526; Asimow et al., Cal. Practice Guide: Administrative Law—Review by Agency of Proposed Decision (The Rutter Group 2022) ¶ 9:302.)

5. Real estate negotiations

The real estate negotiations exception allows a state body to meet in closed session before buying, selling, exchanging, or leasing real property to instruct its negotiator about price and payment terms. (Gov. Code, § 11126, subd. (c)(7)(A).) This exception recognizes the realities of the commercial marketplace and the need to prevent the parties with whom the state body is negotiating from listening to discussions of negotiation terms. (See *Kleitman v. Super. Ct.* (1999) 74 Cal.App.4th 324, 331.)

The exception does not extend to all decisions affecting real property. (See 93 Ops.Cal.Atty.Gen. 51, 55 (2010).) The closed session may not go beyond a property's price and payment terms in a realistically anticipated transaction (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 924), but it may include matters essential to arriving at authorized price and payment terms. (94 Ops.Cal.Atty.Gen. 82, 89 (2011).)

The meeting agenda must identify the property that is the subject of the closed session, the negotiator, and the negotiating parties. (Gov. Code, § 11125, subd. (b), § 11126, subd. (c)(7)(B); 73 Ops.Cal.Atty.Gen. 1, 5 (1990); see also Gov. Code, § 54954.5, subd. (b).) Before convening in closed session, the state body must publicly announce the same information. (Gov. Code, § 11126, subd. (c)(7)(B).)

6. Agency security

Under the agency-security exception, a state body may meet in closed session to discuss the threat of criminal or terrorist activity against its personnel, property, buildings, facilities, or equipment, including electronic data that is owned, leased, or under its control, where disclosure of these considerations could adversely affect its safety or security. (Gov. Code, § 11126, subd. (c)(18)(A).) At any regular or special meeting, a state body may convene under this exception upon a two-thirds vote of the members present at the meeting. (Gov. Code, § 11126, subd. (c)(18)(B).) After the closed session, the state body must reconvene an open meeting, describe the general nature of the matters considered, and report on its action. (Gov. Code, § 11126, subd. (c)(18)(C).) Under the agency-security exception, a state body must give written notice of a closed session to the Legislative Analyst, who must keep the notice for at least four years. (Gov. Code, § 11126, subd. (c)(18)(D).)

7. Audit reports

A state body may meet in closed session under the audit exception to consider its response to a confidential final draft audit report prepared by the Bureau of State Audits. (Gov. Code, § 11126.2, subd. (a).) After the bureau publicly releases the audit report, the state body may further discuss the audit only in open session unless another closed-session exception applies. (Gov. Code, § 11126.2, subd. (b).)

B. Closed-session procedures

In addition to the specific procedures for the closed sessions described above, all closed sessions must comply with certain general procedures. Closed sessions may be held only during a regular or special meeting, not during an emergency meeting. (Gov. Code, § 11128.) The meeting agenda must show that the state body will hold a closed session, must identify generally the topic of the closed session, and must cite the statutory authority for the closed session. (Gov. Code, § 11125, subd. (b).) Unlike the Bagley-Keene Act, the Brown Act has notice templates for various types of closed sessions. (Gov. Code, § 54954.5.) Substantial compliance with these templates provides a “safe harbor” from Brown Act violations. (*Castaic Lake Water Agency v.*

Newhall County Water District (2015) 238 Cal.App.4th 1196, 1206-1207.) These templates therefore may be a useful guide to state bodies for complying with the Bagley-Keene Act's agenda-description requirements for closed sessions.

At an open meeting, before reconvening in closed session, the state body must publicly announce the issues it will discuss during the closed session. The announcement may simply refer to the matter numbers of the closed-session items on the meeting agenda. (Gov. Code, § 11126.3, subd. (a).) The public's right to comment at open meetings includes the right to comment on closed session items. (Gov. Code, § 11125.7, subd. (a); *Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1080.) But the public does not have a right to attend closed sessions. (Gov. Code, § 11125.7, subd. (e).) Therefore, before convening in closed session, a state body must provide an opportunity for the public to comment at the open meeting on a closed-session item.

A state body may not selectively admit some members of the public to a closed session while excluding others. (46 Ops.Cal.Atty.Gen. 34, 35 (1965).) Only essential persons with an official role may attend a closed session. (105 Ops.Cal.Atty.Gen. 89, 93 (2022).) Attendance may not include support staff, unless they have an essential and official role in the closed session. (*Ibid.*; 82 Ops.Cal.Atty.Gen. 29, 33 (1999).) A state body may not allow individuals outside the state body attend a closed session unless their participation is essential to the purpose of the closed session. (See, e.g., Gov. Code, § 11126, subd. (e) [legal counsel]; 88 Ops.Cal.Atty.Gen. 16, 23 (2005) [applicant for disability retirement]; 80 Ops.Cal.Atty.Gen. 308, 311 (1997) [candidates for employment].) A state body member's designee may attend a closed session if serving in the place of the member (82 Ops.Cal.Atty.Gen., 29, 33-34 (1999)), but the member's personal staff may not attend even if beneficial to the member (105 Ops.Cal.Atty.Gen. 89, 93 (2022).)

In a closed session, the state body may only discuss those matters noticed on the agenda and announced at the open meeting. (Gov. Code, § 11126.3, subd. (b).) Members may not stray into other topics, even if topics reasonably related to the closed-session agenda item. (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 924.)

A state body must designate a clerk, officer, or employee to attend a closed session, and keep and enter in a minute book a record of the topics discussed and decisions made at the closed session. The minute book may include a recording of the closed session. The minute book is confidential, and only state body members may access it. (Gov. Code, § 11126.1.) If a state body member abstains from a closed session because of a conflict of interest, the member may not access the minutes. (*Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050.) A court may view the minute book in an action challenging the legality of a closed session. (*Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 898, fn. 3.) If the court determines that the closed session violated the Act, it may order the state body to record its closed sessions in the future. (Gov. Code, § 11130, subd. (b).) If a closed session is not authorized, then its minutes are not confidential. (*Register Div. of Freedom Newspapers, Inc. v. County of Orange, supra*, 158 Cal.App.3d at pp. 907-908.) On motion, and following in camera review, the court may deem the recordings subject to civil discovery. (Gov. Code, § 11130, subd. (c).)

After the closed session, the state body must reconvene in open session before ending the meeting and, if required by the Act, report on its action. (Gov. Code, § 11126.3, subd. (f).) Information received in closed session may not be shared outside the closed session. (86 Ops.Cal.Atty.Gen. 210, 212 (2003); see *Kleitman v. Super. Ct.* (1999) 74 Cal.App.4th 324, 332; 80 Ops.Cal.Atty.Gen. 231, 240-241 (1997).) A member's designee, however, may communicate confidential information with the member, and a member may disclose confidential information to legal counsel. (See 72 Ops.Cal.Atty.Gen. 159, 165-166 (1989).)

VI. CONSEQUENCES FOR VIOLATIONS

The Act provides for criminal penalties, civil remedies, and attorney fee awards in connection with violations of the Act.

A. Criminal penalties

The Act authorizes misdemeanor criminal penalties against any state body member who violates the Act intending to deprive the public of information to which the member knows, or has reason to know, the public is entitled. (Gov. Code, § 11130.7; see Pen. Code, §§ 19, 19.2)

B. Civil remedies

The Act authorizes various civil remedies. The Attorney General, a district attorney, or any interested person may seek mandamus, injunctive, or declaratory relief in a superior court to prevent or stop violations or threatened violations of the Act. (Gov. Code, § 11130, subd. (a).) To qualify as an interested person, a state body member must have a personal interest in the matter. (*Galbiso v. Orosi Public Utility Dist.* (2010) 182 Cal.App.4th 652, 668-669.)

Any interested person may file a civil action to invalidate a decision violating the Act within 90 days of the decision. (Gov. Code, § 11130.3, subd. (a).) Not all decisions may be invalidated. A court may not overturn decisions relating to a bond issuance, tax collection, or contract on which a party has detrimentally relied in good faith. (Gov. Code, § 11130.3, subs. (b)(1), (b)(2), (b)(4).) Merely conferring with and giving direction to staff also is not a decision that may be invalidated. (*Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1118.)

A court may not overturn any decision made in substantial compliance with the Act's notice or open-meeting provisions. (Gov. Code, § 11130.3, subd. (b)(3).) Substantial compliance is actual compliance with the essential substance of the statute's reasonable objectives. (*North Pacifica LLC v. Cal. Coastal Com.* (2008) 166 Cal.App.4th 1416, 1432-1433 [determining that violating the 10-day notice rule for public meetings substantially complied with the Act where the commission acted in good faith to give notice of the hearing's date, location, and purpose].)

The Act allows a state body to cure or correct an open-meeting violation. (Gov. Code, § 11130.3, subd. (a).) To do so, the body should identify a point before the violation occurred, and then repeat the process from that point forward. For example, if the violation involved improper notice, the body could invalidate its decision, provide proper notice, and start the process over. To the extent the state body already engaged in discussions or received information, the body should include such events on the record to make sure that everyone is aware and has an opportunity to respond. (See *Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.* (2021) 62 Cal.App.5th 583, 601 [a "cure" generally requires that the action be thoroughly reconsidered at a properly noticed meeting, not merely ratified].)

C. Attorneys' fees

A prevailing plaintiff in an open-meeting action may recover reasonable attorneys' fees, but only from the state body, not from the members who violated the Act. (Gov. Code, § 11130.5.) A prevailing state body may only recover fees if the plaintiff's lawsuit was frivolous and totally lacking in merit. (Gov. Code, § 11130.5; *Sutter Sensible Planning, Inc. v. Bd. of Supervisors* (1981) 122 Cal.App.3d 813, 825-826.) The purpose of the fee-award statute is to encourage private enforcement of the open-meeting laws. (*Common Cause v. Stirling* (1981) 119 Cal.App.3d 658, 663.)

The award of attorneys' fees is at the court's discretion, but the discretion to deny fees to a plaintiff is narrow; the state body must show the award is unjust. (*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1077.) The factors for determining whether a fee award is unjust include the necessity for the lawsuit, the lack of injury to the public, the likelihood of resolution by some other means, and the probability of recurring violations of the Act. (*Ibid.*) A court may not consider whether a state body acted in good faith, nor the wealth of a plaintiff. (*Los Angeles Times Communications LLC v. Los Angeles County Bd. of Supervisors* (2003) 112 Cal.App.4th 1313, 1333-1334.)

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SB-544 Bagley-Keene Open Meeting Act: teleconferencing. (2023-2024)

As Amends the Law Today

As Amends the Law on Nov 17, 2023

SECTION 1. *Section 11123.2 is added to the Government Code, to read:*

11123.2. *(a) For purposes of this section, the following definitions apply:*

(1) "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.

(2) "Teleconference location" means a physical location that is accessible to the public and from which members of the public may participate in the meeting.

(3) "Remote location" means a location from which a member of a state body participates in a meeting other than a teleconference location.

(4) "Participate remotely" means participation by a member of the body in a meeting at a remote location other than a teleconference location designated in the notice of the meeting.

(b) (1) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123 and Section 11123.5, a state body may hold an open or closed meeting by teleconference as described in this section, provided the meeting complies with all of this section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article relating to the specific type of meeting.

(2) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article, including Sections 11123 and 11123.5.

(c) The portion of the teleconferenced meeting that is required to be open to the public shall be visible and audible to the public at each teleconference location.

(d) (1) The state body shall provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, remotely address the body, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for each teleconference location. The telephonic or online means provided to the public to access the meeting shall be equivalent to the telephonic or online means provided to a member of the state body participating remotely.

(2) The applicable teleconference telephone number, internet website or other online platform, and physical address of each teleconference location, as well as any other information indicating how the public can access the meeting remotely and in person, shall be specified in any notice required by this article.

(3) If the state body allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall do both of the following:

(A) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(B) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment.

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

(f) (1) The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7.

(2) Members of the public shall be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments before the meeting or in writing.

(g) The state body shall post the agenda on its internet website and, on the day of the meeting, at each teleconference location.

(h) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting in accordance with the applicable notice requirements of this article, including Section 11125, requiring the state body to post an agenda of a meeting at least 10 days in advance of the meeting, Section 11125.4, applicable to special meetings, and Sections 11125.5 and 11125.6, applicable to emergency meetings.

(i) At least one member of the state body shall be physically present at each teleconference location.

(j) (1) Except as provided in paragraph (2), a majority of the members of the state body shall be physically present at the same teleconference location. Additional members of the state body in excess of a majority of the members may attend and participate in the meeting from a remote location. A remote location is not required to be accessible to the public. The notice and agenda shall not disclose information regarding a remote location.

(2) A member attending and participating from a remote location may count toward the majority required to hold a teleconference if both of the following conditions are met:

(A) The member has a need related to a physical or mental disability, as those terms are defined in Sections 12926 and 12926.1, that is not otherwise reasonably accommodated pursuant to the federal Americans with Disability Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(B) The member notifies the state body at the earliest opportunity possible, including at the start of a meeting, of their need to participate remotely, including providing a general description of the circumstances relating to their need to participate remotely at the given meeting.

(3) If a member notifies the body of the member's need to attend and participate remotely pursuant to paragraph (2), the body shall take action to approve the exception and shall request a general description of the circumstances relating to the member's need to participate remotely at the meeting, for each meeting in which the member seeks to participate remotely. The body shall not require the member to provide a general description that exceeds 20 words or to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(4) If a member of the state body attends the meeting by teleconference from a remote location, the member shall disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(k) (1) Except as provided in paragraph (2), the members of the state body shall visibly appear on camera during the open portion of a meeting that is publicly accessible via the internet or other online platform.

(2) The visual appearance of a member of the state body on camera may cease only when the appearance would be technologically impracticable, including, but not limited to, when the member experiences a lack of reliable broadband or internet connectivity that would be remedied by joining without video, or when the visual display of meeting materials, information, or speakers on the internet or other online platform requires the visual appearance of a member of a state body on camera to cease.

(3) If a member of the state body does not appear on camera due to challenges with internet connectivity, the member shall announce the reason for their nonappearance when they turn off their camera.

(l) All votes taken during the teleconferenced meeting shall be by rollcall.

(m) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

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

(o) Upon discovering that a means of remote public access and participation required by subdivision (d) has failed during a meeting and cannot be restored, the state body shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on the state body's internet website and by email to any person who has requested notice of meetings of the state body by email under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, internet website, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

(p) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 2. Section 11123.5 of the Government Code is amended to read:

11123.5. (a) For purposes of this section, the following definitions apply:

(1) "Participate remotely" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting.

(2) "Remote location" means a location other than the primary physical location designated in the agenda of a meeting.

(3) "Teleconference" has the same meaning as in Section 11123.

(b) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123 or Section 11123.2, any state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body may hold an open meeting by teleconference as described in this section, provided the meeting complies with all of the section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article.

(c) A member of a state body as described in subdivision (b) who participates in a teleconference meeting from a remote location subject to this section's requirements shall be listed in the minutes of the meeting.

(d) The state body shall provide notice to the public at least 24 hours before the meeting that identifies any member who will participate remotely by posting the notice on its internet website and by emailing notice to any person who has requested notice of meetings of the state body under this article. The location of a member of a state body who will participate remotely is not required to be disclosed in the public notice or email and need not be accessible to the public. The notice of the meeting shall also identify the primary physical meeting location designated pursuant to subdivision (f).

(e) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting at least 10 days in advance of the meeting. The agenda shall include information regarding the physical meeting location designated pursuant to subdivision (f), but is not required to disclose information regarding any remote location.

(f) A state body described in subdivision (b) shall designate the primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting, observe and hear the meeting, and participate. At least one staff member of the state body shall be present at the primary physical meeting location during the meeting. The state body shall post the agenda at the primary physical meeting location, but need not post the agenda at a remote location.

(g) When a member of a state body described in subdivision (b) participates remotely in a meeting subject to this section's requirements, the state body shall provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting, including, if available, equal access equivalent to members of the state body participating remotely. The applicable teleconference phone number or internet website, or other information indicating how the public can access the meeting remotely, shall be in the 24-hour notice described in subdivision (b) that is available to the public.

(h) (1) Except as provided in paragraph (2), the members of the state body shall visibly appear on camera during the open portion of a meeting that is publicly accessible via the internet or other online platform.

(2) The visual appearance of a member of a state body on camera may cease only when the appearance would be technologically impracticable, including, but not limited to, when the member experiences a lack of reliable broadband or internet connectivity that would be remedied by joining without video, or when the visual display of meeting materials, information, or speakers on the internet or other online platform requires the visual appearance of a member of a state body on camera to cease.

(3) If a member of the body does not appear on camera due to challenges with internet connectivity, the member shall announce the reason for their nonappearance when they turn off their camera.

(i) Upon discovering that a means of remote access required by subdivision (g) has failed during a meeting, the state body described in subdivision (b) shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on its internet website and by email to any person who has requested notice of meetings of the state body under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

(j) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article.

(k) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 3. *Section 11123.5 is added to the Government Code, to read:*

11123.5. *(a) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123, any state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body may hold an open meeting by teleconference as described in this section, provided the meeting complies with all of the section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article.*

(b) A member of a state body as described in subdivision (a) who participates in a teleconference meeting from a remote location subject to this section's requirements shall be listed in the minutes of the meeting.

(c) The state body shall provide notice to the public at least 24 hours before the meeting that identifies any member who will participate remotely by posting the notice on its internet website and by emailing notice to any person who has requested notice of meetings of the state body under this article. The location of a member of a state body who will participate remotely is not required to be disclosed in the public notice or email and need not be accessible to the public. The notice of the meeting shall also identify the primary physical meeting location designated pursuant to subdivision (e).

(d) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting at least 10 days in advance of the meeting. The agenda shall include information regarding the physical meeting location designated pursuant to subdivision (e), but is not required to disclose information regarding any remote location.

(e) A state body described in subdivision (a) shall designate the primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate. A quorum of the members of the state body shall be in attendance at the primary physical meeting location, and members of the state body participating remotely shall not count towards establishing a quorum. All decisions taken during a meeting by teleconference shall be by rollcall vote. The state body shall post the agenda at the primary physical meeting location, but need not post the agenda at a remote location.

(f) When a member of a state body described in subdivision (a) participates remotely in a meeting subject to this section's requirements, the state body shall provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting, including, if available, equal access equivalent to members of the state body participating remotely. The applicable teleconference phone number or internet website, or other information indicating how the public can access the meeting remotely, shall be in the 24-hour notice described in subdivision (a) that is available to the public.

(g) Upon discovering that a means of remote access required by subdivision (f) has failed during a meeting, the state body described in subdivision (a) shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on its internet website and by email to any person who has requested notice of meetings of the

state body under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

(h) For purposes of this section:

(1) "Participate remotely" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting.

(2) "Remote location" means a location other than the primary physical location designated in the agenda of a meeting.

(3) "Teleconference" has the same meaning as in Section 11123.

(i) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article.

(j) This section shall become operative on January 1, 2026.

SEC. 4. Section 11124 of the Government Code is amended to read:

11124. (a) No person shall be required, as a condition to attendance at a meeting of a state body, to register their name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to their attendance.

(b) 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.

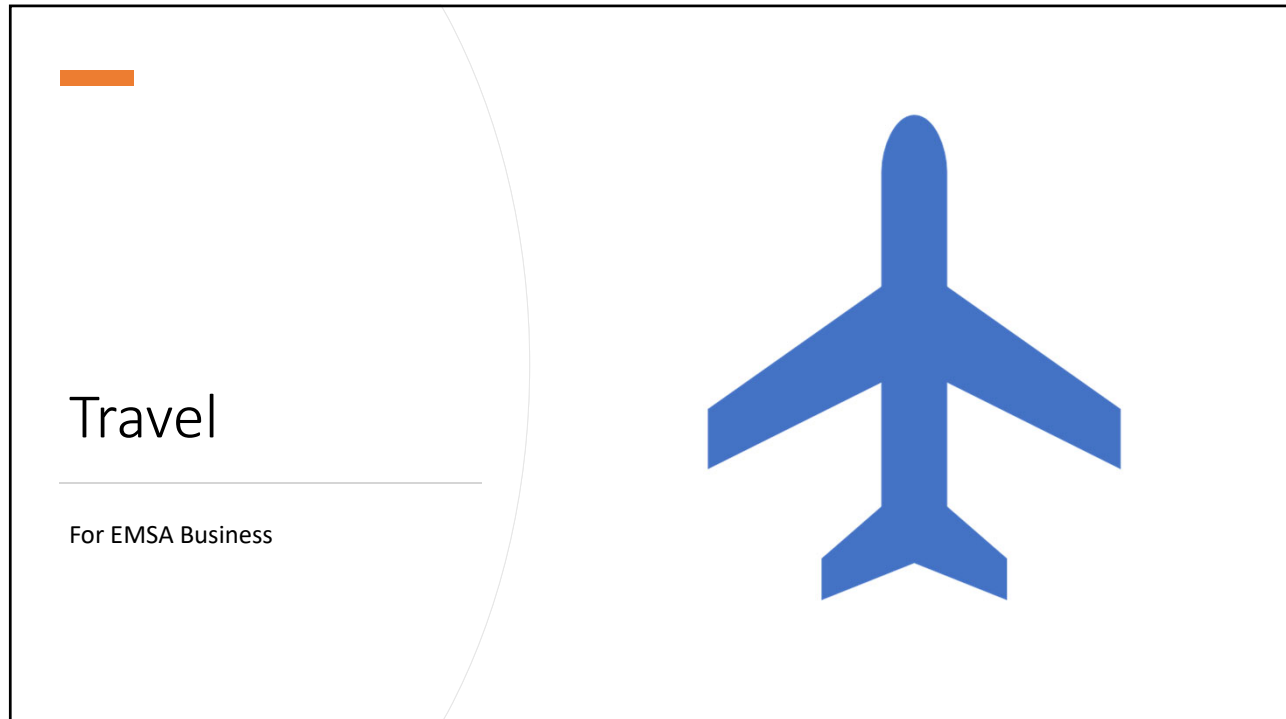
(c) This section does not apply to an internet website or other online platform that may require the submission of information to log into a teleconferenced meeting, provided, however, that a person required to submit such information shall be permitted to submit a pseudonym or other anonymous information when using the internet website or other online platform to attend the meeting.

SEC. 5. *The Legislature finds and declares that Sections 1, 2, 3, and 4 of this act, which add and repeal Section 11123.2 of, amend, repeal, and add Section 11123.5 of, and amend Section 11124 of, the Government Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

(a) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

(b) During the COVID-19 public health emergency, audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and those public meetings have been productive, increased public participation by all members of the public regardless of their location and ability to travel to physical meeting locations, increased the pool of people who are able to serve on these bodies, protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(c) Conducting audio and video teleconference meetings enhances public participation and the public's right of access to meetings of the public bodies by improving access for individuals who often face barriers to physical attendance.



1

Concur via
CalTravelStore
(soon to be CI
Azumano)

- Concur is the booking system used to book all EMSA business related travel
- To log in, go to <https://www.caltravelstore.com/> and click on Concur Login.
 - All participants will be getting their login information after this meeting.

TravelStore Sign In/Create Account ICS Trainings Human Resources... CalHR Home Citi Comm

TRAVELSTORE
MENT BUSINESS TRAVEL

Call Us
877.454.8785
916.376.3989
Available 24 / 7

CalTravelStore DGS Helpful Links Training FAQs

ces

[CalTravelStore Contacts](#)
TravelStore has been servicing state departments for over 40 years. There are dedicated agents to assist you with your travel needs...

[DGS Statewide Travel Program & Contacts](#)

Concur
Concur Login


2


The screenshot shows the SAP Concur Home page. At the top left, there is a logo for 'CALIFORNIA EMERGENCY MEDICAL SERVICES AUTHORITY' and a '01 View Trips' button. The main content area is divided into several sections:


- Trip Search:** Includes a search bar with options for 'Booking for myself' and 'Book for a guest'. Below are icons for flight, car, and hotel. A notification asks if the user's driver's license is REAL ID compliant, with a link for more information. There are also buttons for 'Mixed Flight/Train Search' (Round Trip, One Way, Multi City) and a 'Search' button.
- Alerts:** A notification from Triplt stating 'Triplt creates a schedule with all your travel details in one place, accessible on Android or iPhone. Simply connect your Concur account to Triplt. Connect to Triplt. Not right now.'
- Company Notes:** A red warning: 'Terms of Use: Concur is for official business use only. Booking personal travel on this site is prohibited.' Below it, 'Important Information Regarding Airline Reservations' states that flight changes/exchanges are limited to one instance.
- My Trips (1):** A card for a trip on 'MAR 07 - 07' titled 'Trip from San Diego to Sacramento (For Mr Je... PDRB Quarterly Meeting)' with a 'More' dropdown and icons for flight and car.

3

Booking

 When booking a flight, you have the option to also book a car and hotel in the same reservation.

 As much as possible, flights, cars, and hotels should be booked on the same reservation.

 If you do not need a flight, you are able to book a rental car or hotel alone, just click on the car or bed at the top of the reservation screen.

The screenshot shows the 'Trip Search' form with the following details:

- Search for: 'Round Trip' (selected)
- From: 'Sacramento, CA - Sacramento Intl Airport'
- To: 'San Diego, CA - San Diego Intl Airport'
- Depart: '04/01/2024' at 'Morning' ± 3 days
- Return: '04/04/2024' at 'Afternoon' ± 3 days
- Options: 'Pick-up/Drop-off car at airport' (checked), 'Find a Hotel' (checked)
- Search radius: '5 miles from' (selected)
- Reference Point / Zip Code: 'San Diego, CA'

4

Flights

- Concur will show all flights available, however, per Statewide Travel Program policy, only **Southwest** should be used.
 - There are certain exceptions, so if ever in doubt, reach out to the EMSA travel coordinator.
- As much as possible, **UNREFUNDABLE** tickets should be booked.
- To book the flights, click on Select.

5

Flights Cont.

- Double check the flights you chose and that your name, phone number, and email are all correct.
- Your name should match your ID.
- You are allowed to include a frequent flyer number if you are a part of it.
- Method of Payment
 - Payment for flights will be directly billed to EMSA. You should not be prompted to enter any financial information for flights.
- If everything looks correct, click on Reserve Flight and Continue.

6

Rental cars

- Per Statewide Travel Program policy, only Enterprise should be booked
 - Concur gives the option of Enterprise and National. National should only be used when traveling outside of the state.
- Only Compact and Intermediate sized cars are to be booked.
 - If a larger sized car is needed, prior authorization must be obtained via a DGS OFAM 100 signed by your supervisor and the travel coordinator.

Trip Summary

Flights Reserved
 Round Trip
 SMF - SAN
 Depart: Mon, 04/01/2024
 Return: Thu, 04/04/2024

Select a Car
 Pick-up: Mon, 04/01/2024
 Drop-off: Thu, 04/04/2024

Select a Hotel
 Nights: 3
 San Diego, CA
 Check-in: Mon, 04/01/2024
 Check-out: Thu, 04/04/2024

Finalize Trip

Total Estimated Cost

Air	USD	191.47
	USD	191.47
Total	USD	191.47

Car Display Filters

- Unlimited miles
- Air conditioning
- Hybrid
- Car Transmission
- Automatic
- Manual

Pick up: (SAN) on Mon, Apr 1 07:30 AM
Return: Thu, Apr 4 05:00 PM

Hide matrix	Print / Email	Economy	Compact	Intermediate	Standard	Full-size	Premium	Luxury	Mini
All 49 results									
Preferred		438.37	226.64	226.25	234.23	237.72	314.30	369.75	316.17
Preferred									

Displaying: 49 out of 49 results. Previous 1 2 3 4 5 Next | All

Compact Car - \$37.75 per day (Sabre)
 Automatic transmission
 Unlimited miles, Pick-up Terminal: SAN
 Adults: 2, Children: 0, Large bags: 1, Small bags: 20
 Total cost: \$326.64

Intermediate Car - \$37.75 per day (Sabre)
 Automatic transmission
 Unlimited miles, Pick-up Terminal: SAN
 Adults: 2, Children: 0, Large bags: 1, Small bags: 20
 Total cost: \$328.25

Compact Car - \$37.75 per day (Sabre)
 Automatic transmission
 Unlimited miles, Pick-up Terminal: SAN
 Adults: 2, Children: 0, Large bags: 1, Small bags: 20
 Total cost: \$326.64

7

Rental Cars Cont.

- Although an option in Concur, Statewide Travel Program does not allow In-Car GPS systems.
- Double check your driver's name, phone number, and email are correct.
- If you are part of an Enterprise rewards program, you may enter the program information for points.
- As with the flights, rental cars will be billed directly to EMSA so you should not have to give any payment information.
- Once all looks good, click on Reserve Car and Continue.

Trip Summary

Flights Reserved
 Round Trip
 SMF - SAN
 Depart: Mon, 04/01/2024
 Return: Thu, 04/04/2024

Car Selected
 Pick-up: Mon, 04/01/2024
 Drop-off: Thu, 04/04/2024

Select a Hotel
 Nights: 3
 San Diego, CA
 Check-in: Mon, 04/01/2024
 Check-out: Thu, 04/04/2024

Finalize Trip

Review and Reserve Car

Review Rental Car
Enterprise Car Rental Location Details

Type	Pick-up	Drop-off
Compact Car	Airport Terminal	Airport Terminal
Features	SAN: San Diego	SAN: San Diego
	07:30 am Mon, 04/01/2024	05:00 pm Thu, 04/04/2024

Provide Rental Car Preferences
 Your preferences and comments will be passed to the rental car agency.
 Comments (30 character max)
 Ex. Need early pick-up (10am) Include in-car GPS system Include ski rack

Enter Driver Information
 Ensure the name below matches the I.D. you have with you on the day of pick-up.

Driver
 Name: Ashley Rose Reynolds Phone: 916-639-7839 Email: ashley.arias@emsca.ca.gov

Rental Car Agency Program Add a Program
 No Program selected

Review Price Summary

Description	Daily Rate	Dates	Total
Enterprise Car Rental	\$37.75	Apr 01 - Apr 04	\$226.64*
Total Estimated Cost:			\$226.64*
Total Due Now:			\$0.00**

* Rental provider's estimated amount. Exact fees unknown. Does not include additional fees incurred during trip
 ** Remaining amount due at rental location.

[Back](#) [Reserve Car and Continue](#)

8

Hotels

COUNTIES	RATE
All Counties except those listed below	\$107.00 plus tax
Riverside	\$142.00 plus tax
Sacramento	\$145.00 plus tax
Marin	\$166.00 plus tax
Los Angeles, Orange, Ventura, Edwards AFB, excluding the city of Santa Monica	\$169.00 plus tax
Monterey	\$184.00 plus tax
Alameda	\$189.00 plus tax
San Deigo	\$194.00 plus tax
Napa	\$195.00 plus tax
San Mateo	\$222.00 plus tax
Santa Clara	\$245.00 plus tax
San Francisco and CITY of Santa Monica	\$270.00 plus tax

- Hotels should be reasonable and moderately priced.
- All counties have a maximum lodging reimbursement rate.
 - If unable to find lodging at or under the state approved rate for the county, reach out to EMSA's travel coordinator for approval to book above the price.
- Even though within the approved state rate, any lodging above \$250/night needs an additional approval from CalHR.

9

Hotel Cont.

Find the hotel you would like to stay at and click on View Rooms.

The screenshot displays a travel booking interface. On the left, a 'Trip Summary' section includes:

- Flights Reserved:** Round Trip, SMF - SAE, Depart: Mon, 04/01/2024, Return: Thu, 04/04/2024.
- Car Reserved:** Pick-up: Mon, 04/01/2024, Drop-off: Thu, 04/04/2024.
- Select a Hotel:** Nights: 3, San Diego, CA, Check-in: Mon, 04/01/2024, Check-out: Thu, 04/04/2024.
- Finalize Trip:** Total Estimated Cost: Air (USD 191.47), Car (USD 226.64), Total (USD 418.11).

 A map shows the San Diego area with a 'Company Preferred Accommodation' marker. Below the map, search filters include 'Name Search', 'Sorted By: Policy - Most Compliant', and 'Displaying: 100 out of 100 results'. Two hotel options are listed:

- Holiday Inn Bayside:** 4875 North Harbor Dr., San Diego, CA 92106, \$194, 2.03 miles, 4.5 stars.
- Hyatt Regency Mission Bay Spa And Marina:** 1441 Quivira Rd., San Diego, CA 92109, \$224, 3.64 miles, 4.5 stars.

10

Hotel Cont...

Make sure you choose the State Government or State of California rate.

Check-in Mon, Apr 1 - Check-out Thu, Apr 4

Company Preferred Accommodation

Hide Map Print / Email

Microsoft Bing

Name Search Sorted By: Policy - Most Compliant Displaying: 100 out of 100 results. Previous 1 2 3 4 Next | All

1. Holiday Inn Bayside
 4875 North Harbor Dr, San Diego, CA 92106 [Map it](#) **\$184**
 @2.03 miles ★★☆☆☆ [Hide Rooms](#)

Most Preferred Hotel for Emergency Medical Services Authority [Hotel details](#)

The CA Green Lodging Program encourages State and Local government travelers to seek out and give preference to certified green hotels.

Room Options

Government Rate Rate Incl 20 - Dollar Continental Breakfast Credit 50cpt Off 1 King Standard Exterior Corridor Building 250 Sq Ft Room No Elevator Access Walk In Shower Minifridge (Sabre) **\$184**
[Rules and cancellation policy](#)

State Government Free Airport - Shuttle Free Wifi Weekday Happy Hour With Free 1 King Standard Exterior Corridor Building 250 Sq Ft Room No Elevator Access Walk In Shower Minifridge (Sabre) **\$184**
[Rules and cancellation policy](#)

Government Rate Rate Incl 20 - Dollar Continental Breakfast Credit 50cpt Off 2 Queen Standard Exterior Corridor Building 250 Sq Ft Room No Elevator Access Walk In Shower Minifridge (Sabre) **\$184**
[Rules and cancellation policy](#)

11

Hotel Cont...

- Review your information for the hotel. Make sure the check in and check out date are correct.
- If you are part of a hotel rewards program, you can enter in your program number to earn points.
- Unlike flights and car rentals, hotels will NOT be directly billed to EMSA.
 - Travelers will be required to put a personal credit card on file and pay out of pocket.
 - Hotel expenses will be reimbursed via the travel expense claim process.

Trip Summary

Flights Reserved
 Round Trip
 SMF - SAN
 Depart: Mon, 04/01/2024
 Return: Thu, 04/04/2024

Car Reserved
 Pick-up: Mon, 04/01/2024
 Drop-off: Thu, 04/04/2024

Hotel Selected
 Nights: 3
 San Diego, CA
 Check-in: Mon, 04/01/2024
 Check-out: Thu, 04/04/2024

Finalize Trip

Review and Reserve Hotel

Review Hotel Room
Holiday Inn Bayside
 State Government Free Airport - Shuttle Free Wifi Weekday Happy Hour With Free 2 Queen Standard Exterior Corridor Building 250 Sq Ft Room No Elevator Access Walk In Shower Minifridge
 3 Nights | 1 Guest*

Check-in	Check-out	Address	Phone
Monday, April 01, 2024	Thursday, April 04, 2024	4875 North Harbor Dr San Diego, California 92106 United States	619-224-3621

* We reserve every hotel room for 1 guest only, regardless of the number of actual travelers sharing the room. The primary traveler's name is attached to the reservation for hotel check-in.

Provide Hotel Room Preferences
 Your preferences and comments will be passed to the hotel.
 Comments (35 character max)
 (Ex: Need early check-in (23hr))
 Request foam pillow Request rollaway bed Request crib

Enter Hotel Guest Information
 Ensure the name below matches the I.D. shown on the day of check-in. @

Hotel Guest
 Name: Ashley Rose Reynolds Phone: 916-639-7839 Email: ashley.arian@emsa.ca.gov [Edit](#) | [Review all](#)

Hotel Program [Add a Program](#)
 No Program selected

Review Price Summary

Description	Nightly rate	Dates	Total
Holiday Inn Bayside	\$184.00	Apr 01 - Apr 04	\$552.00
Total Estimated Cost: \$552.00**			
Total Due Now: \$0.00**			

* May not include taxes or additional fees.
 ** Remaining amount due at hotel location.

Select a method of payment
 The credit card you select will be held to confirm your reservation. You will not be charged in full until your hotel stay.
[EMSA Travel - 9099](#) [Edit this card](#) [Add credit card](#)
 * Indicates credit card is a company card

12

Review Price Summary

Description	Nightly rate	Dates	Total
Holiday Inn Bayside	\$184.00	Apr 01 - Apr 04	\$552.00
Total Estimated Cost: \$552.00*			
Total Due Now: \$0.00**			

* May not include taxes or additional fees.
** Remaining amount due at hotel location.

Select a method of payment

The credit card you select will be held to confirm your reservation. You will not be charged in full until your hotel stay.

EMSA Travel (...9999) [Edit this card](#) [Add credit card](#)

* Indicates credit card is a company card

Accept Rate Details and Cancellation Policy

Please review the rate details and cancellation policy provided by the hotel.

Holiday Inn Bayside

Please review the rate rules and restrictions before continuing.

The hotel provided the following information:

RATE: USD 184.00
TOTAL RATE: 621.51 USD

I agree to the hotel's rate rules, restrictions, and cancellation policy.

[Back](#) [Reserve Hotel and Continue](#)

Hotel Cont...

- Read through the hotel's rate details and cancellation policy
 - It is the traveler's responsibility to know the cancellation policy of the hotel being booked.
 - The state will not reimburse cancellation fees.
- Click the box next to "I agree to the hotel's rate rules, restrictions, and cancellation policy"
- Click on Reserve Hotel and Continue.

13

Finalize Travel

- Look through your trip details to make sure everything looks correct.
- If it does, you will click Next.

Trip Summary

- Finalize Trip
- [Review Travel Details](#)
- [Enter Trip Information](#)
- [Submit Trip Confirmation](#)

Travel Details

Trip Overview

I want to... [Print Itinerary](#) [Email Itinerary](#)

Trip Name: Trip from Sacramento to San Diego [\(Info\)](#)

Start Date: April 01, 2024

End Date: April 04, 2024

Created: February 20, 2024, Ashley Reynolds (Modified: February 20, 2024)

Description: (No Description Available) [\(Info\)](#)

Agency Record Locator: JFZIMMC

Passengers: Ashley Rose Reynolds

Total Estimated Cost: \$970.11 USD [\(Details\)](#)

Airfare must be ticketed by: 02/21/2024 11:00 PM Pacific

Reservations

Monday, April 01, 2024

Flight Sacramento, CA (SMF) to San Diego, CA (SAN) [Change](#) | [Cancel All Air](#)

Southwest 4210
Operated by: Southwest

Departure: 06:00 AM
Sacramento Int Airport (SMF)
Terminal: CENTRAL TERMINAL B
Duration: 1 hour, 30 minutes
Nonstop

Arrival: 07:30 AM
San Diego Int Airport (SAN)
Terminal: 1

Additional Details
Aircraft: Boeing 737-700 Distance: 400 miles
E-Ticket
Emissions: 303.4 lbs CO₂
Cabin: YARNNA-GET A104Y (A)

Confirmation: 4W7KT7
Status: Confirmed

Seat: No seat

Enterprise Car Rental at: San Diego US (SAN) [Change](#) | [Cancel](#)

Pick-up at: San Diego US (SAN)


Pick Up: 07:30 AM Mon Apr 1
Pickup at: San Diego US (SAN)
Number of Cars: 1

Confirmation: 11963165385COUNT
Status: Confirmed
Frequent Guest Number: @XXXXX499
Rate Code: ZLBMIS

Return: 05:00 PM Thu Apr 4
Return to: San Diego US (SAN)

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7



Holiday Inn Bayside

4875 North Harbor Dr
San Diego, California, 92106
US
619-224-3621

Checking In: Mon Apr 1
Room 1, Days 3, Guests 1

Checking Out: Thu Apr 4

Confirmation: 66070302
Status: Confirmed

Additional Information
Daily Rate: \$184.00 USD Total Rate: \$652.00 USD


Room Details
Room Description: RoomDescriptionCodeTOT133A
Special Instructions: Earlycheckin

Cancellation Policy
Cancellation Fees may apply
Must Cancel 1 Day(S) Prior To Arrival.

[Add to your Itinerary](#)

[Change](#) | [Cancel](#)

Thursday, April 04, 2024



Flight San Diego, CA (SAN) to Sacramento, CA (SMF)

Southwest 1089
Operated by: Southwest

Departure: 05:00 PM
San Diego Intl Airport (SAN)
Terminal: 1
Duration: 1 hour, 40 minutes
Nonstop

Arrival: 06:40 PM
Sacramento Intl Airport (SMF)
Terminal: CENTRAL TERMINAL B

Additional Details
Aircraft: Boeing 737 MAX 8 Distance: 480 miles
E-Ticket
Emissions: 303.4 lbs CO₂
Cabin: WANNA GET AWAY (A)

[Add to your Itinerary](#)

[Change](#) | [Cancel all Air](#)

15

Total Estimated Cost

Air		View Fare Rules
Airfare quoted amount:		\$150.02 USD
Taxes and fees:		\$41.45 USD
	Air Total Price:	\$191.47 USD
Hotel:		\$552.00 USD
Car:		\$226.64 USD
Total Estimated Cost:		\$970.11 USD

Restrictions
Quote: **NONREF/NONTRANSFERABLE**

TICKET NOT YET ISSUED. AIRFARE QUOTED IN ITINERARY IS NOT GUARANTEED UNTIL TICKETS ARE ISSUED.

Remarks

CALTRAVELSTORE PHONE NUMBER 877 454-8785

If you close at this point your reservation may be cancelled. Note: Any part of the trip that is instant purchase or has deposit required will not be cancelled.

Next >>
Cancel Trip

16

8

Finalize Travel

- The next page to come up will let you put a trip description.
- You must also agree to the Terms of Use
 - Is this for state business?
- There is a drop down for the purpose of the trip.
- Once completed, click Next.

Trip Summary

- Finalize Trip
- Review Travel Details
- Enter Trip Information
- Submit Trip Confirmation

Trip Booking Information

The trip name and description are for your record keeping convenience.

Trip Name	Trip Description (optional)
Trip from Sacramento to San Diego	

Send a copy of the confirmation to:

Send my email confirmation as [HTML_C_Plan-Last](#)

Select information to include in email confirmation:
 Include directions and maps to hotels

I agree to the Terms of Use and have read and will comply with State of CA travel and expense policy [Required] Purpose of Trip [Required]
 Yes Resp by Statute/Contract/Exec Directive

You may HOLD this reservation until: 02/21/2024 11:00 pm Pacific

Please enter information about this trip then press Next to finalize your reservation. If you close at this point your reservation may be cancelled. Note: Any part of the trip that is instant purchase or has deposit required will not be cancelled.

[Display Trip](#) [Hold Trip](#) [<< Previous](#) [Next >>](#) [Cancel Trip](#)

17

Finalize Trip

- A new screen will come up with another summary of the trip.
- Check again that everything looks correct.
- At the bottom of the screen there will be Purchase Tickets.
- You will receive an email with your itinerary for the trip.

Total Estimated Cost

Air	Airfare quoted amount:	\$150.02 USD	View Fare Rules
	Taxes and fees:	\$41.45 USD	
	Air Total Price:	\$191.47 USD	
Hotel:		\$552.00 USD	
Car:		\$226.64 USD	
Total Estimated Cost:		\$970.11 USD	

Restrictions
 Quote: NONREFINONTRANSFERABLE

TICKET NOT YET ISSUED. AIRFARE QUOTED IN ITINERARY IS NOT GUARANTEED UNTIL TICKETS ARE ISSUED.

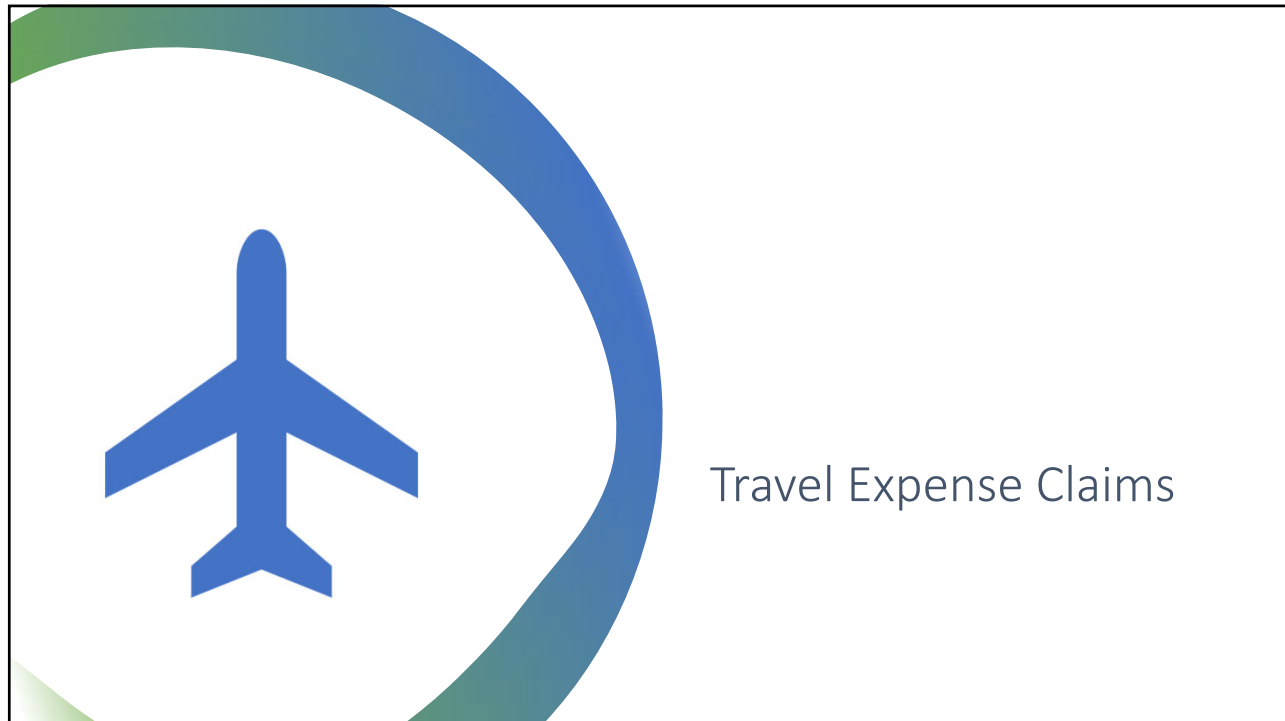
Remarks

CALITRAVELSTORE PHONE NUMBER 877 454-8785

Almost done... Please confirm this itinerary.

[Display Trip](#) [<< Previous](#) [Purchase Tickets>>](#) [Cancel Trip](#)

18



Travel Expense Claims

19

TEC Example

STATE OF CALIFORNIA – DEPARTMENT OF PERSONNEL ADMINISTRATION
TRAVEL EXPENSE CLAIM
STD. 262 (REV. 9/2007)

Clear Print Important Note

See Instructions and "Privacy Statement On Reverse Side"

Page _____ of _____ Pages

CLAIMANT'S NAME Jane Doe			SSN or EMPLOYEE NUMBER*			DEPARTMENT		
POSITION Calmat		CB/ID No.	DIVISION or BUREAU EMSA Calmat			INDEX NUMBER		
RESIDENCE ADDRESS* 1234 Travel Way						HEADQUARTERS ADDRESS 11120 International Drive, Floor 2		
CITY Sacramento		STATE CA	ZIP CODE 95828		CITY Rancho Cordova		STATE CA	ZIP CODE 95670
(1) NORMAL WORK HOURS				(2) PRIVATE VEHICLE LICENSE NUMBER 1234ABC		(3) MILEAGE RATE CLAIMED 0.655		

(4) MONTH/YEAR	(5) DATE	(6) LOCATION WHERE EXPENSES WERE INCURRED	(7) LODGING	(8) MEALS			(9) INCIDENTALS	(10) TRANSPORTATION				(11) BUSINESS EXPENSE	(12) TOTAL EXPENSES FOR DAY
				BREAK-FAST	LUNCH	O.T., LT, N/C, RELO. OR DINNER		(A) COST OF TRANS.	(B) TYPE USED	(C) CARFARE, TOLLS, PARKING	(D) PRIVATE CAR USE		
	TIME								MILES	AMOUNT			
10/2023	10/23	Sacramento to Point Mugu	132.27			15.25		32.59	T	10.00	25.00	16.38	206.49
	10/24	Point Mugu	132.27			14.23				10.00		0.00	156.50
	10/25	Point Mugu to Sacramento				21.55		32.59	T	30.00	25.00	16.38	100.52

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Meals

Meal and Incidental Expense Category	Effective January 1, 2024: Reimbursement Rate for Actual Expense
Breakfast	Up to \$13
Lunch	Up to \$15
Dinner	Up to \$26
Incidentals	Up to \$5
Total Daily Maximum Allowance	Up to \$59

Trips longer than 24 hours

- First day of travel
 - Trip begins at or before 6am – Breakfast can be claimed
 - Trip begins at or before 11am – Lunch can be claimed
 - Trip begins at or before 5pm – Dinner can be claimed
- Continuing Travel after 24 hours
 - Trip ends at or after 8am – Breakfast can be claimed
 - Trip ends at or after 2pm – Lunch can be claimed
 - Trip ends at or after 7pm – Dinner can be claimed

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Backup Documentation

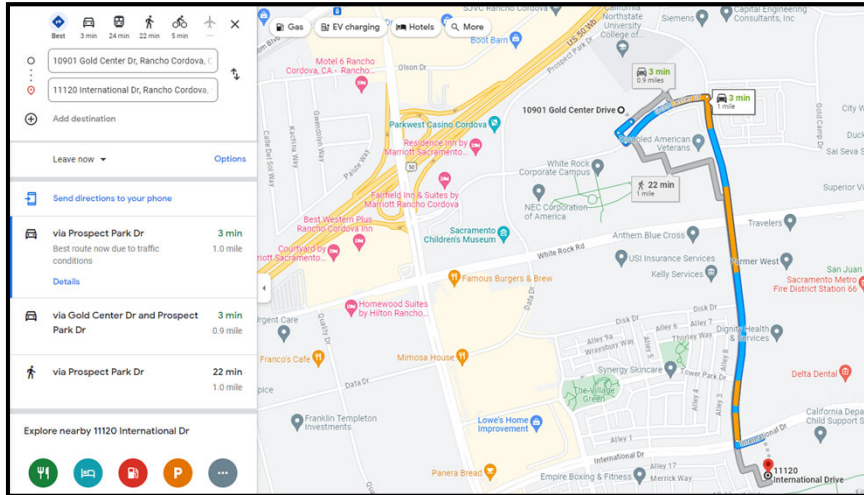
- If you are claiming ***MEALS***, you are not required to submit a receipt, **HOWEVER**, you must be able to present one upon request from EMSA, CalHR auditor, or IRS.
- A meal is not claimable if it is provided by the hotel or EMSA.
- Lunch is not reimbursable for trips less than 24 hours.
- For trips less than 24 hours, meals will be taxed.



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Backup Documentation

- If you are claiming **MILEAGE**→You will need to submit **MAPS**.
- The current mileage rate is \$0.67/mile.



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Backup Documentation

- If you are claiming **LODGING**→You will need to submit a **ZERO BALANCE FOLIO/RECEIPT**



HAMPTON INN AND SUITES BY HILTON
 WATSONVILLE
 75 LEE ROAD
 WATSONVILLE, CA 95076
 United States of America
 TELEPHONE 831-322-5080 • FAX 831-322-5055
 Reservations
 www.hilton.com or 1 800 HILTONS

DOE, JANE
 10901 GOLD CENTER DR
 RANCHO CORDOVA CA 95670
 UNITED STATES OF AMERICA

Room No: 232/NKJU
 Arrival Date: 3/16/2023 5:08:00 PM
 Departure Date: 3/17/2023 5:55:00 AM
 Adult/Child: 2/0
 Cachier ID: TNUCHAI
 Room Rate: 139.00
 AL:
 HH #
 VAT #
 Folio No/Che 66427 A

Confirmation Number: 95319968

HAMPTON INN AND SUITES BY HILTON WATSONVILLE 3/17/2023 5:54:00 AM

DATE	REF NO	DESCRIPTION	CHARGES
3/16/2023	152288	GUEST ROOM	\$139.00
3/16/2023	152288	OCCUPANCY TAX	\$16.68
3/16/2023	152288	COUNTY TOURISM ASSESSMENT	\$2.10
3/16/2023	152288	STATE TOURISM ASSESSMENT	\$0.28
3/17/2023	152386	MC *0104	(\$158.06)
BALANCE			\$0.00

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Backup Documentation

- If you are claiming **PARKING** → You will need to submit a **RECEIPT**

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Completed TEC

- Once you have filled out the travel expense claim and attached the back up documentation, send the completed packet to Katherine Rice.
- Katherine will forward them to a supervisor for signature.
- Once a supervisor has signed off on it, a service ticket will be created.



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Tickets List - My Open and Pending Tickets

Q Search

Select all Sort by: Date created Export 1 - 22 of 22

	Subject	Requester	State	Status	Priority
<input type="checkbox"/>	Mail - Walkers - 2274791-0 #INC-3258	A Admin Division	Response Due	Open	Low
<input type="checkbox"/>	Mail - SMUD Croydon Sept 2023 #INC-3255	A Admin Division	-	Open	Low
<input type="checkbox"/>	Mail - SMUD - Past Due Amount #INC-3254	A Admin Division	Response Due	Open	Low
<input type="checkbox"/>	Mail - FedEx - 8-285-22077 #INC-3252	A Admin Division	-	Open	Low

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What Happens Next?

- Once a ticket is created for your TEC by Katherine, it will go into the travel work queue.
- Travel will audit the TEC for completeness and send it to Contracted Fiscal Services (CFS).
- CFS will check to see if you are in Fi\$Cal and audit the TEC again.
- If all is good, they will forward it to SCO for payment.
- Once the TEC is in SCO's hands, it is a waiting game for the check to come in.
- Typical wait time for reimbursement is 4-8 weeks.

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Resources

- [DGS Statewide Travel Program](#)
- [CalHR Travel Policy](#)

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CALIFORNIA STATE SHORT TERM TRAVEL REIMBURSEMENT PROGRAM

CONDITIONS OF TRAVEL

Each State agency determines the necessity for and the method of employee business travel. Reimbursement shall not be made for meal and lodging expenses incurred within 50 miles of home and headquarters. Authority to approve exceptions was delegated to appointing powers as follows: to approve meals and/or lodging for employees on *travel* status away from, but within 50 miles of home and headquarters when there is a state need. Delegation does not extend to the approval of meals or lodging at either the home or headquarters location.

All travel must be approved in advance using EMSA EMPLOYEE TRAVEL REQUEST FOR TRAVEL OVER 50 MILES signed by the approving supervisor. Forward the signed travel request, along with meeting/conference flyer or pamphlet and agenda to the Travel Coordinator.

LODGING REIMBURSEMENT RATES – IN STATE

Applicable when State business requires an overnight stay and the employee uses a good, moderately priced commercial establishment (*hotel, motel, bed and breakfast or public campground*) that caters to the short term traveler. Employees must book lodgings through Concur/CalTravelStore, <http://www.caltravelstore.com>.

(Do Not use 3rd party vendors such as Priceline, Hotels.com)

COUNTIES	RATE
All Counties except those listed below	\$107.00 plus tax
Riverside	\$142.00 plus tax
Sacramento	\$145.00 plus tax
Marin	\$166.00 plus tax
Los Angeles, Orange, Ventura, Edwards AFB, excluding the city of Santa Monica	\$169.00 plus tax
Monterey	\$184.00 plus tax
Alameda	\$189.00 plus tax
San Deigo	\$194.00 plus tax
Napa	\$195.00 plus tax
San Mateo	\$222.00 plus tax
Santa Clara	\$245.00 plus tax
San Francisco and CITY of Santa Monica	\$270.00 plus tax

EXCESS LODGING

If lodging cannot be obtained for the allowable rates, an EXCESS LODGING RATE REQUEST STD Form 255C must be submitted along with sufficient justification, 3 hotels quotes, signed by the supervisor prior to the trip (CalTravelStore can provide quotes). If over \$270.00 per night, it must also be sent to CAL HR for approval at least **10 days prior to trip**.

MEALS AND INCIDENTALS (each 24 hour period) FOR ALL EMPLOYEES

Breakfast - actual cost up to: \$ 13.00
 Lunch - actual cost up to: \$15.00
 Dinner - actual cost up to: \$26.00
 Incidentals - actual cost up to: \$ 5.00

Note (1): Incidentals can only be claimed for fees and tips given to porters, baggage carriers, & hotel staff. Tips for meals or transportation are NOT reimbursable.

Note (2): Incidentals can only be claimed AFTER 24 hours.

Note (3): It is **YOUR** responsibility to retain all meal receipts for audit by the state or the IRS if asked.

TIME FRAMES FOR ALL EMPLOYEES

FIRST DAY – TRIP OF MORE THAN 24 HOURS

Trip begins at or before 6:00 a.m. may claim breakfast
 Trip begins at or before 11:00 a.m. may claim lunch
 Trip begins at or before 5:00 p.m. may claim dinner

FRACTIONAL DAY – AFTER 24 HOURS OF TRAVEL

Trip ends at or after 8:00 a.m. may claim breakfast
 Trip ends at or after 2:00 p.m. may claim lunch
 Trip ends at or after 7:00 p.m. may claim dinner

FRACTIONAL DAY – TRIP OF LESS THAN 24 HOURS (ALL EMPLOYEES)

- Trip MUST begin at or before 6:00 a.m. AND end at or after 9:00 a.m. to claim breakfast.
- Trip MUST begin at or before 4:00 p.m. AND end at or after 7:00 p.m. to claim dinner.

NO LUNCH OR INCIDENTALS MAY BE CLAIMED FOR PERIODS LESS THAN 24 HOURS. If there is no overnight stay, these meals are taxable.

NOTE: Per the Bargaining Unit Contract, full meals included in airfare, or hotel and conference fees, or **otherwise provided may not also be claimed for reimbursement**. The same meal may not be claimed more than once on any date. Continental breakfasts of rolls, coffee and juice are not considered full meals.

OUT-OF-STATE TRAVEL

Lodging w/receipt: actual expense (subject to department approval)
 Meals/Incidentals: same rates/requirements as in-state reimbursements.

MILEAGE REIMBURSEMENT/RATES

All privately owned vehicle mileage driven on State business is subject to advance approval by the appointing authority. STD. 261 form (Authorization to use Privately Owned Vehicle) must be on file with the manager and Human Resource Office and completed annually. The rate claimed shall be considered full reimbursement for all costs related to the operation and maintenance of the vehicle, including both liability and comprehensive insurance.

Automobile (all employees) \$0.67 per mile (1/1/24)

Per the Bargaining Unit contract, when an employee is required to report to an alternative work location, the employee may be reimbursed for the number of miles driven in **EXCESS** of his/her normal commute to and from his/her assigned headquarters. Expenses arising from travel between home or garage and headquarters shall not be allowed regardless of the employee’s normal mode of transportation. If travel begins and ends at headquarters, then reimbursement from headquarters to the destination and back is allowed.

MILEAGE TO/FROM A COMMON CARRIER

When the employee travels to and/or from a common carrier terminal in a private vehicle and the vehicle is not parked at the terminal during the period of absence, the employee may claim double the number of miles for each way between the terminal and the employee’s headquarters or residence, whichever is less. Exception to “whichever is less:” If the employee begins travel at least one hour before, or ends travel at least one hour after his/her regularly scheduled work day or travels on a regularly scheduled day off, mileage may be computed from his/her residence.

TRAVEL CLAIMS

The original CalATERS Transmittal/Expense Detail pages signed by the supervisor and original receipts should be submitted to the Travel Coordinator **at least monthly**. List all travel, including department paid airfare and car rental. Include a MapQuest /Google Maps for any mileage being claimed, and any other supporting documentation. Submit travel claims by emailing Service@emsa.ca.gov with the subject “TRAVEL – Your Name”.

TRANSPORTATION

Reimbursement for transportation expenses will be only for the method of transportation that is in the best interest, least costly for the State considering both direct expense and the employee's time away from the office.

When an employee chooses, and a manager approves a method of transportation that is more costly than the normal method of travel, (use personal vehicle instead of State, rental car, or commercial airlines) **reimbursement will be the lower amount.**

AIRLINE TRAVEL

Book air travel through Concur/Caltravelstore at <http://www.caltravelstore.com>. When choosing Southwest, use the cheaper nonrefundable fares. Only Southwest does not charge for changing or cancelling a flight. To make changes/cancel a flight you must call Caltravelstore at (877)454-8785 at least one hour before the flight to receive a credit for future use. Use nonrefundable fares on other airlines when changes/cancellations are not likely. Parking will be reimbursed at the economy lot rate only.

RENTAL VEHICLES

Enterprise Rent-A-Car is the primary vendor for providing rental vehicles to state employees on official business. The secondary vendor is National Car Rental but should only be used for travel outside of California. Car rental reservations can be made through Concur/Caltravelstore at <http://www.caltravelstore.com>. The traveler is responsible for adhering to all rental contract policies. Use State cars or airport shuttles whenever possible. Rental vehicles are appropriate when it is necessary to have the use of a vehicle while on travel status in order to conduct State business and there are no State cars available at the location to which you travel.

Only **Compact or Intermediate car rentals are allowed** for contracted state rates of \$37.75 daily. Renting larger/other than state rate vehicles requires **advance approval** and a **Short Term Vehicle Justification form**. <https://www.documents.dgs.ca.gov/dgs/fmc/dgs/ofam100.pdf>

All prior approvals for larger rental vehicles need to be submitted to EMSA Travel prior to the travel taking place. Submit a service ticket to Service@emsa.ca.gov, subject "TRAVEL – OFAM100 – YOUR NAME"

GAS PURCHASE POLICY

To be reimbursed, submit a copy of the car rental agreement, final receipt, and original gasoline receipts.

Fuel receipts must include the amount paid, quantity of fuel purchased, date, and business name, (pre-paid fuel receipts are not allowed). ATM fees charged by fueling stations are not reimbursable (per SCO).

Gas is not reimbursable when driving a personal vehicle as the cost is already included in the rate per mile.

RECEIPTS/TRAVEL AGENCY/LIAISON/MISC.

Receipts shall be submitted for every item of expense of \$25.00 or more (see below for exceptions). When receipts are not required to be submitted with a claim, it is the employees' responsibility to maintain receipts/records of their actual expenses. Receipts must be made available upon request to the department, state control agency and/or IRS.

EXCEPTIONS: Receipts are required for each item of expense for street car, ferry fares, bridge and road tolls, local transit, taxi (Uber/Lyft), shuttle or hotel bus and parking over \$10.00; business phone calls over \$5.00, ALL gas for rental vehicles, and ALL lodging – regardless of the amount. **Bank statements will not be accepted in lieu of a receipt.**

TRAVEL HINTS:

- *Going on vacation? Have fun. But turn the State charged rental car in and rent one in your own name. State charged rentals are for business travel only. It is not ok to extend business rental agreements for personal use and pay the difference.*
- *If you lock the keys in a vehicle, YOU pay the locksmith! (Thank goodness, you're a member of a road service)!*
- *Parking tickets? Tow away charges? They are YOUR responsibility. You are not exempt from obeying traffic laws and parking limits, etc. while you are conducting State business.*
- *Receipts should be kept regardless of if they are required or not. You may be asked to provide proof of a claimed item. Again, bank statements are not acceptable.*

TRAVEL EXPENSE REIMBURSEMENT



STATE OF CALIFORNIA SHORT TERM TRAVEL EXPENSE REIMBURSEMENT PROGRAM SUMMARY

ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF HUMAN RESOURCES

FOR ALL EMPLOYEES

Rates, timeframes and requirements in this pamphlet are applicable to all represented and excluded employees except as noted.

Additional details applicable to the travel reimbursement program may be found in the Bargaining Agreements, CalHR rules, SAM (Section 700), and in EMSA's department policies and procedures (under development).

This pamphlet is intended as a guide and overview only.

For travel information not contained in this pamphlet, contact **Ashley Reynolds, EMSA Travel Coordinator** at **916-639-7839** or **Ashley.Reynolds@emsa.ca.gov**.

January 2024 Version