

**OSTEOPATHIC MEDICAL  
BOARD  
OF CALIFORNIA**

**Teleconference, Friday, January 14, 2021  
10:00 a.m.**

**Osteopathic Medical Board of California  
1300 National Drive, Suite 150  
Sacramento, CA 95834-1991**

**OMBC Phone (916) 928-8390**

# **TABLE OF CONTENTS**

<b>TAB 1</b>	<b>AGENDA</b>
<b>TAB 2</b>	<b>BOARD MEETING MINTUES</b> <ul style="list-style-type: none"><li>• <b>September 10, 2020 Board Meeting (Teleconference)</b></li><li>• <b>December 4, 2020 Board Meeting (Teleconference)</b></li></ul>
<b>TAB 3</b>	<b>ADMINISTRATIVE HEARING</b> <i>(MATERIAL FOR BOARD MEMBERS ONLY)</i>
<b>TAB 4</b>	<b>BUDGET UPDATE - CARL BEERMANN, DCA BUDGET OFFICE</b>
<b>TAB 5</b>	<b>REGULATIONS</b> <ul style="list-style-type: none"><li>• <b>California Code of Regulations (CCR) Section 1635 – Required Continuing Medical Education (CME)</b></li><li>• <b>California Code of Regulations (CCR) Section 1636 – Continuing Medical Education Progress Report</b></li><li>• <b>California Code of Regulations (CCR) Section 1641 – Sanctions for Noncompliance</b></li></ul>
<b>TAB 6</b>	<b>OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA ADMINISTRATIVE MANUAL</b>
<b>TAB 7</b>	<b>EXECUTIVE DIRECTOR’S REPORT – MARK ITO</b> <ul style="list-style-type: none"><li>• <b>Licensing</b></li><li>• <b>Staffing</b></li><li>• <b>Regulations</b></li><li>• <b>COVID-19 (Update)</b></li><li>• <b>Enforcement Report – Corey Sparks</b></li></ul>
<b>TAB 8</b>	<b>GUIDELINES for the RECOMMENDATION of CANNABIS for MEDICAL PURPOSES</b>
<b>TAB 9</b>	<b>FUTURE AGENDA ITEMS</b>
<b>TAB 10</b>	<b>FUTURE MEETING DATES</b>

# Tab 1



## **TELECONFERENCE BOARD MEETING NOTICE AND AGENDA**

**Date:** Thursday, January 14, 2021  
**Time:** 10:00 a.m. to 5:00 p.m. (or until the conclusion of business)

*NOTE:* Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-29-20, dated March 17, 2020, neither Board member locations nor a public meeting location are provided. Public participation may be through the WebEx link as provided below. If you have trouble getting on the call to listen or participate, please call 916-928-8390.

The Osteopathic Medical Board of California will hold a public meeting via WebEx Events. To participate in the WebEx Events meeting, please log on to this website on the day of the meeting:

<https://dca-meetings.webex.com/dca-meetings/onstage/g.php?MTID=eac1f576768a1d76f1a6c5549fc2b373b>

Instructions to connect to the meeting can be found at the end of this agenda. Members of the public may but are not obligated to provide their names or personal information as a condition of observing or participating in the meeting. When signing into the WebEx platform, participants may be asked for their name and email address. Participants who choose not to provide their names will need to provide a unique identifier such as their initials or another alternative, so that the meeting moderator can identify individuals who wish to make public comment; participants who choose not to provide their email address may utilize a fictitious email address like in the following sample format: XXXXX@mailinator.com.

### **AGENDA**

Discussion and possible action may be taken on any items listed on the agenda, and items may be taken out of order to facilitate the effective transaction of business.

### **OPEN SESSION**

1. Call to Order and Roll Call / Establishment of a Quorum
2. Public Comment on Items Not on the Agenda

*The Board may not discuss or take action on any matter raised during this public comment section except to decide whether to place the matter on the agenda of a future meeting. (Government Code sections 11125, 11125.7(a).)*

3. Election of Officers
4. Review and Possible Approval of Minutes
  - September 10, 2020 Teleconference Board Meeting
  - December 4, 2020 Teleconference Board Meeting

5. Petition for Early Termination of Probation, James Paul Maganito, D.O., 20A 11694

### **CLOSED SESSION**

Pursuant to section 11126(c)(3) of the Government Code, the Board will meet in closed session for discussion and to take action on disciplinary matters, including the above petition.

### **RECONVENE IN OPEN SESSION**

6. Department of Consumer Affairs (DCA) Update – Carrie Holmes, Deputy Director of Board and Bureau Relations, DCA
7. Budget Update – Carl Beermann, DCA Budget Office
8. Discussion and Possible Action to Initiate Rulemakings to Amend Board Regulations – Mark Ito:
  - California Code of Regulations (CCR) section 1635 – Required Continuing Medical Education.
  - CCR section 1636 – Continuing Medical Education Progress Report.
  - CCR section 1641 – Sanctions for Noncompliance.
9. Discussion and Possible Adoption of the Osteopathic Medical Board of California’s Administrative Manual – Mark Ito
10. Executive Director’s Report – Mark Ito
  - Licensing
  - Staffing
  - Regulations
  - COVID-19 Update
  - Enforcement Report – Corey Sparks
11. Discussion and Possible Approval of Guidelines for the Recommendation of Cannabis for Medical Purposes
12. Future Agenda Items
13. Future Meeting Dates
14. Adjournment

**For further information about this meeting, please contact Machiko Chong at 916-928-7636 or in writing at 1300 National Drive, Suite 150, Sacramento, CA 95834. This notice and agenda, as well as any available Board meeting materials, can be accessed on the Board’s website at [www.ombc.ca.gov](http://www.ombc.ca.gov)**

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board, including the teleconference sites, are open to the public. Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President, at his or her discretion, may apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items

not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting. (Government Code sections 11125, 11125.7(a).)

Board meetings are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you are a person with a disability requiring disability-related modifications or accommodations to participate in the meeting, including auxiliary aids or services, please contact Machiko Chong, ADA Liaison, at (916) 928-7636 or e-mail at [Machiko.Chong@dca.ca.gov](mailto:Machiko.Chong@dca.ca.gov) or send a written request to the Board's office at 1300 National Drive, Suite 150, Sacramento, CA 95834-1991. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation. Requests should be made as soon as possible, but at least five (5) working days prior to the scheduled meeting. You may also dial a voice TTY/TDD Communications Assistant at (800) 322-1700 or 7-1-1.

# HOW TO – Join – DCA WebEx Event

The following contains instructions on how to join a WebEx event hosted by the Department of Consumer Affairs (DCA).

NOTE: The preferred audio connection to our event is via telephone conference and not the microphone and speakers on your computer. Further guidance relevant to the audio connection will be outlined below.

1. Navigate to the WebEx event link provided by the DCA entity (an example link is provided below for reference) via an internet browser.

Example link:

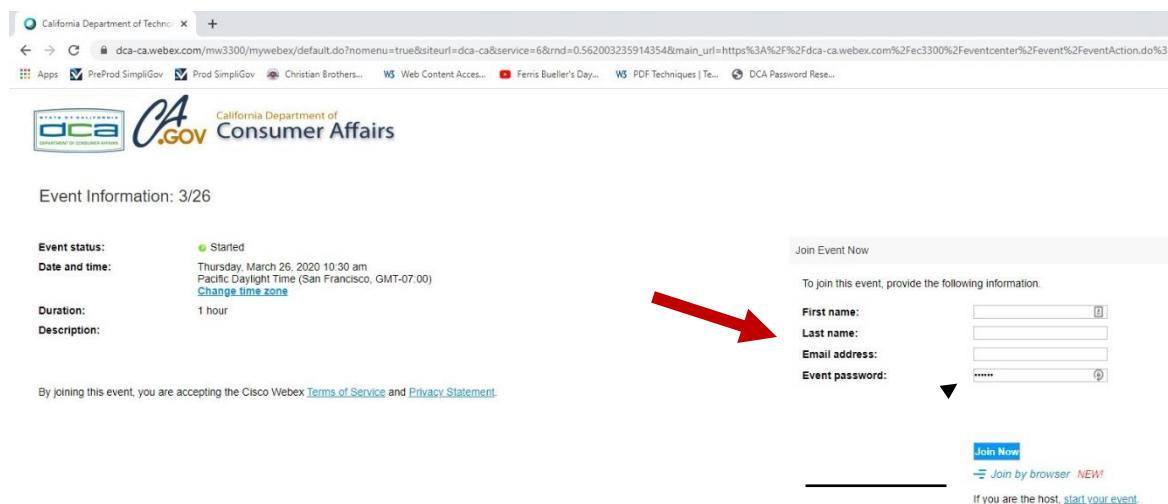
<https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=eb0a73a251f0201d9d5ef3aaa9e978bb5>

The screenshot shows a web browser window displaying the WebEx event page for the California Department of Consumer Affairs. The page is titled "Event Information: 3/26". On the left side, there is a section for "Event status" which is "Started", "Date and time" which is "Thursday, March 26, 2020 10:30 am Pacific Daylight Time (San Francisco, GMT-07:00)", "Duration" which is "1 hour", and "Description" which is blank. Below this, there is a link to "Change time zone". On the right side, there is a "Join Event Now" section. It says "To join this event, provide the following information." and has four input fields: "First name:", "Last name:", "Email address:", and "Event password:". Below the input fields, there is a "Join Now" button and a link "Join by browser NEW!". At the bottom, there is a link "If you are the host, start your event".

2. The details of the event are presented on the left of the screen and the required information for you to complete is on the right.

NOTE: If there is a potential that you will participate in this event during a Public Comment period, you must identify yourself in a manner that the event Host can then identify your line and unmute it so the event participants can hear your public comment. The 'First name', 'Last name' and 'Email address' fields do not need to reflect your identity. The department will use the name or moniker you provide here to identify your communication line should you participate during public comment.

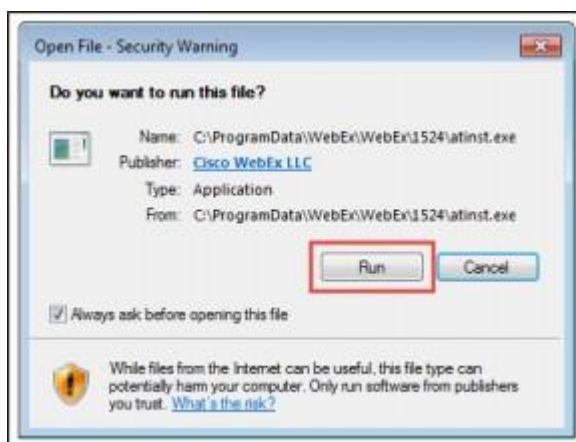
# HOW TO – Join – DCA WebEx Event



3. Click the 'Join Now' button.

*NOTE: The event password will be entered automatically. If you alter the password by accident, close the browser and click the event link provided again.*

4. If you do not have the WebEx applet installed for your browser, a new window may open, so make sure your pop-up blocker is disabled. You may see a window asking you to open or run new software. Click 'Run'.



Depending on your computer's settings, you may be blocked from running the necessary software. If this is the case, click 'Cancel' and return to the browser tab that looks like the window below. You can bypass the above process.



## Starting Webex...



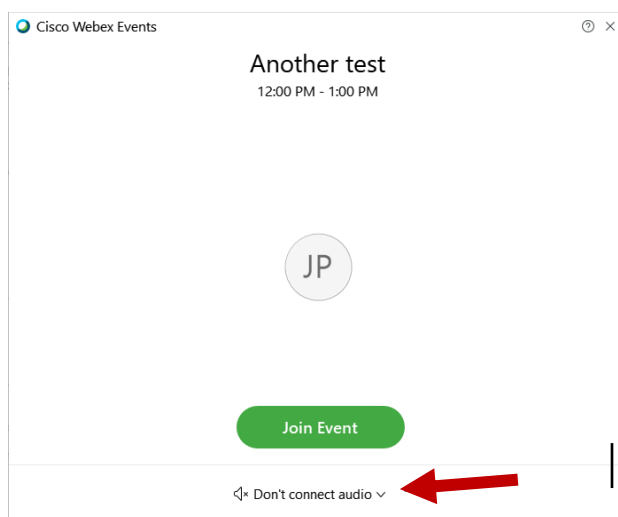
Still having trouble? [Run a temporary application](#) to join this meeting immediately.

5. To bypass step 4, click 'Run a temporary application'.
6. A dialog box will appear at the bottom of the page, click 'Run'.



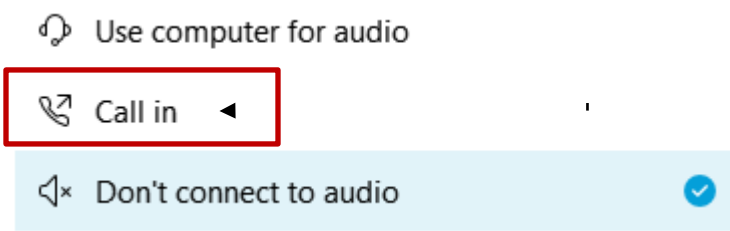
The temporary software will run, and the meeting window will open.

7. Click the audio menu below the green 'Join Event' button.

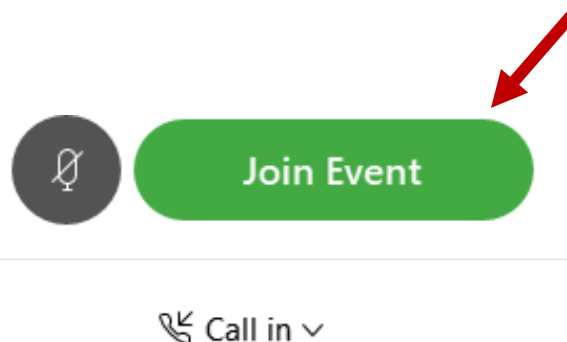


8. When the audio menu appears click 'Call in'.

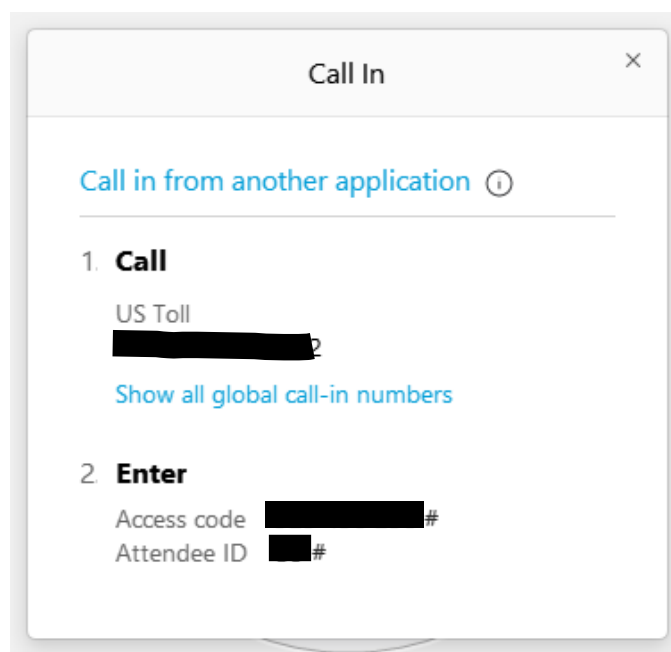
# HOW TO – Join – DCA WebEx Event



9. Click 'Join Event'. The audio conference call in information will be available after you join the Event.



10. Call into the audio conference with the details provided.

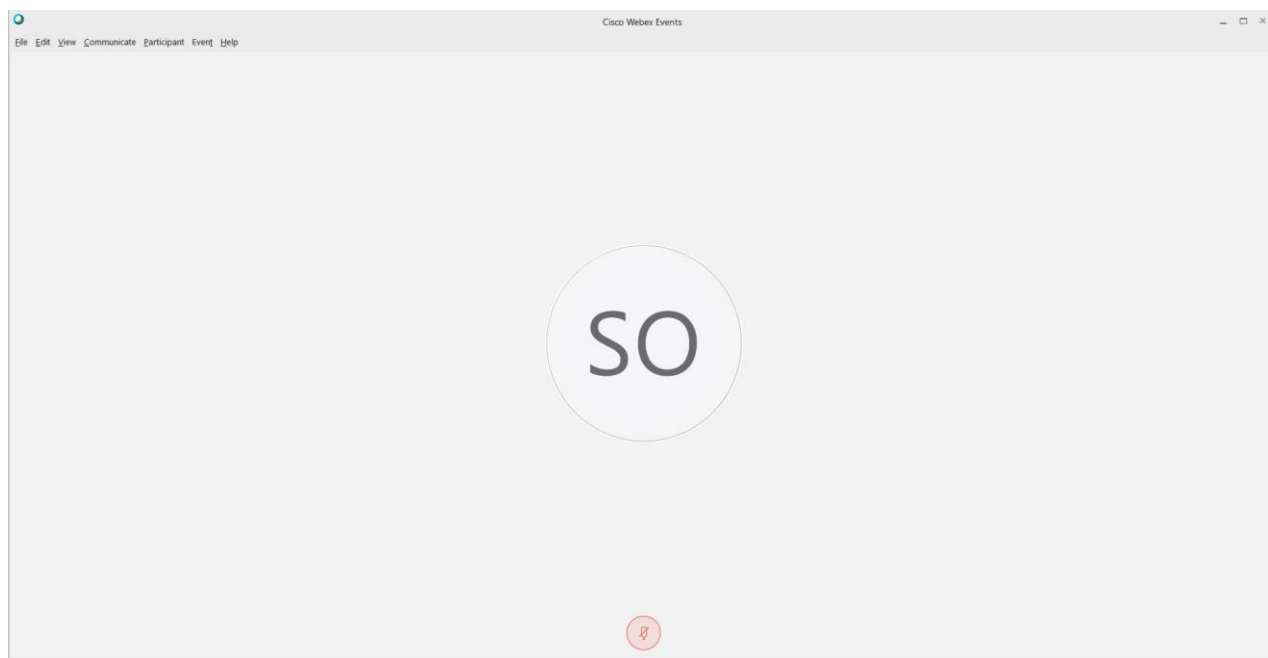


*NOTE: The audio conference is the preferred method. Using your computer's microphone and speakers is not recommended.*

# HOW TO – Join – DCA WebEx Event

Once you successfully call into the audio conference with the information provided, your screen will look like the screen below and you have joined the event.

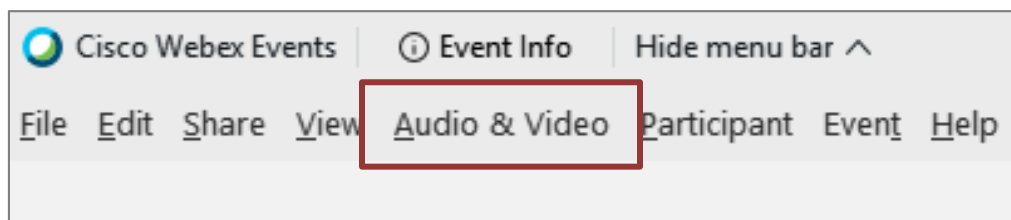
Congratulations!



*NOTE: Your audio line is muted and can only be unmuted by the event host.*

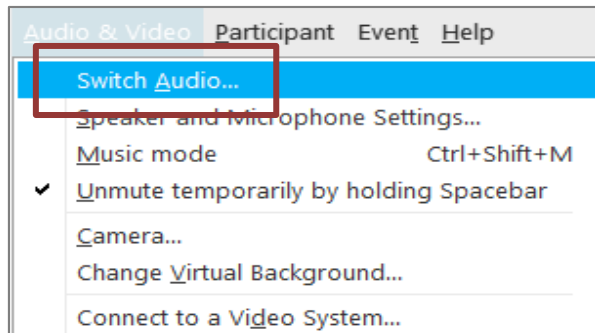
If you join the meeting using your computer's microphone and audio, or you didn't connect audio at all, you can still set that up while you are in the meeting.

1. Select 'Audio & Video' from the menu bar at the top of your screen.

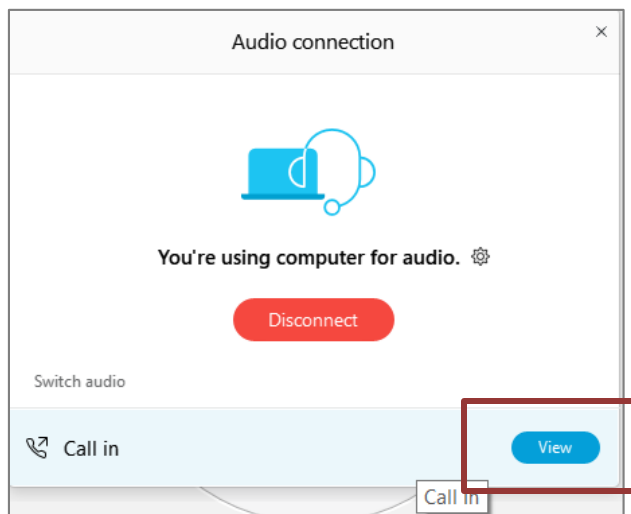


# HOW TO – Join – DCA WebEx Event

2. Select “Switch Audio” from the drop-down menu.



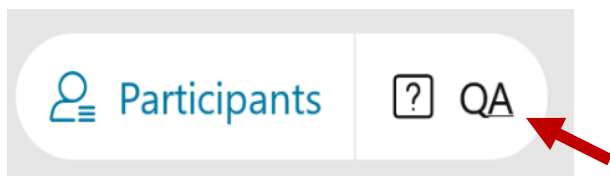
3. The 'Call In' information can be displayed by selecting 'View'



You will then be presented the dial in information for you to call in from any phone.

## Participating During a Public Comment Period

At certain times during the event, the facilitator may call for public comment. If you would like to make a public comment, click on the 'Q and A' button near the bottom, center of your WebEx session.



This will bring up the 'Q and A' chat box.

*NOTE: The 'Q and A' button will only be available when the event host opens it during a public comment period.*

To request time to speak during a public comment period, make sure the 'Ask' menu is set to 'All panelists' and type 'I would like to make a public comment'.

Ask:  ▼

Select a panelist in the Ask menu first and then type your question

Attendee lines will be unmuted in the order the requests were received, and you will be allowed to present public comment.

*NOTE: Your line will be muted at the end of the allotted public comment duration. You will be given a warning that your time is about to expire.*

# Tab 2

**September 10, 2020 Board Meeting  
(Teleconference)**



## Osteopathic Medical Board of California

### Teleconference Minutes

September 10, 2020

**MEMBERS PRESENT:** Cheryl Williams, *President*  
Cyrus Buhari, D.O., *Secretary Treasurer*  
Gor Adamyan, *Board Member*  
Elizabeth Jensen, D.O., *Board Member*  
Claudia Mercado, *Board Member*  
Andrew Moreno, *Board Member*  
Hemesh Patel, D.O., *Board Member*

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Sabina Knight, *Esq., Legal Counsel, DCA*  
Mark Ito, *Executive Director*  
Machiko Chong, *Executive Analyst*  
James Lally, D.O., *Medical Consultant*  
Corey Sparks, *Enforcement Analyst*

**MEMBERS OF THE AUDIENCE:** Nick Birtcil, *Executive Director, Osteopathic Physicians & Surgeons of California (OPSC)*  
  
Students, *Midwestern University (Glendale, AZ)*

#### Agenda Item 1      **Call to Order/Roll Call/Establishment of a Quorum**

The Board Meeting of the Osteopathic Medical Board of California (OMBC) was called to order by President, Cheryl Williams at 10:12 a.m. Machiko Chong called roll and determined a quorum was present. Due notice was provided to all interested parties.



## Board Meeting Minutes – September 10, 2020 (DRAFT)

### Agenda Item 2 Public Comment for Items not on the Agenda

*Note: The Board may not discuss or take action on any matter raised during this public comment section except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]*

Dr. Patel noted that he had been approached by a fellow practicing physician regarding the required continuing medical education (CME) needed to renew licensure with the OMBC. He stated that there is confusion over the CME reporting period at the time of renewal. Board staff and Legal Counsel made note of the concern and stated that the topic could be placed on the agenda for the upcoming Board Meeting.

Nick Birtcil, Director, OPSC, thanked Board staff for their hard work during this unprecedented time.

### Agenda Item 3 Review and Possible Approval of Minutes

Ms. Williams called for a motion for approval of the meeting minutes of the May 7, 2020 Board Meeting.

**Motion to approve the May 7, 2020 Board Meeting minutes with no corrections.**

**Motion** – Dr. Buhari, **Second** – Dr. Jensen

- Roll Call Vote was taken
  - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Dr. Patel, Ms. Williams
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – None
- Motion carried to approve the May 7, 2020 Board Meeting minutes with no corrections.

### Agenda Item 4 Proposed Regulations – Mark Ito

- Discussion and Possible Action to Initiate a Rulemaking to Amend Section 1654 Substantial Relationship Criteria Under Title 16, California Code of Regulations (CCR)
- Discussion and Possible Action to Initiate a Rulemaking to Amend Section 1655 Rehabilitation Criteria for Denial, Suspension, or Revocation of Licensure Under Title 16, CCR
- Discussion and Possible Action to Initiate a Rulemaking to Amend Section 1657 Rehabilitation Criteria for Petition for Reinstatement or Modification of Penalty Under Title 16, CCR

## Board Meeting Minutes – September 10, 2020 (DRAFT)

- Discussion and Possible Action Regarding Comments Received Regarding [AB 2138](#) (Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction)

Sabina Knight, Legal Counsel, provided the Board members with background information regarding the regulatory packet being presented and notified them of the changes that were needed in order to move the process forward. She informed the Board members that there was an error in *Comment #5* on page 6. The response needed to be amended, to change the code section from Business and Professions Code (BPC) Sections 4256, 4258 and 4259 to BPC Sections 1655 and 1657. Ms. Knight noted that the comments received by the Board have been consistent with what other programs within DCA have received. She also indicated that the Board wants to refrain from including duplicative information in the language.

**Motion to reject the proposed comments, provide the responses to the comments as indicated in the meeting materials and complete the regulatory process as authorized by motion at the Board’s May 16, 2019 meeting, with amendments to Comment #5; and allow the Executive Director the authority to make any technical and non-substantive changes that may be required in completing the rulemaking file.**

**Motion** – Dr. Jensen, **Second** – Dr. Buhari

- Roll Call Vote was taken
  - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Dr. Patel, Ms. Williams
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – None
- Motion carried to reject the proposed comments, provide the responses to the comments as indicated in the meeting materials and complete the regulatory process as authorized by motion at the Board’s May 16, 2019 meeting, with amendments to Comment #5; and allow the Executive Director the authority to make any technical and non-substantive changes that may be required in completing the rulemaking file.

### **Agenda Item 5      Discussion and Possible Action on Pending Legislation – Mark Ito**

Mr. Ito informed the Board that the staff has been following the progression of AB 1616 (*Low*) Department of Consumer Affairs: Boards: Expunged convictions and SB 878 (*Jones*) Department of Consumer Affairs Licensing: applications: wait times. Mr. Ito informed the Board that OMBC is no longer following AB 1616 as the bill is dead. However, SB 878 has since been enrolled on September 4<sup>th</sup> and is with the Governor awaiting a final decision.

## **Board Meeting Minutes – September 10, 2020 (DRAFT)**

Dr. Buhari asked how difficult it would be to begin listing our application time frames online. Mr. Ito stated that it should hopefully not be too difficult as the Board will work with OIS on the best way to update the website to include the information in a timely and efficient manner.

### **Agenda Item 6      Review of Medical Board of California Guidelines for the Recommendation of Cannabis for Medical Purposes and FSMB Telehealth Guidelines**

The subcommittee opted to table the discussion until the next board meeting, as they have been attempting to procure a copy of the Guidelines for the Recommendation of Cannabis in a text document that is editable. Ms. Chong stated that she would attempt to locate a copy that they could edit and would let them know.

### **Agenda Item 7      Budget Report – Paul McDermott**

Paul McDermott, DCA Budget Analyst, provided the Board with a detailed overview of the Board's budget for this fiscal year. Mr. McDermott indicated that the OMBC has a healthy fund condition and is anticipated to spend within their appropriation.

Dr. Jensen stated that the OMBC's budget is in good condition due to Mr. Ito's past experience as the OMBC's prior DCA budget manager. Dr. Jensen asked Mr. McDermott if there was anything that the OMBC should be planning for from a budget perspective. Mr. McDermott responded that the OMBC's reversion is higher than normal, but the budget looks solid moving forward.

Ms. Mercado inquired about what types of purchases fall under the Information Technology (IT) line item as there will cost savings this fiscal year. Mr. Ito responded that he is not certain what falls under this line item, but believes that printer toner would be the primary expense.

### **Agenda Item 8      Executive Director's Report – Mark Ito**

Mr. Ito updated the Board on licensing statistics, staffing, COVID-19, and CURES, which were included in the Board packet.

Enforcement/Discipline – The Board's Lead Enforcement Analyst, Corey Sparks, presented the enforcement report to the Board and provided written materials showing various enforcement data.

### **Agenda Item 9      Agenda Items for Next Meeting**

- Review of Guidelines for the Recommendation of Cannabis for Medical Purposes (*Proposed Language*)
- Renewal requirements – Clarification re:CME

## Board Meeting Minutes – September 10, 2020 (DRAFT)

### Agenda Item 10 Future Meeting Dates

- Thursday, January 14, 2021 @ 10:00 am – *TBD*
- Thursday, May 13, 2021 @ 10:00 am – *TBD*

### Agenda Item 11 Adjournment

There being no further business or public comment, Ms. Williams adjourned the meeting at 11:28 a.m.

**December 4, 2020 Board Meeting  
(Teleconference)**



## Osteopathic Medical Board of California

### Teleconference Minutes

December 4, 2020

**MEMBERS  
PRESENT:**

Cheryl Williams, *President*  
Cyrus Buhari, D.O., *Secretary Treasurer*  
Gor Adamyan, *Board Member*  
Elizabeth Jensen, D.O., *Board Member*  
Claudia Mercado, *Board Member*  
Andrew Moreno, *Board Member*  
Hemesh Patel, D.O., *Board Member*

**MEMBERS  
ABSENT:**

None

**STAFF  
PRESENT:**

Sabina Knight, *Esq., Legal Counsel, DCA*  
Mark Ito, *Executive Director*  
Terri Thorfinnson, *Assistant Executive Director*  
Machiko Chong, *Executive Analyst*  
James Lally, D.O., *Medical Consultant*

**MEMBERS OF  
THE AUDIENCE:**

Nick Birtcil, *Executive Director, Osteopathic Physicians & Surgeons of California (OPSC)*  
  
Joseph Zammuto, D.O.

### Agenda Item 1      **Call to Order/Roll Call/Establishment of a Quorum**

The Board Meeting of the Osteopathic Medical Board of California (OMBC) was called to order by President, Cheryl Williams at 11:00 a.m. Machiko Chong called roll and determined a quorum was present. Due notice was provided to all interested parties.

## Board Meeting Minutes – December 4, 2020 (DRAFT)

### Agenda Item 2 Public Comment for Items not on the Agenda

*Note: The Board may not discuss or take action on any matter raised during this public comment section except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]*

No public comment for items not on the agenda were brought forth.

### Agenda Item 3 Discussion and Possible Adoption of the Osteopathic Medical Board of California Administrative Manual – Mark Ito

Mr. Ito informed Board Members of the minor non-substantive changes that were made to the OMBC's Administrative Manual, which has not been updated since its adoption in 2016. The document will be included as one of the attachments in the OMBC's 2020 Oversight Report (Also referred to as the Sunset Review Report), which has been compiled and will soon be disseminated to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development. However, Mr. Ito noted that he will be presenting a fully updated Administrative Manual at the January 14, 2021 Board Meeting for adoption by the full board.

Mr. Moreno inquired whether the Administrative Manual with the non-substantive changes would be included in the 2020 Oversight Report. Mr. Ito confirmed that the Administrative Manual with the non-substantive changes would be utilized for the report.

Ms. Mercado and Dr. Patel expressed that it would be a good idea to indicate in the manual the term lengths of the appointed positions, as well as how long the Board has had vacancies for all appointed members.

**Motion to delegate to the Executive Director the ability to make non-substantive changes to the OMBC's Administrative Manual and approve all minor changes to the document for inclusion in the OMBC's 2020 Oversight Report.**

**Motion** – Dr. Jensen, **Second** – Dr. Patel

- Roll Call Vote was taken
  - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Dr. Patel, Ms. Williams
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – None
- Motion carried to delegate to the Executive Director the ability to make non-substantive changes to the OMBC's Administrative Manual and approve all minor changes to the document for inclusion in the OMBC's 2020 Oversight Report.

## Board Meeting Minutes – December 4, 2020 (DRAFT)

### **Agenda Item 4 Presentation by Osteopathic Physicians and Surgeons of California (OPSC) – Nick Birtcil, Executive Director, OPSC and Joseph Zammuto, D.O.**

Mr. Birtcil began by thanking board staff for its responsiveness and assistance throughout the year in ensuring that all waiver requests that were made; and partnering with OPSC to ensure that physicians were able to continue working through the pandemic.

Mr. Birtcil and Dr. Zammuto, provided background information on the *white paper* that had been included in the board packet regarding Continuing Medical Education (CME) requirements for osteopathic physicians at time of licensure renewal. He noted that the CME task force for the OPSC reviewed requirements for alternate states as well as allopathic physicians at time of renewal and found that there were many disparities regarding the CME requirements that needed to be satisfied. OPSC and its task force are proposing that the Board adjust the CME requirement to reflect 50 hours of CME every 2 years, with 20 of those hours being American Osteopathic Association (AOA) Category 1 credit.

Dr. Patel applauded OPSC's Task Force for the *white paper* that was compiled and noted that a decrease in the required hours needed to satisfy the osteopathic component would be a benefit to osteopathic physicians in the profession in terms of time and cost. He explained that from his perspective he is typically allotted 5 days a year to satisfy CME requirements and on average it takes the full 5 days plus an added expense of somewhere between \$600-\$900 to attend conferences that will cover the AOA criteria. However, physicians would generally need to attend at least two (2) conferences every few years to meet the AOA requirement.

Ms. Knight noted that the *white paper* was only included as a presentation within the packet, however if the Board would like to include any recommendations made by the OPSC in the 2020 Oversight Report, action may be taken on the next agenda item.

### **Agenda Item 5 Discussion and Possible Approval of 2020/2021 Oversight Report – Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee – Mark Ito**

Mr. Ito provided a brief overview of the 2020/2021 Oversight Report and discussed some highlights of the report. He noted that board members at this time would have a chance to revise the "New Issues" on page 70 of the report considering the presentation by Mr. Birtcil and Dr. Zammuto regarding the revisions to the CME requirements.

Dr. Patel noted that changes needed to be made to page number 20 of the document reflecting that he was appointed as a FSMB representative for the American Council for Continuing Medical Education's Accreditation Review Committee.

Mr. Moreno inquired if we could get a little more information on who the "consumers" were that were completing the satisfaction surveys for the Board's enforcement cases.



## Board Meeting Minutes – December 4, 2020 (DRAFT)

Additionally, he noted that editorial corrections needed to be made to page 27 which listed that Mr. Ito was appointed in 2020, and page 1 which listed Mrs. Williams as a D.O.

**Motion to approve the 2020/2021 Oversight Report as written and delegate to the Executive Director the authority to make any technical and non-substantive changes to the Oversight report. Make changes to *page 1* removing D.O. from Cheryl Williams’ title, *page 20* revising Dr. Patel’s appointment to reflect “FSMB representative for the American Council...,” *page 27* revising Mr. Ito’s appointment year to 2019, and *page 1* of Attachment A amending the Governor’s name to reflect Gavin Newsom. Additionally, remove the CME Flexibility verbiage and include the proposed recommendation included in the *white paper* presented by OPSC.**

**Motion** – Dr. Patel, **Second** – Mr. Moreno

- Roll Call Vote was taken
  - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Dr. Patel, Ms. Williams
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – None
  
- Motion carried to approve the 2020/2021 Oversight Report as written and delegate to the Executive Director the authority to make any technical and non-substantive changes to the Oversight report. Make changes to *page 1* removing D.O. from Ms. Williams’ title, *page 20* revising Dr. Patel’s appointment to reflect “FSMB representative for the American Council...,” *page 27* revising Mr. Ito’s appointment year to 2019, and *page 1* of Attachment A amending the Governor’s name to reflect Gavin Newsom. Additionally, remove the CME Flexibility verbiage and include the proposed recommendation included in the *white paper* presented by OPSC.

### **Agenda Item 6      Agenda Items for Next Meeting**

- Review of Guidelines for the Recommendation of Cannabis for Medical Purposes (*Proposed Language*)

### **Agenda Item 7      Future Meeting Dates**

- Thursday, January 14, 2021 @ 10:00 am – *Teleconference*
- Thursday, May 13, 2021 @ 10:00 am – *TBD*

### **Agenda Item 8      Adjournment**

There being no further business or public comment, Mrs. Williams adjourned the meeting at 12:32 p.m.

# Tab 3

**This page has  
intentionally  
been left blank**

# Tab 4

Department of Consumer Affairs

Expenditure Projection Report

Osteopathic Medical Board

Reporting Structure(s): 11112600 Support

Fiscal Month: 4

Fiscal Year: 2020 - 2021

Run Date: 12/15/2020

PERSONAL SERVICES

Fiscal Code	PY FM13	Budget	Current Month	YTD	Encumbrance	YTD + Encumbrance	Projections to Year End	Balance
5100 PERMANENT POSITIONS	\$811,356	\$866,000	\$65,520	\$272,390	\$0	\$272,390	\$714,285	\$151,715
5100 TEMPORARY POSITIONS	\$500	\$0	\$0	\$500	\$0	\$500	\$500	-\$500
5105-5108 PER DIEM, OVERTIME, & LUMP	\$2,100	\$3,000	\$600	\$600	\$0	\$600	\$2,100	\$900
5150 STAFF BENEFITS	\$471,611	\$532,000	\$36,597	\$163,905	\$0	\$163,905	\$429,806	\$102,194
<b>PERSONAL SERVICES</b>	<b>\$1,285,567</b>	<b>\$1,401,000</b>	<b>\$102,716</b>	<b>\$437,395</b>	<b>\$0</b>	<b>\$437,395</b>	<b>\$1,146,690</b>	<b>\$254,310</b>

OPERATING EXPENSES & EQUIPMENT

Fiscal Code	PY FM13	Budget	Current Month	YTD	Encumbrance	YTD + Encumbrance	Projections to Year End	Balance
5301 GENERAL EXPENSE	\$67,445	\$140,000	\$3,283	\$13,386	\$1,191	\$14,577	\$43,731	\$96,269
5302 PRINTING	\$17,350	\$8,000	\$1,088	\$2,707	\$16,115	\$18,822	\$56,467	-\$48,467
5304 COMMUNICATIONS	\$4,328	\$19,000	\$309	\$1,455	\$0	\$1,455	\$4,366	\$14,634
5306 POSTAGE	\$0	\$7,000	\$0	\$0	\$0	\$0	\$5,000	\$2,000
5308 INSURANCE	\$29	\$0	\$0	\$0	\$0	\$0	\$29	-\$29
53202-204 IN STATE TRAVEL	\$25,835	\$14,000	\$0	\$0	\$0	\$0	\$25,835	-\$11,835
5322 TRAINING	\$385	\$6,000	\$0	\$0	\$0	\$0	\$1,000	\$5,000
5324 FACILITIES	\$60,746	\$110,000	\$4,911	\$19,646	\$0	\$19,646	\$60,746	\$49,254
53402-53403 C/P SERVICES (INTERNAL)	\$296,000	\$696,000	\$34,318	\$141,841	\$0	\$141,841	\$520,032	\$175,968
53404-53405 C/P SERVICES (EXTERNAL)	\$156,846	\$195,000	\$8,747	\$19,783	\$97,750	\$117,533	\$117,533	\$77,467
5342 DEPARTMENT PRORATA	\$489,711	\$423,000	\$0	\$217,000	\$0	\$217,000	\$423,000	\$0
5342 DEPARTMENTAL SERVICES	\$1,173	\$0	\$0	\$0	\$0	\$0	\$1,173	-\$1,173
5344 CONSOLIDATED DATA CENTERS	\$2,325	\$2,000	\$0	\$0	\$0	\$0	\$2,325	-\$325
5346 INFORMATION TECHNOLOGY	\$8,294	\$4,000	\$501	\$762	\$607	\$1,369	\$8,294	-\$4,294
5362-5368 EQUIPMENT	\$17,970	\$0	\$718	\$785	\$1,571	\$2,356	\$7,069	-\$7,069
54 SPECIAL ITEMS OF EXPENSE	\$1,059	\$0	\$0	\$0	\$0	\$0	\$1,059	-\$1,059
<b>OPERATING EXPENSES &amp; EQUIPMENT</b>	<b>\$1,149,495</b>	<b>\$1,624,000</b>	<b>\$53,875</b>	<b>\$417,365</b>	<b>\$117,234</b>	<b>\$534,599</b>	<b>\$1,277,657</b>	<b>\$346,343</b>

<b>OVERALL TOTALS</b>	<b>\$2,435,062</b>	<b>\$3,025,000</b>	<b>\$156,592</b>	<b>\$854,760</b>	<b>\$117,234</b>	<b>\$971,994</b>	<b>\$2,424,348</b>	<b>\$600,652</b>
-----------------------	--------------------	--------------------	------------------	------------------	------------------	------------------	--------------------	------------------

19.86%

**Osteopathic Medical Board of California**  
**(Dollars in Thousands) 2021-22 Governor's Budget**

	<b>Actual 2018-19</b>	<b>Actual 2019-20</b>	<b>CY 2020-21</b>	<b>BY 2021-22</b>	<b>BY+1 2022-23</b>
<b>BEGINNING BALANCE</b>	\$2,837	\$3,344	\$5,025	\$4,719	\$4,038
Prior Year Adjustment	\$178	-\$37	\$0	\$0	\$0
Adjusted Beginning Balance	\$3,015	\$3,307	\$5,025	\$4,719	\$4,038
<b>REVENUES, TRANSFERS AND OTHER ADJUSTMENTS</b>					
Revenues					
4121200 - Delinquent fees	\$14	\$14	\$12	\$15	\$15
4127400 - Renewal fees	\$2,044	\$1,770	\$1,939	\$1,755	\$1,755
4129200 - Other regulatory fees	\$40	\$29	\$31	\$31	\$31
4129400 - Other regulatory licenses and permits	\$406	\$488	\$985	\$985	\$985
4150500 - Interest from interfund loans	\$0	\$45	\$0	\$0	\$0
4163000 - Income from surplus money investments	\$71	\$95	\$49	\$52	\$52
4171400 - Escheat of unclaimed checks and warrants	\$0	\$3	\$0	\$0	\$0
4172500 - Miscellaneous revenues	\$0	\$268	\$0	\$0	\$0
4173500 - Settlements and Judgments - Other	\$0	\$0	\$3	\$0	\$0
Totals, Revenues	\$2,575	\$2,712	\$3,019	\$2,838	\$2,838
General Fund Transfers and Other Adjustments	\$0	\$1,500	-\$166	\$0	\$0
<b>TOTALS, REVENUES, TRANSFERS AND OTHER ADJUSTMENTS</b>	\$2,575	\$4,212	\$2,853	\$2,838	\$2,838
<b>TOTAL RESOURCES</b>	\$5,590	\$7,519	\$7,878	\$7,557	\$6,876

	<b>Actual 2018-19</b>	<b>Actual 2019-20</b>	<b>CY 2020-21</b>	<b>BY 2021-22</b>	<b>BY+1 2022-23</b>
<b>EXPENDITURES AND EXPENDITURE ADJUSTMENTS</b>					
Expenditures:					
1111 Program Expenditures (State Operations)	\$2,060	\$2,281	\$2,958	\$3,239	\$3,336
9892 Supplemental Pension Payments (State Operations)	\$25	\$53	\$53	\$53	\$53
9900 Statewide Pro Rata	\$161	\$160	\$148	\$227	\$227
<b>TOTALS, EXPENDITURES AND EXPENDITURE ADJUSTMENTS</b>	<b>\$2,246</b>	<b>\$2,494</b>	<b>\$3,159</b>	<b>\$3,519</b>	<b>\$3,616</b>
<b>FUND BALANCE</b>					
Reserve for economic uncertainties	\$3,344	\$5,025	\$4,719	\$4,038	\$3,260
Months in Reserve	16.1	19.1	16.1	13.4	10.8

**NOTES:**

Assumes workload and revenue projections are realized in BY +1 and ongoing.  
Expenditure growth projected at 3% beginning BY +1.  
CY revenue and expenditures are projections.

# Tab 5





## MEMORANDUM

<b>DATE</b>	January 14, 2021
<b>TO</b>	Board Members
<b>FROM</b>	Mark Ito Executive Director
<b>SUBJECT</b>	<b>Continuing Medical Education (CME) Rulemaking Package – Agenda Item 8</b>

### **BACKGROUND:**

Since 1995 the Osteopathic Medical Board of California (Board) has required all California licensed Doctors of Osteopathic Medicine (D.O.s) to demonstrate compliance with the Board's continuing medical education (CME) requirements by submitting documentation of completion. Completion of CME is a condition of renewal and until the Board can verify completion, the D.O.'s license cannot be renewed. Over the past several years, the Board has experienced a significant increase in the number of newly licensed D.O.s, which in turn has caused a significant increase in the Board's workload of CME review and renewals.

During the December 13, 2018 and June 17, 2019 Board Meetings, the Board approved the Executive Director to complete a rulemaking file to implement a process for licensees to self-certify completion of the required CME and a post-renewal audit process.

During the May 7, 2020 Board Meeting, the Board approved the Executive Director to complete a rulemaking file that included the language approved during the two previous meetings plus additional language authorizing the Board to make exemptions for the pain management and the treatment of terminally ill and dying patients CME requirement.

### **DISCUSSION:**

Business and Professions Code Section 2454.5 states that licensed osteopathic physicians and surgeons must complete 100 hours of CME with 40 of those hours completed in AOA Category 1. The proposed language approved at the aforementioned meetings included the required number of hours identified in BPC Section 2454.5. The intent of regulations is to make specific the law; and including the required number of CME hours in regulations is duplicative to the law. Additionally, if the regulations include specific requirements already identified in law, the Board will be required to amend regulations if the law changes.

A recent example would be the CME reduction issue that was presented at the December 4, 2020 Board Meeting. If BPC Section 2454.5 is changed to include the CME reduction, under the Board's current language, the Board would be required to amend regulations.

The Board is proposing to amend the proposed language to remove the specific CME hour requirements and instead reference BPC Section 2454.5. This change would remove the requirement to amend regulations if the CME requirements are changed in BPC Section 2454.5.

**ACTION REQUESTED:**

Staff recommends the Board move to approve the proposed text for a 45 day public comment period and delegate to the Executive Director the authority to adopt the proposed regulatory changes if there are no adverse comments received during the public comment period, to follow established procedures and processes in doing so, and also delegate to the Executive Director the authority to make any technical and non-substantive changes that may be required in completing the rulemaking file.

## **Proposed Regulatory Language**

# OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

## PROPOSED REGULATORY LANGUAGE

The amendment format is as follows: Existing language remains unchanged; new wording is underlined; wording proposed for deletion is identified with strikeout lines.

The Osteopathic Medical Board of California hereby amends its regulations in Division 16 of Title 16 of the California Code of Regulations to read as follows:

1) Amend CCR Section 1635 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

### **§1635. Required Continuing Medical Education (~~CME~~).**

(a) Each physician and surgeon submitting the tax and registration fee shall submit satisfactory proof to the Board of ongoing compliance with the provisions of this article at the times specified herein.

(b) ~~Commencing January 1, 1989, a~~ Each physician and surgeon shall complete 150 hours within a three-year period shall demonstrate satisfaction of the continuing medical education (CME) requirements set forth in Business and Professions Code Section 2454.5 during the two years immediately preceding their license expiration date. ~~of his or her license in order to satisfy the CME requirement; †This three~~ two-year cycle is defined as the “CME requirement period.”

(c) ~~The requirement of 150 hours during the three-year CME requirement period shall include a minimum of 60 hours of CME in Category 1-A or 1-B defined by the American Osteopathic Association (AOA). The balance of the CME requirement of 90 hours may consist of CME as defined by either the American Osteopathic Association (AOA) or the American Medical Association (AMA) and may be completed within the entire three-year CME requirement period.~~

(cd) ~~Effective January 1, 1989, the three-year CME period shall commence for those licensed on or before January 1, 1989. For †those~~ physicians and surgeons licensed after January 1, 1989 ~~2022, the initial~~ CME requirement period on a prorata basis commencing the first full calendar year subsequent to initial licensure shall be from the date of initial licensure to the first license expiration date. Subsequent ~~three~~ two-year CME requirement periods shall not include CME earned during a preceding ~~three~~ two-year CME requirement period.

(de) All physicians and surgeons shall complete a continuing education course in the subjects of pain management and the treatment of terminally ill and dying patients within four-years of their initial licensure or by their second license renewal date, whichever comes first. The Board

may exempt physicians and surgeons from this requirement if the physician and surgeon does not engage in direct patient care, does not provide patient consultations, or does not reside in the State of California, per Business and Professions Code Section 2190.5(b).

~~(e) Category 1 A, or other CME is defined by the American Osteopathic Association (AOA), set forth in the American Osteopathic Association's "Continuing Medical Education Guide," and is hereby incorporated by reference and can be obtained from the AOA at 142 E. Ontario Street, Chicago, IL 60611; it is published once every three years by the AOA most recently in 1992. Category 1 defined by the American Medical Association is set forth in "Physicians Recognition Award Information Booklet," and is hereby incorporated by reference and can be obtained from the American Medical Association, 515 North State Street, Chicago, IL 60610; it is published on an occasional basis by the AMA, most recently in January, 1986.~~

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 1; and Sections 2018, 2190.5, 2454.5 and 3600-1, Business and Professions Code. Reference: Section 2454.5, Business and Professions Code.

2) Amend CCR Section 1636 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

**§1636. Continuing Medical Education Progress Report Documentation.**

~~Physicians shall report the total number of continuing medical education (CME) hours to the Board with the renewal application. This may be accomplished by:~~

~~(a) The physician sending the Board a copy of their computer printout of CME activity as compiled from documents submitted to the AOA Division of Continuing Medical Education by both sponsors and the physician (Individual Activity Report) which will list the amount of CME credit hours, or~~

~~(b) Sending the Board copies of any certificates given for the CME credit hours of attendance at any program approved by the Board, or~~

~~(c) Reports from any program approved by the Board, to be furnished by the physician, showing his CME credit hours of attendance hours as verified by the program organizer.~~

~~(d) CME categories are defined by Section 1635(e).~~

(a) Each physician and surgeon shall self-certify completion of the required CME hours by submitting to the Board a completed *Osteopathic Medical Board of California Continuing Medical Education (CME) Self-Certification Form for Renewal (OMB-21, Rev. 1/2022)*, which is

hereby incorporated by reference. Physicians and surgeons submitting incomplete forms shall be deemed ineligible for renewal.

(b) Physicians and surgeons shall be subject to audit of their CME hours. Each physician and surgeon shall retain all documents that demonstrate compliance with CME requirements for a period of six years from the completion date. Those physicians and surgeons selected for audit shall be required to submit documentation of their compliance with the CME requirements as specified by this article. Documents demonstrating compliance include:

(1) A copy of their computer printout of CME activity as compiled from documents submitted to the AOA Division of Continuing Medical Education by both sponsors and the physician and surgeon (Individual Activity Report) which will list the amount of CME credit hours, or

(2) Copies of any certificates indicating the title of the course/program attended and CME credit hours and dates of attendance at any program approved by the Board, or

(3) Reports from any program approved by the Board, to be furnished by the physician and surgeon, showing his or her CME credit hours and dates of attendance as verified by the program organizer or sponsoring organization.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 1; and Sections 2018 and 3600-1, Business and Professions Code. Reference: Sections 2190.5, and 2452 and 2454.5, Business and Professions Code.

3) Amend CCR Section 1641 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

**§1641. Sanctions for Noncompliance.**

(a) Any physician and surgeon who has not satisfied the CME requirement per Business and Professions Code Section 2454.5 ~~completed 150 hours of approved CME or the prorated share pursuant to Section 1635(d)~~ during the ~~three~~ two-year CME requirement period will be required to make up any deficiency unless a waiver is obtained pursuant to Section 1637. Any physician and surgeon who fails to complete the deficient hours shall be ineligible for renewal of his or her license to practice medicine until such time as the deficient hours of CME are documented to the Board.

(b) It shall constitute unprofessional conduct and grounds for a citation and fine or disciplinary action including the filing of an accusation, for any physician and surgeon to misrepresent his or her compliance with the provisions of this article or who fails to comply with the provisions of this article.

~~(c) Each physician shall retain records for a minimum of four years of all CME programs attended which indicate the title of the course or program attended, dates of attendance, the length of the course or program, the sponsoring organization and the accrediting organization, if any.~~

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 1; and Sections 2018, 2454.5 and 3600-1, Business and Professions Code. Reference: Section 2454.5, Business and Professions Code.

# Tab 6



DCA

# Osteopathic Medical Board of California

---

Administrative Manual



# Osteopathic Medical Board of California

## Board Administrative Manual

Proposed January 14, 2021  
Gavin Newsom, Governor  
*State of California*

### **Members of the Board**

Cheryl Williams, President  
Cyrus Buhari, D.O., Secretary-Treasurer  
Gor Adamyan, Public Member  
Elizabeth Jensen-Blumberg, D.O.  
Claudia Mercado, Public Member  
Andrew Moreno, Public Member  
Hemesh Patel, D.O.

### **Executive Director**

Mark Ito

This procedure manual is a general reference including a review of some important laws, regulations, and basic board policies in order to guide the actions of the board members and ensure Board effectiveness and efficiency.

This Administrative Procedure Manual, regarding board policy, can be amended by a majority of affirmative votes of any current or future Board.

# TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>5</b>
<b>BOARD HISTORY .....</b>	<b>7</b>
<b>GENERAL RULES OF CONDUCT .....</b>	<b>8</b>
<b>DEFINITIONS .....</b>	<b>9</b>
<b>BOARD AND COMMITTEE MEETINGS .....</b>	<b>11</b>
<i>Board Meeting Frequency.....</i>	11
<i>Committee Meeting Frequency.....</i>	11
<i>Board Meeting Attendance .....</i>	11
<i>Meeting Quorum.....</i>	11
<i>Board Meeting Format .....</i>	11
<i>Committee Meeting Format .....</i>	12
<i>Agenda Topics.....</i>	12
<i>Meeting Materials .....</i>	12
<i>Record of Meeting .....</i>	12
<i>Digital Recording.....</i>	12
<b>MEETING REQUIREMENTS .....</b>	<b>13</b>
<i>Bagley-Keene Open Meeting Act.....</i>	13
<i>Definition of a Meeting (government Code section 11122.5).....</i>	13
<i>Teleconference Meetings (Government Code Section 11123) .....</i>	13
<b>BAGLEY-KEENE / OPENING MEETING ACT.....</b>	<b>15</b>
<i>Board Duties Under The Open Meeting Act.....</i>	15
<i>Meeting Notice Requirements (Government Code Section 11125).....</i>	15
<i>Opportunity for Public Comment (Government Code Section 11125.7).....</i>	15
<i>Public Meetings.....</i>	16
<b>TRAVEL AND SALARY/PER DIEM .....</b>	<b>17</b>
<i>Travel Policies .....</i>	17
<i>Travel Approval (State Administrative Manual Section 700 et seq.).....</i>	17
<i>Travel Arrangements (Department Procedure / Board Procedure).....</i>	17
<i>Exceptions to Travel Reimbursement Policies .....</i>	18
<i>Lodging .....</i>	18
<i>Airport Parking Reimbursement.....</i>	18
<i>Travel Claims (Department Policy).....</i>	18

<i>Salary Per Diem (BPC Section 103)</i> .....	18
<b>SELECTION OF OFFICERS AND COMMITTEES .....</b>	<b>19</b>
<i>Board Officers (BPC 2012)</i> .....	19
<i>Committee Appointments (Board Procedure)</i> .....	19
<i>Duties of the Board President</i> .....	19
<b>BOARD ADMINISTRATION AND BOARD STAFF .....</b>	<b>21</b>
<i>Board Administration</i> .....	21
<i>Executive Director (BPC Section 2020)</i> .....	21
<i>Board Staff</i> .....	21
<i>Rules for Contacting Staff (Board Procedure)</i> .....	21
<i>Strategic Planning</i> .....	22
<i>Board Member Addresses (DCA Policy)</i> .....	22
<i>Business Cards</i> .....	22
<b>OTHER POLICIES AND PROCEDURES .....</b>	<b>23</b>
<i>Public Records Act and Complaint Disclosure</i> .....	23
<i>Immunity from Liability</i> .....	23
<i>Resignation of Board Members (Government Code Section 1750)</i> .....	24
<i>Removal of Board Members (BPC 106)</i> .....	24
<i>Rules for Contact with the Public, a Licensee, an Applicant, or the Media</i> .....	24
<i>Conflict of Interest (Government Code Section 87100)</i> .....	24
<i>Service of Lawsuits</i> .....	25
<i>Ex Parte Communications (Government Code Section 11430.10 et seq.)</i> .....	25
<b>BOARD MEMBER REQUIRED TRAINING .....</b>	<b>27</b>
<i>Statement of Economic Interest</i> .....	27
<i>Ethics Orientation For State Officials (Government Code Sections 11146-11146.4)</i> .....	27
<i>DCA Board Member Orientation Training (BPC Section 453)</i> .....	28
<i>Sexual Harassment Prevention Training (Government Code Section 12950.1; California Code of Regulations, Title 2, Section 11024)</i> .....	28
<b>BOARD MEMBER ROLE – POLICY DECISIONS.....</b>	<b>29</b>
<i>Setting Board Policy</i> .....	29
<b>BOARD MEMBER ROLE – DISCIPLINARY PROCESS .....</b>	<b>33</b>
<i>Disciplinary Process Overview</i> .....	33
<i>Disciplinary Options</i> .....	33
<i>Citation and Fine</i> .....	33
<i>Formal Disciplinary Action</i> .....	34

<i>Filing Formal Charges</i> .....	34
<i>Pleadings</i> .....	34
<b><i>Actions Preceding an Administrative Hearing</i></b> .....	<b>35</b>
<i>Stipulations (Settlements) – Requires Board Member Vote</i> .....	35
<i>Determining Settlement Terms</i> .....	35
<i>Office of Administrative Hearings</i> .....	36
<b><i>Formal Disciplinary Case Outcomes</i></b> .....	<b>37</b>
<i>Default Decisions</i> .....	37
<i>Probation</i> .....	37
<i>Criminal Prosecution</i> .....	37
<b><i>Board Member Role - Disciplinary Case Review</i></b> .....	<b>39</b>
<i>Board Review of Stipulations and Proposed Decisions</i> .....	39
<i>Mail Vote Process</i> .....	39
<i>Mail Ballot Definitions</i> .....	40
<i>Mail Vote Outcomes</i> .....	40
<i>Stipulations – Proposed Settlement</i> .....	40
<i>Proposed Decisions – Decision from the ALJ Following a Formal Hearing</i> .....	41
<i>Disqualification – May Not Participate in Case Decision</i> .....	41
<i>Recusal from Case Decision</i> .....	42
<i>Ex Parte Communications Definition and Limitations</i> .....	42
<b><i>GUIDELINES FOR PETITIONER HEARINGS</i></b> .....	<b>43</b>
<i>Petition Hearing Overview</i> .....	43
<i>Questions For Petitioners</i> .....	44
<i>Deliberations</i> .....	45
<b><i>RESOURCES</i></b> .....	<b>47</b>
<i>Professional Associations</i> .....	48
<b><i>ATTACHMENTS</i></b> .....	<b>49</b>
A.    Guide to The Bagley-Keene Open Meeting Act .....	49
B.    DCA Travel Guide .....	49
C.    Board Organizational Chart .....	49
D.    Uniform Standards Related to Substance Abuse and Disciplinary Guidelines .....	49



---

## ***INTRODUCTION***

This procedure manual is provided to Board Members as a ready reference of important laws, regulations, DCA policies, and Board policies to guide the actions of the Board Members and ensure Board effectiveness and efficiency. The Executive Director will coordinate an orientation session with each new Board Member upon his or her appointment, to assist the new member in learning processes and procedures.

The Board's mission is to protect the public by requiring competency, accountability, and integrity in the safe practice of medicine by osteopathic physicians and surgeons.

The vision of the Board is to uphold the highest standards of quality and care by our physicians; continuing to utilize technology and innovation to enhance and deliver an outstanding level of public protection.

To accomplish its mission, the Board investigates consumer complaints and criminal convictions; responds to emerging changes and trends in the osteopathic healthcare profession legislatively or through regulations; and creates publications for consumers, applicants, registrants, and licensees.

The Board's statutes and regulations require an individual to be licensed before they may engage in the practice of osteopathic medicine. These statutes and regulations set forth the requirements for licensure and provide the Board the authority to discipline licensees.

The highest priority for the Board is protection of the public in exercising its licensing, regulatory, and disciplinary functions. Board members fulfill this mandate through policy decisions and voting on proposed disciplinary actions in which a licensee or registrant has violated the Board's laws.





---

# CHAPTER 1

## ***BOARD HISTORY***

The Osteopathic Medical Board of California (Board) is one of the forty regulatory entities within the Department of Consumer Affairs (DCA). DCA is one of eight entities under the Business, Consumer Services and Housing Agency (BCSH), an agency within the California State Government Executive Branch.

DCA educates consumers by giving them the information they need to avoid unscrupulous or unqualified people who promote deceptive or unsafe practices. Although DCA provides administrative oversight and support services to the Board, the Board has policy autonomy and sets its own policies, procedures, and regulations

The OMBC was established in 1922 when the Osteopathic Initiative Act was passed by electorate. The OMBC is a fully functioning regulatory board within the Department of Consumer Affairs with the responsibility and sole authority to issue licenses to D.O.s in California. The Board licenses and regulates D.O.s and Postgraduate Training licensees; and issues Fictitious Name Permits.

To meet its responsibilities for regulation of the D.O. profession, the OMBC is authorized by law to:

1. Monitor licensees for continued competency by requiring approved continuing education.
2. Take appropriate disciplinary action whenever licensees fail to meet the standard of practice.
3. Determine that osteopathic medical schools and hospitals are in compliance with medical education curriculum and post-graduate training requirements.
4. Provide rehabilitation opportunities for licensees whose competency may be impaired due to abuse of alcohol or other drugs.

The Board consists of nine members (five professional and four public members) who are appointed to the Board for four-year terms. Seven members (five professional and two public members) are appointed by the Governor and are subject to Senate confirmation. The Senate Rules Committee and the Speaker of the Assembly each appoint a public member.

---

## ***GENERAL RULES OF CONDUCT***

Whether you are attending a public board meeting or an event/activity unrelated to the Board, your role as a Board Member is continuous. The public perceives you as the “Board” and this perception will not end until your service on the Board is concluded. Therefore, it is important that your actions and conduct are a positive reflection upon the Board, and ultimately the Governor of California.

The following list is intended to assist Board Members in avoiding any situation that has the potential to reflect poorly on the Board.

- Board Members’ actions shall uphold the Board’s primary mission to protect the public.
- Board Members shall maintain the confidentiality of confidential documents and information.
- Board Members shall commit time, actively participate in Board activities, and prepare for Board meetings, which includes reading Board packets and all required legal documentation.
- Board Members shall respect and recognize the equal role and responsibilities of all Board Members, whether public or licensee.
- Board Members shall act fairly and, in a nonpartisan, impartial, and unbiased manner.
- Board Members shall treat all applicants and licensees in a fair and impartial manner.
- Board Members shall not use their positions on the Board for political, personal, familial, or financial gain.

**DEFINITIONS**

AG	Office of the Attorney General
Agency (BCSH)	Business, Consumer Services, and Housing Agency
ALJ	Administrative Law Judge
B&P, BP, BPC	Business and Professions Code
BCP	Budget Change Proposal (request for additional staff/funds to Board budget)
BreEZe	Board Database System
CCR	California Code of Regulations
DAG	Deputy Attorney General
DCA	Department of Consumer Affairs
Department	Department of Consumer Affairs
DOF	Department of Finance
DOI	Division of Investigations
OAH	Office of Administrative Hearings
PD	Proposed Decision issued from ALJ
SAM	State Administrative Manual
STIP	Stipulation – settlement agreement
Uniform Standards	Disciplinary Guidelines for Substance Abusing Licensees



---

# CHAPTER 2

## **BOARD AND COMMITTEE MEETINGS**

### ***BOARD MEETING FREQUENCY***

Business and Professions Code section 101.7 requires the Board to meet at least two times per calendar year; holding at least one meeting in Northern California and one meeting in Southern California. The Board usually schedules three (3) one day meetings.

The meeting dates are coordinated with the Board President and the upcoming legislative calendar. The meeting dates are announced prior to the September Board meeting.

### ***COMMITTEE MEETING FREQUENCY***

As needed, ad-hoc committees are established to address specific topic areas. The number of members on an ad-hoc committee ranges from two to three Board Members.

All committee members are appointed by the Board President.

### ***BOARD MEETING ATTENDANCE***

Board Members shall attend each meeting of the Board and their assigned committee. If a member is unable to attend, they must contact the Board President or the Executive Director and ask to be excused from the meeting for a specific reason.

All meeting minutes will reflect Board Member attendance including when a member is excused or absent from the meeting.

### ***MEETING QUORUM***

A quorum of the Board or committee must be present to constitute an act and/or decision on behalf of the Board. If a quorum of the Board is not present, the meeting is canceled.

Quorum for a Board meeting is five (5) members. Committee meetings require a majority of the Committee membership. For example, in committees comprised of three members, two members must be present.

### ***BOARD MEETING FORMAT***

Board meetings typically include an open and closed session. The closed session permits the Board to deliberate and render a decision on all disciplinary matters. The last day of the meeting is reserved for all Board business. At all Board meetings, Board Members are provided with a quarterly report regarding the Board's operations, statistics, and budget. All open sessions of the Board meetings are webcast when possible.

***COMMITTEE MEETING FORMAT***

At all committee meetings, the members and the public discuss items on the meeting notice. The committee members will vote to recommend a position or language to the Board. The recommendation is presented at the next Board Meeting. Alternatively, the committee members may direct Board staff to complete specified tasks and present the findings at a following committee meeting.

***AGENDA TOPICS***

Any Board Member may suggest items for a Board meeting agenda to the Executive Director or during the “Executive Director’s Report” at every Board meeting. The Executive Director sets the agenda at the direction and approval of the Board President.

***MEETING MATERIALS***

The Board staff prepares all materials for Board and Committee meetings. Board Members may opt to receive meeting materials via electronically; otherwise a hard copy will be mailed.

Board and Committee Members will receive all related material in advance of each meeting. To engage in a meaningful discussion to determine a recommendation or position, Board and Committee Members should thoroughly review all meeting materials prior to each meeting.

***RECORD OF MEETING***

Board minutes are a summary, not a transcript, of each Board Meeting. The minutes are prepared and submitted for review by Board Members before the next Board Meeting. Board Meeting minutes are approved at the next scheduled meeting of the Board. The purpose of reviewing and approving the minutes at a Board meeting is not to approve of actions taken by the Board at the previous meeting, but rather to determine whether the minutes as drafted accurately reflect the Board’s discussion at the previous meeting. When approved, the minutes shall serve as the official record of the meeting.

***DIGITAL RECORDING***

The public-session portions of a meeting may be digitally recorded if determined necessary for staff purposes. Digital recordings shall be deleted following Board approval of the minutes.

---

# CHAPTER 3

## **MEETING REQUIREMENTS**

All Board and Committee meetings are open to the public unless a closed session is specifically authorized. All Board and Committee meetings are subject to the provisions of the Bagley-Keene Open Meeting Act.

### ***BAGLEY-KEENE OPEN MEETING ACT***

The Bagley-Keene Open Meeting Act (*Government Code Section 11120 et seq.*) directs that the people's business must be conducted openly. Therefore, decisions and actions by a public agency must be conducted openly so that the public may be informed. The Board achieves this legislative mandate by complying with all the requirements specified in the Bagley-Keene Open Meeting Act.

### ***DEFINITION OF A MEETING (GOVERNMENT CODE SECTION 11122.5)***

A meeting is defined in the Bagley-Keene Open Meeting Act (Open Meeting Act) as including "any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains." In this definition, the term "state body" refers to the Board.

The meeting definition also applies to all communication between Board Members (e.g., emails, telephone calls, texts, dining conversations) if the total number of Board Members involved in the communication is a majority of the Board or a Committee.

If Board Members engage in any communication regarding Board business with more than one member, this communication is a violation of the Open Meeting Act. The violating members may be guilty of a misdemeanor (*Government Code Section 11130.7*).

There are some exemptions to the meeting definition. Please refer to the Bagley-Keene Open Meeting Act for clarification. When in doubt, contact the Executive Director or the Board's legal counsel.

*Please refer to Attachment A: Guide to the Bagley-Keene Open Meeting Act.*

### ***TELECONFERENCE MEETINGS (GOVERNMENT CODE SECTION 11123)***

The Board may opt to hold a meeting via teleconference. Meetings held via teleconference are also subject to the same notice requirements under the Open Meeting Act. The meeting notice must be published at least ten days in advance and must include

the physical location of each Board Member attending the meeting remotely (unless this legal requirement is waived due to an Executive Order by the Governor).

The Board Member must be present at the physical location he or she provided for the meeting notice. The public is permitted to attend the meeting at any of the locations listed on the meeting notice during an open session of the meeting. Therefore, each Board Member must confirm that the physical location used for the teleconference meeting is ADA accessible. The public is not permitted to attend any part of the meeting that is designated as “closed session.”



---

# CHAPTER 4

## ***BAGLEY-KEENE / OPENING MEETING ACT***

### ***BOARD DUTIES UNDER THE OPEN MEETING ACT***

The Board has three duties under the Open Meeting Act: provide notice of meetings, provide opportunity for public comment, and conduct public meetings.

### ***MEETING NOTICE REQUIREMENTS (GOVERNMENT CODE SECTION 11125)***

The Board must give adequate notice of meetings to be held. The Board meets this duty at the time the meeting notice is published. The Board must give at least ten calendar day's written notice of each Board and Committee meeting. This notice is posted on the Board's website. The meeting notice includes the location(s) where the meeting will be held and the meeting agenda.

The agenda must include all items of business to be transacted or discussed at the meeting. A brief description of the item to be discussed at the meeting is required. The description may not be generalized (i.e., miscellaneous topics or old business) and must provide sufficient information so that the public is aware of the item to be discussed.

The notice must include the name, address, and telephone number of any person who can provide further information prior to the meeting and must contain the website address where the notice can be accessed. Additionally, the notice must contain information that would enable a person with a disability to know how, to whom, and by when a request can be made for any disability-related accommodation, including auxiliary aids or services.

A meeting notice, once posted, may not be revised after the tenth day prior to the meeting date.

### ***OPPORTUNITY FOR PUBLIC COMMENT (GOVERNMENT CODE SECTION 11125.7)***

The Board meeting must provide an opportunity for public comment. The Board solicits public comment for each topic on the agenda and after a motion is made. Additionally, every Board and Committee meeting agenda contains an agenda item that allows for public comment on items not on the agenda. Board Members may not act or discuss matters presented by the public under this agenda item. The matter may be suggested for a future agenda item or for follow-up by Board staff.

## ***PUBLIC MEETINGS***

The Board must conduct the meetings in an open session except where a closed session is specifically authorized. All Board and Committee meetings, except for a closed session, are open to the public.

Closed session meetings must follow the same meeting notice requirements and are held specifically for matters designated under law, such as discussion of disciplinary cases, pending litigation, and personnel matters.

---

# CHAPTER 5

## **TRAVEL AND SALARY/PER DIEM**

### **TRAVEL POLICIES**

Board Members will be reimbursed for travel expenses related to all Board and Committee meetings. Reimbursement will be in accordance with current state travel reimbursement policies. Please refer to the Department of Consumer Affairs (DCA) Travel Guide for specific travel guidelines and reimbursement policies.

*Please refer to Attachment B: DCA Travel Guide.*

### **TRAVEL APPROVAL (STATE ADMINISTRATIVE MANUAL SECTION 700 ET SEQ.)**

Travel related to Board and Committee meetings do not need approval. All other travel related to Board business must be approved by the DCA prior to the event. This includes any out-of-state travel. Under specific circumstances, a Board Member may travel to attend a national association meeting. Please contact the Executive Director for further information.

### **TRAVEL ARRANGEMENTS (DEPARTMENT PROCEDURE / BOARD PROCEDURE)**

Board Members should always contact Machiko Chong to make travel arrangements for Board and Committee meetings. Ms. Chong will book flights, and hotel and rental car reservations. A hotel that honors the state government employee rate will be chosen for all Board Members needing a room. Rental cars will be reserved for Board Members when a car is needed. To encourage ride sharing, vans or large sedans are reserved. Board Members may also use taxi, ride sharing services such as Uber or Lyft, shuttle service, or a personal vehicle for transportation.

To facilitate easier travel planning, all Board Members should provide Ms. Chong with their credit card information and Southwest Rapid Rewards number. This information will be kept in a secure location and will be kept on file for future travel arrangements.

All travel and transportation arrangements are made in compliance with state travel guidelines. Any expenses incurred by a Board Member, which were not previously approved or within the state travel guidelines, may require written justification. The written justification will be submitted with the travel claim and is subject to the appropriate approvals. The expense may or may not be approved.

## ***EXCEPTIONS TO TRAVEL REIMBURSEMENT POLICIES***

### ***LODGING***

State guidelines generally prohibit reimbursement for hotel expenses within 50 miles of an individual's home address or an extra night stay following the conclusion of the Board activity. However, an exception to this guideline may be obtained if the circumstances necessitate an overnight stay. Please contact Ms. Chong for further information.

### ***AIRPORT PARKING REIMBURSEMENT***

State guidelines strongly encourage the use of the least expensive parking available. However, if the Board determines that additional parking costs above the lowest-cost option are in the best interest of the State, a written justification explaining the necessity for the additional cost must be submitted with the travel claim. Please contact Ms. Chong for further information.

### ***TRAVEL CLAIMS (DEPARTMENT POLICY)***

Rules governing reimbursement of travel and meeting expenses for Board Members are the same as for state management-level staff. All invoices must be submitted to Ms. Chong for processing.

Board Members are strongly encouraged to submit their invoices immediately after returning from a trip and not later than the 15<sup>th</sup> of the month following the trip. It is also necessary to submit original receipts for expenses claimed such as parking, transportation service, bridge tolls, and flight itineraries. Hotel receipts must reflect a zero balance. Receipts for meals are not required for reimbursement.

### ***SALARY PER DIEM (BPC SECTION 103)***

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board Members is determined by Business and Professions Code section 103.

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

Board Members fill non-salaried positions but are paid \$100 per day for each meeting day or 8-hour day spent performing Board business.

---

# CHAPTER 6

## **SELECTION OF OFFICERS AND COMMITTEES**

### ***BOARD OFFICERS (BPC 2012)***

The Board shall elect a President and a Vice President from its membership. Not later than the first of June of each calendar year, the Board shall elect the officers. Officers shall serve terms of one year and may be re-elected to consecutive terms. The election of officers occurs at the January Board meeting.

If for any reason the President is unable to continue in his/her role, the Vice President shall immediately assume the duties of President until the next election of officers.

### ***COMMITTEE APPOINTMENTS (BOARD PROCEDURE)***

Committees are created by and appointed at the discretion of the Board President. The Committee Chair is appointed by the Board President. Board Members who desire to serve on a committee are encouraged to speak to the Board President.

### ***DUTIES OF THE BOARD PRESIDENT***

- Spokesperson for the Board (may attend legislative hearings and testify on behalf of the Board, may attend meetings with DCA or Agency, may attend meetings with stakeholders and legislators)
- Meets and communicates with the Executive Director on a regular basis
- Communicates with other Board Members for Board business
- Chairs and facilitates Board meetings
- Assigns Board Members to Board Committees, appoints the Chair for committees

In the absence of the Board President, the Board Vice President will perform the above duties.



---

# CHAPTER 7

## **BOARD ADMINISTRATION AND BOARD STAFF**

### **BOARD ADMINISTRATION**

Board Members should be concerned primarily with formulating decisions on Board policies rather than making decisions concerning the implementation of such policy. It is inappropriate for Board Members to become involved in the details of program delivery or implementation. Strategies for the day-to-day management of Board programs and Board staff is the responsibility of the Executive Director. Board Members should not interfere with day-to-day operations, which are under the authority of the Executive Director.

### **EXECUTIVE DIRECTOR (BPC SECTION 2020)**

The Executive Director is appointed by and serves at the pleasure of the Board, and is exempt from civil service. The Executive Director shall exercise the powers and perform the duties delegated by the Board. The Executive Director is responsible for the financial operations and integrity of the Board and is the official custodian of records. Annually, the Board Members will conduct a review of the Executive Director's performance. The Board President will meet with the Executive Director to discuss the performance appraisal.

### **BOARD STAFF**

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

*See Attachment D: Board Organizational Chart.*

### **RULES FOR CONTACTING STAFF (BOARD PROCEDURE)**

Board Members should only contact the following designated staff:

- Executive Director, Mark Ito at (916) 928-7639 regarding all Board business.

- Assistant Executive Director, Terri Thorfinnson at (916) 999-3426 regarding all Board business.
- Administrative Analyst, Machiko Chong at (916) 928-7636 regarding travel, salary per diem, Board and Committee meeting materials, training and required personnel forms.
- Enforcement Analyst, Corey Sparks at (916) 928-8393 regarding disciplinary mail votes.
- Legal Counsel, Sabina Knight at (916) 574-8220 regarding disciplinary procedural questions or ethical questions.

### ***STRATEGIC PLANNING***

The Board will conduct periodic strategic planning sessions. Dates for these sessions will be announced well in advance.

### ***BOARD MEMBER ADDRESSES (DCA POLICY)***

Board Member addresses and telephone numbers are confidential and shall not be released to the public without expressed authority by the individual Board Member.

A roster of Board Members is maintained for public distribution and is placed on the Board's website, using the Osteopathic Medical Board of California's office address and telephone number.

### ***BUSINESS CARDS***

Business cards will be provided to each Board Member with the Board's address, telephone and fax number, and website address.



---

# CHAPTER 8

## ***OTHER POLICIES AND PROCEDURES***

### ***PUBLIC RECORDS ACT AND COMPLAINT DISCLOSURE***

The California Public Records Act (PRA), Government Code section 6250 et seq., requires public records to be available upon request. The PRA provides for specific timelines and general process to respond to a request for public records. Further, Government Code section 6254 specifies which records are not subject to public disclosure. As a state regulatory board within DCA, the Board is subject to the requirements for all PRA requests. The Board's response is coordinated with its DCA legal counsel.

Business and Professions Code section 27 specifies what information, such as enforcement actions and a licensee's address of record, must be available through the Internet (i.e., Board website). Providing this information allows consumers to verify their osteopathic doctor's licensure status as well as determine if there is any disciplinary action.

### ***IMMUNITY FROM LIABILITY***

There are many provisions in state law relating to the liability of public agencies and employees. Government Code section 818.4 states, "A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked."

Government Code section 821.2 states, "A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of, or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked."

Many other complex provisions relate to defense, payment of a judgment or settlement, and indemnification. Specific questions should be discussed with the Board's legal counsel.

### ***RESIGNATION OF BOARD MEMBERS (GOVERNMENT CODE SECTION 1750)***

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

The departing Board Member is also required to complete and submit specific paperwork immediately following the effective date of the resignation. The departing Board Member is encouraged to contact Ms. Chong for further information.

### ***REMOVAL OF BOARD MEMBERS (BPC 106)***

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

### ***RULES FOR CONTACT WITH THE PUBLIC, A LICENSEE, AN APPLICANT, OR THE MEDIA***

Occasionally, in your role as a Board Member, you may be contacted by a licensee, colleague, applicant, member of the public, or the media regarding an issue or concern that pertains to Board business or proceedings. Any one of these contacts may compromise your position relating to future decisions about policy, disciplinary actions, or other Board business.

To avoid compromising your role as a Board Member, please refrain from assisting the individual with his/her issue. Instead, offer to refer the matter to the Executive Director or give the individual the contact information for the Executive Director. Refrain from engaging in discussion with the individual and make every effort to end the conversation quickly and politely. Report all such contacts to the Executive Director as soon as possible.

### ***CONFLICT OF INTEREST (GOVERNMENT CODE SECTION 87100)***

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

## **SERVICE OF LAWSUITS**

Board Members may receive service of a lawsuit against themselves and the Board pertaining to a specific issue (e.g., a disciplinary matter, a complaint, a legislative matter, etc.). To prevent a confrontation, the Board Member should accept service. Upon receipt, the Board Member should notify the Executive Director of the service and indicate the name of the matter that was served, date and time of service, and any other pertinent information. The Board Member should mail and email the entire packet to the Executive Director as soon as possible. The Board's legal counsel will provide instructions to the Board Members on what is required of them once service has been made.

## **EX PARTE COMMUNICATIONS (GOVERNMENT CODE SECTION 11430.10 ET SEQ.)**

The Government Code contains provisions prohibiting *ex parte communications*. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party.

While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

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

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

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

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

If the Board Member believes he or she has received an unlawful *ex parte* communication the Board Member should contact the Board's legal counsel and/or the Executive Director.



---

# CHAPTER 9

## **BOARD MEMBER REQUIRED TRAINING**

Board Members are required to complete specific forms and training at various intervals during their appointment period. To ensure compliance and notification to the requisite agencies, all training certificates and required forms must be sent to Ms. Chong at the Board.

Ms. Chong will forward the required documentation to the appropriate agency and maintain a copy in the Board Member's personnel file. It is important that the Board have a copy of all required training and documents. This ensures that the Board has an accurate record that you have satisfied all requirements and are able to provide copies upon request.

### **STATEMENT OF ECONOMIC INTEREST (<http://www.fppc.ca.gov/Form700.html>)**

This form is commonly referred to as Form 700 and is to be completed upon assuming the position, annually, and upon leaving. Under DCA's Conflict of Interest Code, designated officials are required to complete a Statement of Economic Interests Form 700. Annually, DCA will send several reminders to complete this form with a link to the electronic filing system.

Failure to complete this form in a timely manner may result in a fine from the Fair Political Practice Commission. All fines are publicly noticed.

### **ETHICS ORIENTATION FOR STATE OFFICIALS (GOVERNMENT CODE SECTIONS 11146-11146.4)**

California law requires all appointees to take an ethics orientation within the first six months of their appointment and to repeat the ethics orientation every two years throughout their term.

The training includes important information on activities or actions that are inappropriate or illegal. For example, public officials cannot take part in decisions that directly affect their own economic interests. They are prohibited from misusing public funds, accepting free travel and accepting honoraria. There are limits on gifts.

An online, interactive version of the training is available on the Attorney General's website at <https://oag.ca.gov/ethics/course>.

An accessible, text-only version of the materials is also available at the Attorney General's website.

Copies of completion certificates must be sent to Ms. Chong to be maintained in the personnel file. Records concerning the attendance of this course must be kept on file for five years.

### ***DCA BOARD MEMBER ORIENTATION TRAINING (BPC SECTION 453)***

California Business and Professions Code Section 453 require every newly appointed member to complete a training and orientation program offered by DCA within one year of assuming office.

DCA has been advised that this statute also applies to all reappointed Board Members. Therefore, if you attended the training during your first term and are reappointed, you must attend the training following your reappointment.

The training covers the functions, responsibilities and obligations that come with being a member of a DCA board. To receive credit for the training, Board Members must attend the entire training.

DCA schedules the Board Member Orientation Training (BMOT) sessions throughout the year. Specific locations are announced several months prior to the orientation. Board Members must register for the training through Ms. Chong.

### ***SEXUAL HARASSMENT PREVENTION TRAINING (GOVERNMENT CODE SECTION 12950.1; CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 11024)***

Section 12950.1 of the Government Code requires an employer having five or more employees to provide at least two hours of classroom or other interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. The employer shall provide sexual harassment training and education to each employee once every two years. New nonsupervisory employees shall be provided training within six months of hire.

California Code of Regulations, Title 2, Section 11024 also specifies requirements of an employer to provide two hours of training mandated by Government Code 12950.1.

An online, two-hour Sexual Harassment Prevention Tutorial is provided by DCA. Ms. Chong will provide information and instructions to access the online tutorial.

# CHAPTER 10

## ***BOARD MEMBER ROLE – POLICY DECISIONS***

Protection of the public is the highest priority for a Board Member. Board Members achieve this mandate by establishing policies that affect the licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

### ***SETTING BOARD POLICY***

At each Board and Committee meeting, Board Members are presented proposals to modify or add to existing statutes and laws affecting the licensees governed by the Board. Each meeting packet will contain information relevant to the discussion, such as an analysis of the proposed bill or suggested language to modify an existing statute.

The meeting allows for Board Members and stakeholders to engage in an open discussion regarding the proposal. Below is a list of questions that are helpful to consider when determining an action or position on a proposal.

#### Consumers

- Does a consumer safety issue exist?
- Does the bill assist consumer access to services?
- Does the bill ensure their safety?
- Will the provisions provide them with more information?
- Does the bill directly or indirectly increase costs for the consumer?
- Is any added cost worth the increased protection provided by the bill?
- Is there a less costly way to achieve the goals of the bill?

#### Licensees

- Is the provision necessary to ensure that they are minimally competent to perform their scope of practice?
- Will the bill increase costs for the licensees?
- Does the bill increase barriers to entry for licensees?

- The bill should not be concerned with elevating licensees (trade associations).
- Is there a way to achieve the bill's goal that is less costly for the licensees?

#### Board Impact

- Will the bill be costlier for the Board?
- Does the Board have the staff, resources, and expertise to perform any proposed additional functions?
- Is the proposed additional function appropriate for the Board to perform?
- Will it result in a fee increase?
- Is there a way to achieve the bill's goal that is less costly to the Board?

The discussion may result in the following action.

- Board staff is directed to make the suggested changes and bring the proposal back at a future meeting.
- Board staff is directed to gather additional information to present at a future meeting.
- The proposal is approved by the Board, and Board staff is directed to initiate the action (i.e., initiate rulemaking process or seek an author for the proposal).
- The discussion results in a motion to take a formal position on the proposal.

As a member of a state regulatory board, the Board's position on a bill proposal affecting Board licensees is important to legislators. Regulatory agencies, such as the Board, are viewed as the experts for the professions it regulates. In determining policy changes, the legislature relies on their staff and regulatory boards for input. The absence of a position on a bill proposal that affects the Board's licensees may result in unintended consequences. Therefore, it is important when considering a position to understand the position's definition.



Position	Definition
Support	The Board agrees with the proposal. The Board will send a letter of support to the author and actively participate in the legislation process to get the proposal in law.
Support, if amended	The Board is seeking some changes to the proposal. If the requested changes are made, the Board will move to a support position. If changes are not made, the Board will move to a neutral (silent) position on the proposal.
Oppose	The Board does not agree with the proposal. The Board will send a letter of opposition to the author and actively participate in the legislation process to prevent the bill from becoming law.
Oppose, unless amended	The Board is seeking some changes to the proposal. If the changes are not made, the Board will move to an oppose position. If the changes are made, the Board will move to a neutral (silent) position on the proposal.
Neutral	The Board neither supports or opposes the proposal. The Board does not participate in the legislative process.



---

# CHAPTER 11

## ***BOARD MEMBER ROLE – DISCIPLINARY PROCESS***

### ***DISCIPLINARY PROCESS OVERVIEW***

Each year, the Board receives over 600 consumer complaints and nearly 20 criminal arrest notifications. Through the enforcement process, each consumer complaint and criminal arrest notification is reviewed to determine if the matter is within the Board's jurisdiction. If the complaint or conviction is determined to be within the Board's jurisdiction, the allegations are investigated to determine if evidence exists to substantiate a violation of the Board's laws and regulations.

All cases in which the evidence substantiates a violation has occurred, are referred to Subject Matter Experts (SMEs). The SME is a licensee of the Board and will review the investigation and evidence to determine if the violation constitutes gross negligence, incompetence, and/or patient harm. Cases in which clear and convincing evidence substantiates a violation of the Board's laws and regulations, appropriate disciplinary action is initiated.

### ***DISCIPLINARY OPTIONS***

The Board has two options available to impose discipline against a licensee. In cases in which the violations do not warrant the revocation of a license, a citation and fine is issued. In cases in which the violations are egregious and warrant formal discipline of the license, the Board forwards the matter to the Attorney General's (AG's) office to pursue formal disciplinary action. Each decision is made in consultation with the Executive Director.

### ***CITATION AND FINE***

A citation and fine issued to the licensee is not considered a formal disciplinary action. However, the matter is an administrative action and is subject to public disclosure. The fines are set forth in law and range from \$100 to a maximum of \$2,500. In specific circumstances (e.g., a violation against a senior citizen or disabled person), a fine up to a maximum of \$5,000 may be issued.

All citation and fines issued include an order of abatement in which the cited person must provide information or documentation that the violation has been corrected. The cited person is afforded the opportunity to appeal the issuance of the citation and fine.

The cited person may submit a written request for an administrative hearing or an informal citation conference. All informal citation conferences are conducted by the Executive Director. The citation may be modified, affirmed, or dismissed. If the cited person wished

to contest the affirmed or modified citation, the matter will be referred to an administrative hearing before an Administrative Law Judge (ALJ).

### ***FORMAL DISCIPLINARY ACTION***

If an investigation and evidence substantiate gross negligence, incompetence, or patient harm, the Enforcement Analyst, in consultation with the Executive Director and the Assistant Executive Director, determines whether the case should be forwarded to the AG's Office for formal disciplinary action.

### ***FILING FORMAL CHARGES***

Formal charges are almost always filed in cases in which the health and safety of the consumer has been compromised, and in which clear and convincing evidence can be established. The Board's Executive Director determines whether to file formal charges for any violation of the Board's licensing laws. These formal charges are referred to as pleadings. In each pleading, the Executive Director is the complainant. The Deputy Attorney General (DAG) assigned to the matter represents the Board.

### ***PLEADINGS***

There are three types of pleadings. The type of pleading is dependent upon whether the respondent (subject of the case) is licensed with the Board, an applicant for licensure, or is already on probation.

- **Accusation:** A written statement of charges against the holder of a license or privilege, to revoke, suspend or limit the license, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations.
- **Statement of Issues:** A written statement of the reasons for denial of an application for a license or privilege, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations.
- **Petition to Revoke Probation:** A written statement to revoke a probationer's license alleging the probationer has violated the terms and conditions of his or her probation.

In all formal disciplinary actions, the respondent is formally notified of the Board's proposed action, their rights under the law, and a due date to respond to the Board's notification.

## ***ACTIONS PRECEDING AN ADMINISTRATIVE HEARING***

### ***STIPULATIONS (SETTLEMENTS) – REQUIRES BOARD MEMBER VOTE***

The licensee/applicant and Board may decide to settle the case at any time during the administrative process. Settlements are negotiated and completed prior to the date of an administrative hearing. Although settlements prior to the scheduled hearing avoid the expense of a hearing; this is not a reason to settle a case. Settlements are considered in cases where the respondent has presented mitigating information/evidence to demonstrate that he/she may be a good candidate for probation.

The settlement is reduced to a written stipulation and order which sets forth the settlement terms and proposed disciplinary order. The DAG prepares a memo describing the rationale for the proposed settlement. The memo and the written stipulation and order are forwarded to the Board Members for consideration and decision.

If the Board Members reject the proposed settlement, the case will return to the disciplinary process. A new settlement may be submitted to the Board Members later or the case may proceed to an administrative hearing before an ALJ.

Stipulations prior to an administrative hearing also eliminate the six-months to one-year delay that may result from attempting to schedule a mutually agreeable hearing date. The public is often better served because the resolution time is reduced, lengthy appeals are avoided, and the Board and respondent save time and money. Further, a licensee on probation is closely monitored by the Board.

### ***DETERMINING SETTLEMENT TERMS***

Stipulations (settlements) are negotiated by the DAG (in consultation with the Executive Director), the respondent, and the respondent's legal counsel. Stipulation terms are provided to the DAG utilizing the Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Disciplinary Guidelines). These guidelines provide the parameters for settlement terms for specific violations of law. The Executive Director considers the evidence, the law, witness and subject matter expert testimony, and protection of the public in the decision process.

The following factors are considered when settlement terms are proposed:

- Nature and severity of the act(s), offense(s), or crime(s)
- Actual or potential harm to any consumer or client
- Prior disciplinary record
- Number and/or variety of current violations

- Mitigation evidence
- Rehabilitation evidence
- In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation
- Overall criminal record
- Time elapsed since the act(s) or offense(s) occurred
- Whether the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties
- Recognition by respondent of her or his wrongdoing and demonstration of corrective action to prevent recurrence

The Board's Disciplinary Guidelines were established to provide consistency in determining settlement terms. Variation from the guidelines may occur when sufficient mitigating information or evidence warrants a reduction in the term and does not compromise consumer protection.

Enforcement staff considers the Disciplinary Guidelines when determining whether to seek revocation, suspension, and/or probation of a license. Board Members use the Disciplinary Guidelines when considering cases during closed sessions. The Disciplinary Guidelines are updated when necessary and are distributed to DAGs and ALJs who work on Board cases.

If the parties are not able to agree on the proposed settlement terms, the matter will move forward to a hearing held at the Office of Administrative Hearings.

*See Attachment E: Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.*

### **OFFICE OF ADMINISTRATIVE HEARINGS**

The Office of Administrative Hearings (OAH) is a central panel of experienced, highly qualified ALJs who preside as neutral judicial officers at hearings and settlement conferences. The ALJs are fully independent of the agencies whose attorneys appear before them. The ALJs are required to have practiced law for at least five years before being appointed and typically have over ten years of experience.

The administrative hearing process is similar to any other court proceeding. The ALJ presides over the hearing; a DAG represents the Board and presents the case; and the respondent or the respondent's representative/attorney presents its case. Testimony and evidence is presented and there is a transcript of the proceedings.

Upon the conclusion of the administrative hearing, the ALJ will consider all the testimony and evidence and will prepare a Proposed Decision. Once the hearing is finished, the ALJ has 30 days to prepare the Proposed Decision and send it to the Board.

### ***FORMAL DISCIPLINARY CASE OUTCOMES***

The Board refers over 15 cases a year for formal discipline. The possible outcomes for these cases are denial of the application, revocation, surrender of the license, or probation. If an individual is placed on probation, the individual must comply with the specific terms of the probation during the probation period. Once the individual has successfully completed probation, the license is restored without restrictions. However, the discipline will remain part of the individual's record.

### ***DEFAULT DECISIONS***

If an accusation is returned by the post office as unclaimed, the service is not possible because the Board does not know the whereabouts of a respondent. The respondent is considered to be in default. A respondent is also considered to be in default if the respondent fails to file a Notice of Defense upon receipt of the Accusation or Statement of Issues or fails to appear personally or through counsel at the hearing.

Default cases result in revocation of the license or denial of the application. The Board Members have delegated the authority to adopt a Default Decision to the Executive Director. In the event, the respondent becomes aware of the decision prior to the effective date, he/she may submit a written request to reconsider the decision. This request is presented to the Board Members to determine if they wish to grant the request.

### ***PROBATION***

Licensees who are placed on probation are monitored by the Board. The average length of probation is five years. Upon successful completion of probation, the license is restored and is unrestricted.

A probationary file is established to monitor an individual's compliance with the probation requirements (e.g., cost recovery payments, remedial education course completion, and quarterly reports). When a probationer violates a term of probation, the Board has the option to revoke probation and impose previously stayed discipline.

### ***CRIMINAL PROSECUTION***

Depending on the nature of a complaint, cases may be referred to local law enforcement entities. All cases in which there is sufficient evidence to file charges against a licensee or person performing unlicensed activity are referred to the appropriate city or district attorney's office. Criminal actions include, but are not limited to, violations of the licensing laws of the Board.





---

# CHAPTER 12

## ***BOARD MEMBER ROLE - DISCIPLINARY CASE REVIEW***

### ***BOARD REVIEW OF STIPULATIONS AND PROPOSED DECISIONS***

The Board Members review and vote on each case where the matter is either settled prior to hearing or the ALJ issues a Proposed Decision. In all cases, the Board Member has the option to adopt, reject, or hold for discussion. The decision on each case is based on a majority vote of the Board.

### ***MAIL VOTE PROCESS***

Proposed Decisions (decision from the ALJ) and Proposed Stipulations (negotiated settlements) are sent to the Board via email for their consideration and vote. Mail ballot packet materials are confidential and include the following:

- Memo from enforcement staff listing the cases for review and decision
- Ballot or instructions to submit the vote electronically
- Legal documents (Proposed Decision or Proposed Stipulation, and Accusation or Statement of Issues)
- Memo from the assigned DAG (Proposed Stipulated Settlement cases only)
- Self-addressed, stamped envelopes

Deliberation and decision-making should be done independently and confidentially by each Board Member. The Board Member shall only use the information provided to make their determination. Where the vote is done by mail (or email), voting members may not communicate with each other and may not contact the DAG, the respondent, anyone representing the respondent, any witnesses, the complainant, the ALJ, or anyone else associated with the case.

Additionally, Board Members should not discuss pending cases with Board staff, except as to questions of procedure or to ask whether additional information is available, and whether the agency may properly consider such information. It is strongly encouraged that these types of questions be directed to the Executive Director or the Board's legal counsel.

If a Board Member has any procedural questions not specific to evidence, or any question specifically related to the cases, the questions should be directed to the Board's legal counsel.

Completed mail ballots are due at the Board office no later than the due date indicated in the mail ballot package. The due dates are established in accordance with the timelines indicated in the Administrative Procedure Act (APA). It may be that your vote that is the deciding vote in the outcome of a case. Therefore, it is critical that Board Members return their votes timely.

Mail ballot materials should be retained until notification by enforcement staff that the cases have been adopted. Once a decision is final, the mail ballot packet materials must be confidentially destroyed.

### ***MAIL BALLOT DEFINITIONS***

Each mail ballot will have the following options for each case. Below are the definitions for each option.

- **Adopt/Grant:** A vote to adopt the proposed action means that you agree with the action as written.
- **Reject/Non- Adopt:** A vote to reject or non-adopt the proposed action means that you disagree with one or more portions of the proposed action and do not want it adopted as the Board's decision. However, a majority vote to adopt will prevail over a minority vote to not adopt.
- **Hold for Discussion:** A vote to hold for discussion may be made if you wish to have some part of the action changed in some way (increase penalty, reduce penalty, etc.). For example, you may believe an additional or a different term or condition of probation should be added, or that a period of suspension should be longer. At least two votes in this category must be received to stop the process until the Board can consider the case in closed session at the Board meeting.

### ***MAIL VOTE OUTCOMES***

Below are the outcomes for each voting option for either a Stipulation (proposed settlement) or Proposed Decision.

#### ***STIPULATIONS – PROPOSED SETTLEMENT***

- **Adopt** – If the decision of the Board is to adopt the terms proposed in the Stipulation, the decision becomes effective within 30 days and the respondent is notified.
- **Reject/Non-Adopt** – If the Board decides to reject or non-adopt the stipulation, the respondent is notified, and the matter resumes the process for a formal administrative hearing before an ALJ. Following the hearing, the ALJ will issue a Proposed Decision for the Board Members to consider.

- **Hold for Discussion** – A Board Member may be unable to decide due to concerns or desire further clarification. *(Note: A Board Member may seek procedural clarification from the Board’s legal counsel.)* In this situation, the Board Member may choose to hold the case for discussion citing the reasons for this vote. If two or more Board Members vote to hold the case for discussion, the case is discussed in the next available meeting during a closed session. If only one Board Member votes to hold the case for discussion, the case is not held for discussion and the majority decision of the remaining Board Members prevails.

***PROPOSED DECISIONS – DECISION FROM THE ALJ FOLLOWING A FORMAL HEARING***

Proposed Decisions (PDs) are subject to a specified timeline pursuant to the APA. The Board has 100 days after receiving the PD to either adopt or non-adopt the PD.

- **Adopt** – If the Board Members decide to adopt the Proposed Decision, it becomes effective within 30 days and the respondent is notified by Board staff.
- **Reject/Non-Adopt** – If the Board Members do not agree with any aspect of the ALJ’s Proposed Decision, they may non-adopt the Proposed Decision. In this situation, the respondent is notified. Board staff will order the administrative hearing transcripts and request written arguments from the respondent. Board Members review the transcripts, evidence, and written arguments and meet in a closed session Board meeting with legal counsel to write their decision. The Board uses the Disciplinary Guidelines and applicable law when making such decisions. The Board’s decision is then adopted and issued to the respondent.

***DISQUALIFICATION – MAY NOT PARTICIPATE IN CASE DECISION***

With some limited exception, a Board Member cannot decide a case if that Board Member investigated, prosecuted or advocated in the case or is subject to the authority of someone who investigated, prosecuted or advocated in the case. A Board Member may be disqualified for bias, prejudice or interest in the case. When in doubt Board Members should contact DCA legal counsel for guidance.

### ***RECUSAL FROM CASE DECISION***

If the Board Member knows the respondent and/or is familiar with facts/circumstances regarding the action that lead to the disciplinary matter, the Board Member shall consult with legal counsel regarding the Board Member's ability to participate in the case decision.

### ***EX PARTE COMMUNICATIONS DEFINITION AND LIMITATIONS***

"Ex Parte" technically means "by or for one party only." In practice, it is a limitation on the types of information and contacts that Board Members may receive or make when considering a case. While a case is pending, there are only limited types of communications with Board Members that are allowed if all parties are not aware of the communication and do not have a chance to reply.

For example, a Board Member can accept advice from a Board staff member who has not been an investigator, prosecutor, or advocate in the case; however, that person/staff cannot add to, subtract from, alter or modify the evidence in the record. Or, a Board Member can accept information on a settlement proposal or on a procedural matter.

Most other communications may need to be disclosed to all parties, and an opportunity will be provided to the parties to make a record concerning the communication. Disclosure may also apply to communications about a case received by a person who later becomes a Board Member deciding the case. Receipt of some ex parte communications may be grounds to disqualify a Board Member from that case.

---

# CHAPTER 13

## ***GUIDELINES FOR PETITIONER HEARINGS***

### ***PETITION HEARING OVERVIEW***

Board meetings consist of requests from probationers to modify the terms of their probation or from licensees seeking to reinstate their license. These individuals submit a request to the Board and include all documentation to support their request. Board staff will review all documentation to determine if the individual is eligible to make the request. If so, the individual will be scheduled to appear at an upcoming Board meeting.

Prior to the Board meeting, Board staff will prepare the petition package, include all relevant documentation, and mail or email the petition package to the Board Members for their review. Board Members should review the package thoroughly, noting any questions they may have about the documentation.

The petition hearings are conducted during an open session of the Board Meeting with an ALJ presiding. A court reporter is present to document the testimony. Unless otherwise indicated, all testimony, questions, and comments are part of the record.

The hearing format begins with the ALJ announcing the petitioner's name and case number. The ALJ will explain the hearing process to the petitioner and ascertain if the petitioner has any questions. Once the ALJ is satisfied that the petitioner understands the process, the ALJ begins the hearing.

First, the DAG appears on behalf of the Board and introduces the case. The DAG provides the history of the conduct that resulted in probation or license revocation and introduces the relevant evidence. The DAG will question the petitioner regarding their request, supporting documentation, and rehabilitation efforts. The DAG's questions may occur either before or after the Board Members question the petitioner.

Next, the petitioner is provided an opportunity to testify in support of their request. The petitioner may or may not be represented by an attorney. The petitioner often reads a prepared statement or speaks freely. The petitioner may, or may not, call witnesses to provide testimony in support of the petitioner's request.

Following the petitioner's testimony, each Board Member is provided the opportunity to question the petitioner.

## **QUESTIONS FOR PETITIONERS**

In your role to protect the public, it is critical to determine the following.

*Will the public be protected without the current restrictions?*

*Will the petitioner deliver services safely to the public?*

Your decision must be based on the evidence before you – the petitioner’s supporting documentation, petitioner’s testimony, witness testimony, and rehabilitation. All questions to the petitioner should be related to documentation in the petitioner’s packet and testimony provided by the petitioner.

Frequently, Board Members may inquire about the following topics.

- Inconsistencies in the documentation
- Inconsistencies or clarification related to the petitioner’s testimony
- Incidents of non-compliance with probation
- Efforts related to rehabilitation and support systems
- Petitioner’s efforts to practice self-care and good physical and mental health.
- Petitioner’s personal growth while on probation
- What assurance does the petitioner offer that the incident will not reoccur?

These types of questions are appropriate and often, the responses aid in determining the petitioner’s ability to safely practice.

Board Members should exercise caution to avoid inquiries that are not appropriate. For example:

- Questions that attempt to relitigate the matter that led to the probation or revocation.
- Questions that may compel the petitioner to disclose a medical condition or physical disability.
- Questions that may compel the petitioner to disclose a protected group category (e.g., age, race, religion, sexual orientation).

***DELIBERATIONS***

Upon conclusion of the hearing, the Board Members, ALJ, Board legal counsel, and a Board staff member will meet in closed session to discuss whether to grant the petitioner's request.





---

# CHAPTER 14

## **RESOURCES**

### **Osteopathic Medical Board of California Website**

[www.ombc.ca.gov](http://www.ombc.ca.gov)

### **Osteopathic Medical Board of California Disciplinary Guidelines**

[https://www.ombc.ca.gov/forms\\_pubs/disp\\_guideline.pdf](https://www.ombc.ca.gov/forms_pubs/disp_guideline.pdf)

### **DCA Board Member Resource Center**

<http://www.dcaboardmembers.ca.gov>

### **California Administrative Procedure Act**

*The California Administrative Procedure Act is found in the California Government Code starting at section 11370 and continuing through section 11529 and title 1 of the California Code of Regulations starting at section 1000 through section 1050.*

<http://leginfo.legislature.ca.gov/faces/codes.xhtml>

<https://govt.westlaw.com/calregs>

### **Bagley Keene Open Meeting Act**

<https://oag.ca.gov/open-meetings>

### **California Legislative Information (may search for bills and subscribe to bill updates)**

<http://leginfo.legislature.ca.gov/faces/home.xhtml>

## ***PROFESSIONAL ASSOCIATIONS***

Osteopathic Physicians and Surgeons of California (OPSC)

<https://www.opsc.org/>

American Osteopathic Association (AOA)

<https://osteopathic.org/>

---

## ***ATTACHMENTS***

- A. GUIDE TO THE BAGLEY-KEENE OPEN MEETING ACT
- B. DCA TRAVEL GUIDE
- C. BOARD ORGANIZATIONAL CHART
- D. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES



A Handy Guide  
to  
The Bagley-Keene Open Meeting Act 2004

*California Attorney General's Office*

## **INTRODUCTION**

The Bagley-Keene Open Meeting Act (“the Act” or “the Bagley-Keene Act”), set forth in Government Code sections 11120-11132<sup>1</sup>, covers all state boards and commissions. Generally, it requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session. Following is a brief summary of the Act’s major provisions. Although we believe that this summary is a helpful road map, it is no substitute for consulting the actual language of the Act and the court cases and administrative opinions that interpret it.

If you wish to obtain additional copies of this pamphlet, they may be ordered or downloaded via the Attorney General’s Home Page, located on the World Wide Web at <http://caag.state.ca.us>. You may also write to the Attorney General’s Office, Public Inquiry Unit, P.O. Box 944255, Sacramento, CA 94244-2550 or call us at (800) 952-5225 (for callers within California), or (916) 322-3360 (for callers outside of California); the TTY/TDD telephone numbers are (800) 952-5548 (for callers within California), or (916) 324-5564 (for callers outside of California).

## **PURPOSE OF THE ACT**

Operating under the requirements of the Act can sometimes be frustrating for both board members and staff. This results from the lack of efficiency built into the Act and the unnatural communication patterns brought about by compliance with its rules.

If efficiency were the top priority, the Legislature would create a department and then permit the department head to make decisions. However, when the Legislature creates a multimember board, it makes a different value judgment. Rather than striving strictly for efficiency, it concludes that there is a higher value to having a group of individuals with a variety of experiences, backgrounds and viewpoints come together to develop a consensus. Consensus is developed through debate, deliberation and give and take. This process can sometimes take a long time and is very different in character than the individual-decision-maker model.

Although some individual decision-makers follow a consensus-building model in the way that they make decisions, they’re not required to do so. When the Legislature creates a multimember body, it is mandating that the government go through this consensus building process.

When the Legislature enacted the Bagley-Keene Act, it imposed still another value judgment on the governmental process. In effect, the Legislature said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. (§ 11120.) By reserving this place for the public, the Legislature has provided the public with the ability to monitor and participate in the decision-making process. If the body were permitted to meet in secret, the public’s role in the decision-making process would be negated. Therefore, absent a specific reason to keep

---

<sup>1</sup>All statutory references are to the Government Code.

the public out of the meeting, the public should be allowed to monitor and participate in the decision-making process.

If one accepts the philosophy behind the creation of a multimember body and the reservation of a seat at the table for the public, many of the particular rules that exist in the Bagley-Keene Act become much easier to accept and understand. Simply put, some efficiency is sacrificed for the benefits of greater public participation in government.

### **BODIES COVERED BY THE ACT: General Rule**

The general rule for determining whether a body is covered by the Act involves a two part test (§ 11121(a)):

First, the Act covers multimember bodies. A multimember body is two or more people. Examples of multimember bodies are: state boards, commissions, committees, panels, and councils. Second, the body must be created by statute or required by law to conduct official meetings. If a body is created by statute, it is covered by the Act regardless of whether it is decision-making or advisory.

#### ■ **Advisory Bodies**

The Act governs two types of advisory bodies: (1) those advisory bodies created by the Legislature and (2) those advisory bodies having three or more members that are created by formal action of another body. (§11121(c).) If an advisory body created by formal action of another body has only two members, it is not covered by the Bagley-Keene Act. Accordingly, that body can do its business without worrying about the notice and open meeting requirements of the Act. However, if it consists of three people, then it would qualify as an advisory committee subject to the requirements of the Act.

When a body authorizes or directs an individual to create a new body, that body is deemed to have been created by formal action of the parent body even if the individual makes all decisions regarding composition of the committee. The same result would apply where the individual states an intention to create an advisory body but seeks approval or ratification of that decision by the body.

Finally, the body will probably be deemed to have acted by formal action whenever the chair of the body, acting in his or her official capacity, creates an advisory committee. Ultimately, unless the advisory committee is created by staff or an individual board member, independent of the body's authorization or desires, it probably should be viewed as having been created by formal action of the body.

■ **Delegated Body**

The critical issue for this type of body is whether the committee exercises some power that has been delegated to it by another body. If the body has been delegated the power to act, it is a delegated committee. (§ 11121(b).) A classic example is the executive committee that is given authority to act on behalf of the entire body between meetings. Such executive committees are delegated committees and are covered by the requirements of the Act.

There is no specific size requirement for the delegated body. However, to be a body, it still must be comprised of multiple members. Thus, a single individual is not a delegated body.

■ **Commissions Created by the Governor**

The Act specifically covers commissions created by executive order. (§ 11121(a).) That leaves open two potential issues for resolution with respect to this type of body. First, what's an executive order as opposed to other exercises of power by the Governor? Second, when is a body a "commission" within the meaning of this provision? There is neither case law nor an Attorney General opinion addressing either of these issues in this context.

■ **Body Determined by Membership**

The next kind of body is determined by who serves on it. Under this provision, a body becomes a state body when a member of a state body, in his or her official capacity, serves as a representative on another body, either public or private, which is funded in whole or in part by the representative's state body. (§ 11121(d).) It does not come up often, but the Act should be consulted whenever a member of one body sits as a representative on another body.

In summary, the foregoing are the general types of bodies that are defined as state bodies under the Bagley-Keene Act. As will be discussed below, these bodies are subject to the notice and open meeting requirements of the Act.

**MEMBERS-TO-BE**

The open meeting provisions of the Act basically apply to new members at the time of their election or appointment, even if they have not yet started to serve. (§ 11121.95.) The purpose of this provision is to prevent newly appointed members from meeting secretly among themselves or with holdover members of a body in sufficient numbers so as to constitute a quorum. The Act also requires bodies to provide their new members with a copy of the Act. (§ 11121.9.) We recommend that this Handy Guide be used to satisfy that requirement.

## **WHAT IS A MEETING?**

The issue of what constitutes a meeting is one of the more troublesome and controversial issues under the Act. A meeting occurs when a quorum of a body convenes, either serially or all together, in one place, to address issues under the body's jurisdiction. (§ 11122.5.) Obviously, a meeting would include a gathering where members were debating issues or voting on them. But a meeting also includes situations in which the body is merely receiving information. To the extent that a body receives information under circumstances where the public is deprived of the opportunity to monitor the information provided, and either agree with it or challenge it, the open-meeting process is deficient.

Typically, issues concerning the definition of a meeting arise in the context of informal gatherings such as study sessions or pre-meeting get-togethers. The study session historically arises from the body's desire to study a subject prior to its placement on the body's agenda. However, if a quorum is involved, the study session should be treated as a meeting under the Act. With respect to pre-meeting briefings, this office opined that staff briefings of the city council a half hour before the noticed city council meeting to discuss the items that would appear on the council's meeting agenda were themselves meetings subject to open meeting laws.<sup>2</sup> To the extent that a briefing is desirable, this office recommends that the executive officer prepare a briefing paper which would then be available to the members of the body, as well as, to the public.

### ■ **Serial Meetings**

The Act expressly prohibits the use of direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body outside of an open meeting. (§ 11122.5(b).) Typically, a serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members. For example, a chain of communications involving contact from member A to member B who then communicates with member C would constitute a serial meeting in the case of a five-person body. Similarly, when a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred. In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues. For example, when a representative of member A meets with representatives of members B and C to discuss an agenda item, the members have conducted a serial meeting through their representatives acting as intermediaries.

---

<sup>2</sup>42 Ops.Cal.Atty.Gen. 61 (1963); see also 32 Ops.Cal.Atty.Gen. 240 (1958).



In the *Stockton Newspapers* case, the court concluded that a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting.<sup>3</sup> In that case, the attorney individually polled the members of the body for their approval on a real estate transaction. The court concluded that even though the meeting was conducted in a serial fashion, it nevertheless was a meeting for the purposes of the Act.

An executive officer may receive spontaneous input from board members on the agenda or on any other topic. But problems arise if there are systematic communications through which a quorum of the body acquires information or engages in debate, discussion, lobbying, or any other aspect of the deliberative process, either among themselves or between board members and the staff.

Although there are no cases directly on point, if an executive officer receives the same question on substantive matters addressed in an upcoming agenda from a quorum of the body, this office recommends that a memorandum addressing these issues be provided to the body and the public so they will receive the same information.

This office has opined that under the Brown Act (the counterpart to the Bagley-Keene Act which is applicable to local government bodies) that a majority of the board members of a local public agency may not e-mail each other to discuss current topics related to the body's jurisdiction even if the e-mails are also sent to the secretary and chairperson of the agency, posted on the agency's Internet website, and made available in printed form at the next public meeting of the board.<sup>4</sup>

The prohibition applies only to communications employed by a quorum to develop a collective concurrence concerning action to be taken by the body. Conversations that advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members, or advance the ultimate resolution of an issue, are all examples of communications that contribute to the development of a concurrence as to action to be taken by the body. Accordingly, with respect to items that have been placed on an agenda or that are likely to be placed upon an agenda, members of state bodies should avoid serial communications of a substantive nature that involve a quorum of the body.

In conclusion, serial meeting issues will arise most commonly in connection with rotating staff briefings, telephone calls or e-mail communications among a quorum of board members. In these situations, part of the deliberative process by which information is received and processed, mulled over and discussed, is occurring without participation of the public.

Just remember, serial-meeting provisions basically mean that what the body can not do as a group it can not do through serial communications by a quorum of its members.

---

<sup>3</sup>*Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 105. See also, 65 Ops.Cal.Atty.Gen. 63, 66 (1982); 63 Ops.Cal.Atty.Gen. 820, 828-829 (1980).

<sup>4</sup> Cal.Atty.Gen., Indexed Letter, No. IL 00-906 (February 20, 2001).

### ■ Contacts by the Public

One of the more difficult areas has to do with the rights of the public to contact individual members. For example, a communication from a member of the public to discuss an issue does not violate the Act. (§ 11122.5(c)(1).) The difficulty arises when the individual contacts a quorum of the body.

So long as the body does not solicit or orchestrate such contacts, they would not constitute a violation of the Bagley-Keene Act. Whether its good policy for a body to allow these individual contacts to occur is a different issue.

### ■ Social Gatherings

The Act exempts purely social situations from its coverage. (§ 11122.5(c)(5).) However, this construction is based on the premise that matters under the body's jurisdiction will not be discussed or considered at the social occasion. It may be useful to remind board members to avoid "shop talk" at the social event. Typically, this is difficult because service on the body is their common bond.

### ■ Conferences and Retreats

Conferences are exempt from the Act's coverage so long as they are open to the public and involve subject matter of general interest to persons or bodies in a given field. (§ 11122.5(c)(2).) While in attendance at a conference, members of a body should avoid private discussions with other members of their body about subjects that may be on an upcoming agenda. However, if the retreat or conference is designed to focus on the laws or issues of a particular body it would not be exempt under the Act.

### ■ Teleconference Meetings

The Act provides for audio or audio and visual teleconference meetings for the benefit of the public and the body. (§ 11123.) When a teleconference meeting is held, each site from which a member of the body participates must be accessible to the public. [Hence, a member cannot participate from his or her car, using a car phone or from his or her home, unless the home is open to the public for the duration of the meeting.] All proceedings must be audible and votes must be taken by rollcall. All other provisions of the Act also apply to teleconference meetings. For these reasons, we recommend that a properly equipped and accessible public building be utilized for teleconference meetings. This section does not prevent the body from providing additional locations from which the public may observe the proceedings or address the state body by electronic means.

## **NOTICE AND AGENDA REQUIREMENTS**

The notice and agenda provisions require bodies to send the notice of its meetings to persons who have requested it. (§ 11125(a).) In addition, at least ten days prior to the meeting, bodies must

prepare an agenda of all items to be discussed or acted upon at the meeting. (§ 11125(b).) In practice, this usually translates to boards and commissions sending out the notice and agenda to all persons on their mailing lists. The notice needs to state the time and the place of the meeting and give the name, phone number and address of a contact person who can answer questions about the meeting and the agenda. (§ 11125(a).) The agenda needs to contain a brief description of each item to be transacted or discussed at the meeting, which as a general rule need not exceed 20 words in length. (§ 11125(b).)

The agenda items should be drafted to provide interested lay persons with enough information to allow them to decide whether to attend the meeting or to participate in that particular agenda item. Bodies should not label topics as “discussion” or “action” items unless they intend to be bound by such descriptions. Bodies should not schedule items for consideration at particular times, unless they assure that the items will not be considered prior to the appointed time.

The notice and agenda requirements apply to both open and closed meetings. There is a tendency to think that agendas need not be prepared for closed session items because the public cannot attend. But the public’s ability to monitor closed sessions directly depends upon the agenda requirement which tells the public what is going to be discussed.

### **REGULAR MEETINGS**

The Act, itself, does not directly define the term “regular meeting.” Nevertheless, there are several references in the Act concerning regular meetings. By inference and interpretation, the regular meeting is a meeting of the body conducted under normal or ordinary circumstances. A regular meeting requires a 10-day notice. This simply means that at least 10 days prior to the meeting, notice of the meeting must be given along with an agenda that sufficiently describes the items of business to be transacted or discussed. (§§ 11125(a), 11125(b).) The notice for a meeting must also be posted on the Internet, and the web site address must be included on the written agenda. In addition, upon request by any person with a disability, the notice must be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the applicable federal rules and regulations. The notice must contain information regarding the manner in which and the deadline by which a request for any disability-related modification or accommodation, including auxiliary aids or services, may be made by a person requiring these aids or services in order to participate in the meeting.

In two special situations, items may be added to the agenda within the 10-day notice period, provided that they are added and notice is given no later than 48 hours prior to the meeting. (§ 11125.) The first such situation is where the body concludes that the topic it wishes to add would qualify for an emergency meeting as defined in the Act. (§ 11125.3(a)(1).) The second situation is where there is a need for immediate action and the need for action came to the attention of the body after the agenda was mailed in accordance with the 10-day notice requirement. (§ 11125.3(a)(2).) This second situation requires a two-thirds vote or a unanimous vote if two-thirds of the members are not present.

Changes made to the agenda under this section must be delivered to the members of the body and to national wires services at least 48 hours before the meeting and must be posted on the Internet as soon as practicable.

### **SPECIAL MEETINGS**

A few years ago, special meetings were added to the Act to provide relief to agencies that, due to the occurrence of unforeseen events, had a need to meet on short notice and were hamstrung by the Act's 10-day notice requirement. (§ 11125.4.) The special meeting requires that notice be provided at least 48 hours before the meeting to the members of the body and all national wire services, along with posting on the Internet.

The purposes for which a body can call a special meeting are quite limited. Examples include pending litigation, legislation, licencing matters and certain personnel actions. At the commencement of the special meeting, the body is required to make a finding that the 10-day notice requirement 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 the finding. The finding must be adopted by two-thirds vote and must contain articulable facts that support it. If all of these requirements are not followed, then the body can not convene the special meeting and the meeting must be adjourned.

### **EMERGENCY MEETINGS**

The Act provides for emergency meetings in rare instances when there exists a crippling disaster or a work stoppage that would severely impair public health and safety. (§ 11125.5.) An emergency meeting requires a one-hour notice to the media and must be held in open session. The Act also sets forth a variety of other technical procedural requirements that must be satisfied.

### **PUBLIC PARTICIPATION**

Since one of the purposes of the Act is to protect and serve the interests of the general public to monitor and participate in meetings of state bodies, bodies covered by the Act are prohibited from imposing any conditions on attendance at a meeting. (§ 11124.) For example, while the Act does not prohibit use of a sign-in sheet, notice must be clearly given that signing-in is voluntary and not a pre-requisite to either attending the meeting or speaking at the meeting. On the other hand, security measures that require identification in order to gain admittance to a government building are permitted so long as security personnel do not share the information with the body.

In addition, members of the public are entitled to record and to broadcast (audio and/or video) the meetings, unless to do so would constitute a persistent disruption. (§ 11124.1.)

To ensure public participation, the Legislature expressly afforded an opportunity to the public to speak or otherwise participate at meetings, either before or during the consideration of each agenda item. (§11125.7.) The Legislature also provided that at any meeting the body can elect to consider comments from the public on any matter under the body's jurisdiction. And while the body cannot act on any matter not included on the agenda, it can schedule issues raised by the public for consideration at future meetings. Public comment protected by the Act includes criticism of the programs, policies and officials of the state body.

### **ACCESS TO RECORDS**

Under the Act, the public is entitled to have access to the records of the body. (§ 11125.1.) In general, a record includes any form of writing. When materials are provided to a majority of the body either before or during the meeting, they must also be made available to the public without delay, unless the confidentiality of such materials is otherwise protected. Any records provided to the public, must be available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the applicable federal rules and regulations, upon request by a person with a disability.

Notwithstanding the foregoing, the Act makes Government Code section 6254, the most comprehensive exemption under the California Public Records Act, applicable to records provided to the body. That is, if the record that is being provided to the board members is a record that is otherwise exempt from disclosure under section 6254 of the Government Code, then the record need not be disclosed to members of the public. (§ 11125.1(a).) However, the public interest balancing test, set forth in Government Code section 6255, is expressly made inapplicable to records provided to members of the body.

If an agency has received a request for records, the Public Records Act allows the agency to charge for their duplication. (§ 11125.1(c).) Please be aware that the Public Records Act limits the amount that can be charged to the direct cost of duplication. This has been interpreted to mean a pro-rata share of the equipment cost and probably a pro-rata share of the employee cost in order to make the copies. It does not include anything other than the mere reproduction of the records. (See, § 6253.9 for special rules concerning computer records.) Accordingly, an agency may not recover for the costs of retrieving or redacting a record.

### **ACCESSABILITY OF MEETING LOCATIONS**

The Act requires that the place and manner of the meeting be nondiscriminatory. (§ 11131.) As such, the body cannot discriminate on the basis of race, religion, national origin, etc. The meeting site must also be accessible to the disabled. Furthermore, the agency may not charge a fee for attendance at a meeting governed by the Act.

## **CLOSED SESSIONS**

Although, as a general rule, all items placed on an agenda must be addressed in open session, the Legislature has allowed closed sessions in very limited circumstances, which will be discussed in detail below. Closed sessions may be held legally only if the body complies with certain procedural requirements. (§ 11126.3)

As part of the required general procedures, the closed session must be listed on the meeting agenda and properly noticed. (§ 11125(b).) Prior to convening into closed session, the body must publically announce those issues that will be considered in closed session. (§ 11126.3.) This can be done by a reference to the item as properly listed on the agenda. In addition, the agenda should cite the statutory authority or provision of the Act which authorizes the particular closed session. (§11125(b).) After the closed session has been completed, the body is required to reconvene in public. (§ 11126.3(f).) However, the body is required to make a report only where the body makes a decision to hire or fire an individual. (§ 11125.2.) Bodies under the Bagley-Keene Act are required to keep minutes of their closed sessions. (§ 11126.1.) Under the Act, these minutes are confidential, and are disclosable only to the board itself or to a reviewing court.

Courts have narrowly construed the Act's closed-session exceptions. For example, voting by secret ballot at an open-meeting is considered to be an improper closed session. Furthermore, closed sessions may be improperly convened if they are attended by persons other than those directly involved in the closed session as part of their official duties.

### ■ **Personnel Exception**

The personnel exception generally applies only to employees. (§ 11126(a) and (b).) However, a body's appointment pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution (usually the body's executive director) has been designated an employee for purposes of the personnel exception. On the other hand, under the Act, members of the body are not to be considered employees, and there exists no personnel exception or other closed session vehicle for board members to deal with issues that may arise between them. Board elections, team building exercises, and efforts to address personality problems that may arise between members of the board, cannot be handled in closed session.

Only certain categories of subject matter may be considered at a closed session authorized under the personnel exception. (§ 11126(a)(1).) The purpose of the personnel exception is to protect the privacy of the employee, and to allow the board members to speak candidly. It can be used to consider appointments, employment, evaluation of performance, discipline or dismissal, as well as to hear charges or complaints about an employee's actions. Although the personnel exception is appropriate for discussion of an employee's competence or qualifications for appointment or employment, we do not think that discussion of employee compensation may be conducted in closed

session in light of an appellate court decision interpreting a similar exception in the Brown Act, (the counterpart to the Bagley-Keene Act which is applicable to local government bodies).<sup>5</sup>

The Act requires compliance with specific procedures when the body addresses a complaint leveled against an employee by a third person or initiates a disciplinary action against an employee. Under either circumstance, the Act requires 24-hour written notice to the employee. (§ 11126(a)(2).) Failure to provide such notice voids any action taken in closed session.

Upon receiving notice, the employee has the right to insist that the matter be heard in public session. (§ 11126(a)(2).) However, the opposite is not true. Under the Act, an employee has no right to have the matter heard in closed session. If the body decides to hold an open session, the Bagley-Keene Act does not provide any other option for the employee. Considerations, such as the employee's right to privacy, are not addressed under the Bagley-Keene Act.

If an employee asserts his or her right to have the personnel matter addressed in open session, the body must present the issues and information/evidence concerning the employee's performance or conduct in the open session. However, the body is still entitled to conduct its deliberations in closed session. (§ 11126(a)(4).)

■ **Pending Litigation Exception**

The purpose of the pending litigation exception is to permit the agency to confer with its attorney in circumstances where, if that conversation were to occur in open session, it would prejudice the position of the agency in the litigation. (§ 11126(e)(1).) The term "litigation" refers to an adjudicatory proceeding that is held in either a judicial or an administrative forum. (§11126(e)(2)(c)(iii).) For purposes of the Act, litigation is "pending" in three basic situations. (§11126(e)(2).) First, where the agency is a party to existing litigation. Secondly, where under existing facts and circumstances, the agency has substantial exposure to litigation. And thirdly, where the body is meeting for the purpose of determining whether to initiate litigation. All of these situations constitute pending litigation under the exception.

For purposes of the Bagley-Keene Act, the pending litigation exception constitutes the exclusive expression of the attorney-client privilege. (§ 11126(e)(2).) In general, this means that independent statutes and case law that deal with attorney-client privilege issues do not apply to interpretations of the pending litigation provision of the Bagley-Keene Act. Accordingly, the specific language of the Act must be consulted to determine what is authorized for discussion in closed session.

Because the purpose of the closed session exception is to confer with legal counsel, the attorney must be present during the entire closed session devoted to the pending litigation. The Act's pending litigation exception covers both the receipt of advice from counsel and the making of

---

<sup>5</sup>*San Diego Union v. City Council* (1983) 146 Cal.App.3d 947.

litigation decisions (e.g., whether to file an action, and if so, what approach should be taken, whether settlement should be considered, and if so, what the settlement terms should be.

What happens in a situation where a body desires legal advice from counsel, but the Act's pending litigation exception does not apply? In such a case, legal counsel can either (1) provide the legal advice orally and discuss it in open session; or (2) deliver a one-way legal advice memorandum to the board members. The memorandum would constitute a record containing an attorney-client privileged communication and would be protected from disclosure under section 6254(k) of the Public Records Act. (11125.1(a).) However, when the board members receive that memorandum, they may discuss it only in open session, unless there is a specific exception that applies which allows them to consider it in closed session.<sup>6</sup>

■ **Deliberations Exception**

The purpose of the deliberations exception is to permit a body to deliberate on decisions in a proceeding under the Administrative Procedures Act, or under similar provisions of law, in closed session. (§ 11126(c)(3).)

■ **Real Property Exception**

Under the Act, the real-property exception provides that the body can, in closed session, advise its negotiator in situations involving real estate transactions and in negotiations regarding price and terms of payment. (§ 11126(c)(7).) However, before meeting in closed session, the body must identify the specific parcel in question and the party with whom it is negotiating. Again, the Act requires that the body properly notice its intent to hold a closed session and to cite the applicable authority enabling it to do so.

■ **Security Exception**

A state body may, upon a two-thirds vote of those present, conduct a closed session to consider matters posing a potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could adversely affect their safety or security. (11126(c)(18).) After such a closed session, the state body must reconvene in open session prior to adjournment and report that a closed session was held along with a description of the general nature of the matters considered, and whether any action was taken in closed session.

Whenever a state body utilizes this closed session exception, it must also provide specific written notice to the Legislative Analyst who must retain this information for at least four years. (11126(c)(18)(D).) This closed session exception will sunset in 2006. (11126(h).)

---

<sup>6</sup>*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 381.



## **REMEDIES FOR VIOLATIONS**

The Act provides for remedies and penalties in situations where violations have allegedly occurred. Depending on the particular circumstances, the decision of the body may be overturned (§ 11130.3), violations may be stopped or prevented (§ 11130), costs and fees may be awarded (§11130.5), and in certain situations, there may be criminal misdemeanor penalties imposed as well. (§ 11130.7.)

Within 90 days of a decision or action of the body, any interested person may file suit alleging a violation of the Act and seeking to overturn the decision or action. Among other things, such suit may allege an unauthorized closed session or an improperly noticed meeting. Although the body is permitted to cure and correct a violation so as to avoid having its decision overturned, this can be much like trying to put toothpaste back in the tube. If possible, the body should try to return to a point prior to when the violation occurred and then proceed properly. For example, if the violation involves improper notice, we recommend that the body invalidate its decision, provide proper notice, and start the process over. To the extent that information has been received, statements made, or discussions have taken place, we recommend that the body include all of this on the record to ensure that everyone is aware of these events and has had an opportunity to respond.

In certain situations where a body has violated the Act, the decision can not be set aside or overturned; namely, where the action taken concerns the issuance of bonds, the entering into contracts where there has been detrimental reliance, the collection of taxes, and, in situations where there has been substantial compliance with the requirements of the Act. (11130.3(b).)

Another remedy in dealing with a violation of the Act involves filing a lawsuit to stop or prevent future violations of the Act. (§ 11130.) In general, these legal actions are filed as injunctions, writs of mandates, or suits for declaratory relief. The Legislature has also authorized the Attorney General, the District Attorney or any other interested person to use these remedies to seek judicial redress for past violations of the Act.

A prevailing plaintiff may recover the costs of suit and attorney's fees from the body (not individual members). (§ 11130.5.) On the other hand, if the body prevails, it may recover attorney's fees and costs only if the plaintiff's suit was clearly frivolous and totally without merit.

The Act provides for misdemeanor penalties against individual members of the body if the member attends a meeting in violation of the Act with the intent to deprive the public of information to which he or she knows, or has reason to know, the public is entitled to receive. (§ 11130.7.)

**THE BAGLEY-KEENE OPEN MEETING ACT**

**Government Code Sections 11120-11132**  
**(January 2004)**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
§ 11120. Policy statement; requirement for open meetings	17
§ 11121. State body	17
§ 11121.1. State body; exceptions	18
§ 11121.9. Requirement to provide law to members	18
§ 11121.95. Application to persons who have not assumed office	18
§ 11122. Action taken; defined	18
§ 11122.5. Meeting defined; exceptions	19
§ 11123. Requirement for open meetings; teleconference meetings	20
§ 11123.1. Compliance with the ADA	21
§ 11124. No conditions for attending meetings	21
§ 11124.1. Right to record meetings	21
§ 11125. Required notice	21
§ 11125.1. Agenda; writings provided to body; public records	22
§ 11125.2. Announcement of personnel action	24
§ 11125.3. Exception to agenda requirements	24
§ 11125.4. Special meetings	24
§ 11125.5. Emergency meetings	25

§ 11125.6.	Emergency meetings; Fish and Game Commission	26
§ 11125.7.	Opportunity for public to speak at meeting	27
§ 11125.8.	Closed session; Board of Control; crime victims	28
§ 11125.9.	Regional water quality control boards; additional notice requirements	28
§ 11126.	Closed sessions	29
§ 11126.1.	Minutes; availability	35
§ 11126.3.	Required notice for closed sessions	35
§ 11126.5.	Removal of disruptive persons	36
§ 11126.7.	Charging fees prohibited	36
§ 11127.	State bodies covered	37
§ 11128.	Time restrictions for holding closed sessions	37
§ 11128.5.	Adjournment	37
§ 11129.	Continuation of meeting; notice requirement	37
§ 11130.	Legal remedies to stop or prohibit violations of act	37
§ 11130.3.	Cause of action to void action	39
§ 11130.5.	Court costs; attorney's fees	39
§ 11130.7.	Violation; misdemeanor	39
§ 11131.	Prohibited meeting facilities; discrimination	39
§ 11131.5.	Required notice; exemption for name of victim	40
§ 11132.	Closed sessions; express authorization required	40

# THE BAGLEY-KEENE OPEN MEETING ACT

## Government Code Sections 11120-11132

### § 11120. Policy statement; requirement for open meetings

11120. It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

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

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

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

### § 11121. State body

11121. As used in this article, "state body" means each of the following:

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

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

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

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

**§ 11121.1. State body; exceptions**

11121.1. As used in this article, “state body” does not include any of the following:

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

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

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

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

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

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

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

**§ 11121.9. Requirement to provide law to members**

11121.9. Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

**§ 11121.95. Application to persons who have not assumed office**

11121.95. 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.

**§ 11122. Action taken; defined**

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

## **§ 11122.5. Meeting defined; exceptions**

11122.5. (a) As used in this article, “meeting” includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

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

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

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

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

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

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

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

**§ 11123. Requirement for open meetings; teleconference meetings**

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

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

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

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

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

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

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

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

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

### **§ 11123.1. Compliance with the ADA**

11123.1. All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

### **§ 11124. No conditions for attending meetings**

11124. No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance. If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

#### **§ 11124.1. Right to record meetings**

11124.1. (a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

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

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

### **§ 11125. Required notice**

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.



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

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

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

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

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

#### **§ 11125.1. Agenda; writings provided to body; public records**

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the

meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

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

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

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

(3) Made available on the Internet.

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

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

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

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

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

### **§ 11125.2. Announcement of personnel action**

11125.2. Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

### **§ 11125.3. Exception to agenda requirements**

11125.3. (a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

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

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

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

### **§ 11125.4. Special meetings**

11125.4. (a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

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

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

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

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

(6) To consider license examinations and applications.

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

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

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

#### **§ 11125.5. Emergency meetings**

11125.5. (a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

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

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

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

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

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

#### **§ 11125.6. Emergency meetings; Fish and Game Commission**

11125.6. (a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

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

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

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

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

### **§ 11125.7 Opportunity for public to speak at meeting**

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

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

(c) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

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

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

(f) This section is not applicable to hearings conducted by the State Board of Control pursuant to Sections 13963 and 13963.1.

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

**§ 11125.8. Closed session; Board of Control; crime victims**

11125.8. (a) Notwithstanding Section 11131.5, in any hearing that the State Board of Control conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

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

**§ 11125.9. Regional water quality control boards; additional notice requirements**

11125.9. Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

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

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

## **§ 11126. Closed sessions**

11126. (a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

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

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

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

(b) For the purposes of this section, “employee” does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

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

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

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



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

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

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

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

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

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

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

(D) For purposes of this paragraph, “lease” includes renewal or renegotiation of a lease.

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

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

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

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by

law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

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

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

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

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

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

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

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

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

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

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

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

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

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

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

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

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

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

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

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

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

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

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

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

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

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the California Board of Accountancy pursuant to

Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

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

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

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

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

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

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

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

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

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

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

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

(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

### **§ 11126.1. Minutes; availability**

11126.1. The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

### **§ 11126.3. Required notice for closed sessions**

11126.3. (a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

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

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

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

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

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

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

#### **§ 11126.5. Removal of disruptive persons**

11126.5. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

#### **§ 11126.7. Charging fees prohibited**

11126.7. No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

### **§ 11127. State bodies covered**

11127. Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

### **§ 11128. Time restrictions for holding closed sessions**

11128. Each closed session of a state body shall be held only during a regular or special meeting of the body.

#### **§ 11128.5. Adjournment**

11128.5. The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

### **§ 11129. Continuation of meeting; notice requirement**

11129. Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

### **§ 11130. Legal remedies to stop or prohibit violations of act**

11130. (a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this



article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to tape record its closed sessions as hereinafter provided.

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

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

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

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

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

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

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

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

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

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

### **§ 11130.3. Cause of action to void action**

11130.3. (a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

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

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

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

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

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

### **§ 11130.5. Court costs; attorney's fees**

11130.5. A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof. A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

### **§ 11130.7. Violation; misdemeanor**

11130.7. Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

### **§ 11131. Prohibited meeting facilities; discrimination**

11131. No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. As used in this section,

“state agency” means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

**§ 11131.5. Required notice; exemption for name of victim**

11131.5. No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

**§ 11132. Closed sessions; express authorization required**

11132. Except as expressly authorized by this article, no closed session may be held by any state body.

# Department of Consumer Affairs Travel Guide

---

## Office of Administrative Services Accounts Payable Travel Unit



November 2020

---

**Disclaimer:** *Bargaining Contracts, California Department of Human Resources (CalHR), Departmental Policy and the State Administrative Manual (SAM) sets forth the information contained in this Travel Guide. If any of the information within conflicts with the most recent provisions set forth by the said mentioned above, then those provisions will supersede this Travel Guide. Information provided in this Travel Guide is routinely updated by various control agencies. The traveler or user of this Travel Guide must always make sure they have the most current information. Click on the web links to view the most current information.*

---

## Table of Contents

<b>Chapter 1: Introduction and Definitions</b> .....	<b>1</b>
Introduction .....	1
Who can file a claim? .....	1
Terms.....	2
Policies.....	2
<b>Chapter 2. Per Diem Allowances</b> .....	<b>5</b>
Introduction .....	5
Lodging Rates .....	6
Hotel Tax Waiver .....	7
Acceptable Receipts .....	7
Sharing a Room .....	7
Meal Rates.....	7
Fewer Than 24 Hours .....	8
More Than 24 Hours .....	8
Incidentals.....	9
Business-Related Meals .....	9
Receipts .....	9
Overtime Meals and Rates.....	9
Definitions .....	10
Arduous Work OT Meal* .....	10
Excess Lodging Policy and Procedure.....	10
Reasonable Accommodation .....	11
Exception to Travel Status Policy.....	11
Exception Authority, Limits, and Criteria .....	11
Exception Process .....	12
<b>Chapter 3. Transportation.</b> .....	<b>13</b>
Introduction .....	13
Supervisor’s Responsibility .....	13
Determining the Most Economical Mode of Travel.....	14
Cost Comparison .....	14

Example of Cost Comparison .....	15
Reimbursement.....	15
Exception .....	15
Direct and Indirect Travel Arrangements .....	15
Air Travel.....	16
Airport Parking .....	16
Non-Employee Reservations (Airfare and Lodging).....	17
Frequent Flyer Programs .....	17
Receipts .....	17
Privately Owned Aircraft Usage SAM 0743 and 0746 .....	18
State-Owned, Privately Owned, and Commercially Owned Rental Vehicle Use.....	18
Commercial Rental Cars .....	19
Car Rental Reservation Information .....	19
Private Vehicle Authorization and Use .....	22
Mileage Rate Reimbursement.....	22
Alternate Worksite Mileage .....	23
Airport Dropoff.....	23
Motor Vehicle Accident Reporting.....	23
Overtime and Callback Mileage .....	23
State Vehicle Emergency Repairs .....	23
Taxis and Shuttles .....	24
Uber and Lyft .....	24
Parking and Tolls (SAM section 0755).....	24
Commuting Transit and Vanpool .....	24
<b>CHAPTER 4. BUSINESS EXPENSES AND RECEIPTS.....</b>	<b>25</b>
Business Expenses .....	25
Valid Receipts .....	26
Required Receipts.....	26
Receipts Not Required.....	27
Lost Receipts .....	27
Odd-Size Receipts .....	27

<b>Chapter 5. Reportable Tax Items.....</b>	<b>27</b>
Introduction .....	27
Reportable Items.....	28
Reportable Withholdings .....	28
Capturing Reportable Items .....	29
<b>Chapter 6. Out-of-State, Out-of-Country, and Amended Claims. ....</b>	<b>30</b>
Introduction .....	30
Out-of-State Travel (OST).....	30
Out-of-Country Travel .....	31
Amended Claims.....	31
<b>Chapter 7. Travel and Evidence Advances. ....</b>	<b>32</b>
Travel Advances .....	32
<b>Chapter 8. Filing Requirements. ....</b>	<b>33</b>
Claim Form and Correction Instructions.....	33
When to Submit Travel Expense Claims.....	34
Required Information .....	34
<b>Chapter 9. Completing a Travel Expense Claim. ....</b>	<b>35</b>
Introduction .....	35
Employee Information .....	35
Trip Information, Miscellaneous Information and Justifications, and Authorized Signatures.....	36
<b>Appendix.....</b>	<b>37</b>
Resource Materials .....	37
Useful Websites and Addresses .....	38
List of Related Forms.....	38

# Chapter 1: Introduction and Definitions

## Introduction

The purpose of the Department of Consumer Affairs Travel Guide (Guide) is to provide and define the basic travel reimbursement rules for employees who are required to travel on official State business, methods of travel that are available, and how to use them, in accordance with the State Bargaining Contracts, California Department of Human Resources (CalHR) travel rules for state officers and employees pursuant to Sections 599.615 through 599.638.1 of Article 2 of Subchapter 1 of Chapter 3 of Division 1 of Title 2 of the California Code of Regulations, and the *State Administrative Manual (SAM)*, Chapter 700. If any of the information herein conflicts with the most recent provisions set forth by the bargaining contracts or legal provisions cited above, then those provisions will supersede this Guide. In addition, information provided in this Guide is routinely updated by various control agencies. The traveler or user of this Guide must always make sure they have the most current information.

Note: The travel reimbursement program is subject to Internal Revenue Service (IRS) requirements. There are no flat reimbursement rates. All items claimed must be for the actual amount of the expense, up to the maximum rates allowed for all State officers, employees, and agents of the State traveling on official State business.

## Who can file a claim?

All Department of Consumer Affairs (DCA and/or Department) employees and any agent of the State (listed below) may request a travel advance and/or travel reimbursement using the appropriate Department forms and the CalATERS Global System. Certain restrictions may apply (see reference-related section for specific requirements).

Statutory Board Members are individuals appointed to serve on boards or commissions established by law. Members are appointed by the Governor, Legislature, or Department Head. Reimbursement for necessary travel expenses is based on the rates for non-represented employees.

Non-statutory Board Members are individuals appointed to serve on boards, commissions, committees, or task forces that are created by agency secretaries, department directors, executive officers, or board members on an as-needed basis to fulfill the Department's mission. Reimbursement for necessary travel expenses is based on the rates for non-represented employees.

Proctors are intermittent hires through the State Personnel Board. Proctors administer written or physical agility exams for civil service classification. Reimbursement for necessary travel expenses is based on the rates for non-represented employees.



Volunteers are individuals who voluntarily perform services for the State without pay. The volunteer must sign an Oath of Allegiance, which is kept on file at the Department with the Volunteer Service Agreement. Volunteers will be reimbursed for necessary travel expenses at the rate negotiated for State employees performing comparable duties.

## **Terms**

Short-Term Travel: Expenses incurred at least 50 miles (one-way) from headquarters and/or residence when applicable and is fewer than 31 consecutive days.

Long-Term Travel: Travel that is in excess of 30 consecutive days becomes long-term travel. Specific reimbursement rates and reporting requirements apply; contact your Travel Liaison.

Per Diem Expenses: Meals, lodging, and all appropriate incidental expenses incurred may be claimed when conducting State business while on travel status.

Transportation Expenses: Various modes of transportation used while on official State business; for example, airfare, vehicle, taxi, and shuttle expenses.

Business Expenses: Charges necessary to the completion of official State business, such as business phone calls, emergency clothing, and emergency supplies. All purchases shall be justified, and if the total business expense is more than \$25, the claim must be approved by the DCA Accounting Administrator II.

Conference or Convention: A meeting with a formal agenda of persons to discuss or consult on specific work-related subjects with the purpose of exchanging views, providing lectures or dialogue, or providing or gaining skills and/or information for the good of the State. Requires an approved conference attendance request prior to attending and must be attached to the [Travel Expense Claim \(TEC\) \(STD 262 A\)](#).

Non-State Sponsored Conference: Planned, arranged, and funded by an outside entity.

State-Sponsored Conference: Planned, arranged, and funded by State agencies for the benefit of the State and/or outside parties for the purpose of conducting State business.

## **Policies**

Official Established Headquarters: Shall be designated for each State officer and employee and defined as the place where the officer or employee spends the largest portion of their regular workdays or working time, or the place to which they return upon completion of special assignments. In some instances, however, it may be in the best interest of the Department to designate either an employee's residence address or an assigned geographic area as their headquarters. Home-as-headquarters and

geographic area designations will be based upon a determination of “economic merit” for geographic and logistical circumstances where the State benefits from such a determination, either in increased efficiencies or reduced costs.

**Signature Authority:** The signature of the approving officer certifies that the traveler is authorized to travel, the expenses incurred were to conduct official State business, and that the items claimed are appropriate and keeping within the rules that govern State business travel. Typically, the approving officer would be the traveling employee’s immediate supervisor.

### Travel Approvals (Updated May 2020)

Type of Travel	Who Must Approve?	Date to DCA	Forms Required	Submittal Recipient/ Questions
Conference Attendance	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Deputy Director of Administrative Services</li> </ul>	One month prior to travel	<ul style="list-style-type: none"> <li>• <a href="#">Conference Attendance Request</a></li> <li>• Conference Agenda</li> <li>• Bulleted Memo</li> <li>• All documents supporting the necessity &amp; mission criticality of the travel</li> <li>• EO or AEO signature required</li> </ul>	<p><b>Natalie Daniel</b> Deputy Director Administrative Services (916) 574-8301 <a href="mailto:Natalie.Daniel@dca.ca.gov">Natalie.Daniel@dca.ca.gov</a></p>
Mission Critical In-State Travel	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> </ul>	<p style="text-align: center;">N/A</p> <p style="text-align: center;"><i>Delegated Authority; Not Submitted to DCA for Approval</i></p>	<ul style="list-style-type: none"> <li>• Approvers retain:               <ul style="list-style-type: none"> <li>- Bulleted Memo</li> <li>- Agendas and all documents supporting the necessity and mission criticality of the travel</li> <li>- EO, Bureau Chief or Deputy Director approval signatures</li> </ul> </li> </ul> <p style="text-align: center;"><i>NOTE: If the travel is in-state and to a conference, the conference attendance process is to be followed.</i></p>	<p><b>Questions to Kam Khatra</b> Accounting Administrator (916) 574-7170 <a href="mailto:Kam.Khatra@dca.ca.gov">Kam.Khatra@dca.ca.gov</a></p>

Out-of-Country	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Budget Office</li> <li>• DCA Director</li> <li>• Agency Secretary</li> <li>• Governor's Office</li> </ul>	Three months prior to travel	<ul style="list-style-type: none"> <li>• Out-of-State Travel Memo Template</li> <li>• <a href="#">STD. 257 Approval Request Form</a></li> <li>• Cost Breakdown Document</li> <li>• Agendas and all documents supporting the necessity and mission criticality of the travel</li> <li>• EO signature required</li> </ul>	<p><b>Janice Shintaku-Enkoji</b> DCA Fiscal Officer (916) 574-7173 <a href="mailto:Janice.Shintaku-Enkoji@dca.ca.gov">Janice.Shintaku-Enkoji@dca.ca.gov</a></p> <p><b>Carrie Holmes</b> Deputy Director Board &amp; Bureau Services (916) 574-8214 <a href="mailto:Carrie.Holmes@dca.ca.gov">Carrie.Holmes@dca.ca.gov</a></p>
Out-of-State	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Budget Office</li> <li>• DCA Director</li> <li>• Agency Secretary</li> <li>• Governor's Office</li> </ul>	Two months prior to travel	<ul style="list-style-type: none"> <li>• Out-of-State Travel Memo Template</li> <li>• <a href="#">STD. 257 Approval Request Form</a></li> <li>• Cost Breakdown Document</li> <li>• Agendas and all documents supporting the necessity and mission criticality of the travel</li> <li>• EO signature required</li> </ul>	<p><b>Janice Shintaku-Enkoji</b> DCA Fiscal Officer</p> <p><b>Carrie Holmes</b> Deputy Director Board &amp; Bureau Services</p>
Travel Advance Exception Request	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Deputy Director Board &amp; Bureau Services</li> <li>• DCA Accounting Office</li> </ul>	10-days prior to travel	<ul style="list-style-type: none"> <li>• Advance approval in the CALATERS System (<b>Carrie Holmes</b>)</li> <li>• <a href="#">Travel Advance Exception Approval Request Form</a> (Kam Khatra)</li> </ul>	<p><b>Carrie Holmes</b> Deputy Director Board &amp; Bureau Services</p> <p><b>Kam Khatra</b> Accounting Administrator</p>
50-Mile Exemption Request	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Accounting Office</li> </ul>	10-days prior to travel	<ul style="list-style-type: none"> <li>• Bulleted Memo</li> <li>• Additional Detail: <ul style="list-style-type: none"> <li>- Start and end time of the meeting(s)</li> <li>- Mileage from traveler's house to the meeting site</li> <li>- Estimated Commute Time</li> </ul> </li> <li>• EO or AEO signature required</li> </ul>	<p><b>Kam Khatra</b> Accounting Administrator</p>

Excess Lodging Request	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Accounting Office</li> <li>• California Department of Human Resources (CalHR)</li> </ul>	10-days prior to travel	<ul style="list-style-type: none"> <li>• <a href="#">Excess Lodging Form</a></li> <li>• Three lodging quotes</li> <li>• Justification as to why the proposed lodging is needed</li> <li>• Traveler or manager's signature required</li> </ul> <p>Note: CalHR approval required for lodging over \$250.</p>	<b>Kam Khatra</b> Accounting Administrator
------------------------	---	-------------------------	--	---

The Deputy Director of Board Relations approves Board Presidents' [TECs](#). Once they have been reviewed and initialed by the Executive Officer, the Board President shall approve the Executive Officer's and the Board Members' travel claims. In the absence of the Board President, the Board Vice President shall approve the Executive Officer's and the Board Members' travel claims.

The Deputy Director of the Office of Administrative Services approves Bureau and Board Presidents', Bureau Chiefs', Division Chiefs', and Deputy Directors' travel advances, expense claims, conference requests, and authorized signature forms. The Deputy Director of the Office of Administrative Services also approves all exception-to-travel status for board and bureau and Travel Advance Requests for non-salaried employees. In the absence of the Board President, the Board Vice President shall approve the Executive Officers' and the Board Members' travel claims.

In the extended absence of either the Deputy Director of Board and Bureau Services or the Deputy Director of the Office of Administrative Services, either can approve the above for boards and bureaus.

All approving officers must have a signature card on file with the Accounting Office before approving a claim.

Note: See DCA policy, form, and procedures posted on the ["Accounting" page of the DCA Intranet](#) regarding authorized signatures.

## Chapter 2. Per Diem Allowances

### Introduction

The State provides for reimbursement of actual and necessary out-of-pocket expenses while traveling on State business. When determining the appropriate amount of reimbursement allowed for meals, lodging, and incidentals, two criteria need to be

considered: distance and time. Employees on travel status must be at least 50 miles from home and/or headquarters. The most direct route determines this distance.

For short-term travel status per diem (meals, lodging, and incidentals), several factors need to be considered, such as:

- The bargaining unit of the employee (represented or excluded).
- Geographical location of travel must be at least 50 miles (one-way) from where the trip begins at headquarters and/or home. Factors include: Which is the closest distance? Is travel during normal working hours or not? Is it a second worksite?
- The timeframe in which the trip started and stopped.
- The type and location of facilities used for lodging.

### Lodging Rates

Short-term reimbursement rates for lodging expenses are as follows. Please review your Bargaining Unit Contract on [CalHR](#) website for current rates.

<b>For Excluded/Exempt, BU 1 through BU 21</b>	
<b>Lodging</b>	<b>Reimbursement</b>
Statewide (except for those listed below)	\$90.00 plus taxes/resort fees on the entire cost of the lodging rate.
Napa, Riverside, and Sacramento Counties	\$95.00 plus taxes/resort fees on the entire cost of the lodging rate.
Marin County	\$110.00 plus taxes/resort fees on the entire cost of the lodging rate.
Los Angeles, Orange, Ventura Counties, and Edwards AFB, excluding the City of Santa Monica	\$120.00 plus taxes/resort fees on the entire cost of the lodging rate.
Monterey, San Diego	\$125.00 plus taxes/resort fees on the entire cost of the lodging rate.
Alameda, San Mateo, and Santa Clara Counties	\$140.00 plus taxes/resort fees on the entire cost of the lodging rate.
City of Santa Monica	\$150.00 plus taxes/resort fees on the entire cost of the lodging rate.
San Francisco County	\$250.00 plus taxes/resort fees on the entire cost of the lodging rate.

Lodging facilities include commercial hotels and motels and residential property—short term rental, that are reserved for fewer than 30 days. (See [CalHR PML-2015-039](#), Assembly Bill 229 (Stats. 2015, ch. 770), effective January 1, 2016 through December 31, 2018.) All rates for reimbursement are limited to State-contracted lodging rates. (See [CalHR Travel Reimbursements](#).)

## Hotel Tax Waiver

The [Hotel/Motel Transient Occupancy Tax Waiver, STD 236 \(New 9-91\)](#), is available on the [DCA Intranet](#) Travel Home Page and should be used whenever possible. This form must be completed in advance and given to the hotel for its records. In most cases, employees must ask for the exemption at time of reservation. Some hotels will not honor the tax waiver.

## Acceptable Receipts

Lodging receipt must indicate the establishment's name, address, and check-in/check-out dates and times, number of occupancies, room rate, taxes, and method of payment.

In the rare event where an employee chooses to use a third-party vendor (such as Priceline.com, Expedia.com, Travelocity.com, Hotels.com, etc.) to make travel arrangements, the following instructions must be strictly adhered to:

- Employees who request reimbursement for receipts from third-party vendors for lodging expenses related to a State-approved relocation or for lodging expenses incurred while traveling on State business, must provide a valid receipt from the third-party vendor and the commercial lodging establishment where the employee stayed.

Both receipts are required to properly substantiate a valid business expense.

## Sharing a Room

When sharing a room with another State employee, each person can claim half the room rate, or one employee can claim the entire amount and reference the other person in the comment section. Both employees should file their travel expense claims ([TECs](#)) at the same time and a copy of the other's claim should be attached to their own.

## Meal Rates

There are no flat reimbursement rates. All items claimed are to be for the actual amount of the expense, up to the following maximum reimbursement amounts listed below. The employee (or agent of the State) shall not claim reimbursement for any meals provided by or included in the cost of the hotel stay, airfare, and conference or convention registration fee and/or provided by the terms stated in a State contract. Please review your Bargaining Unit Contract on [CalHR, Travel Reimbursements](#) website for current rates.

Excluded and/or exempt employees and represented employees in Bargaining Units (BU) 1 through 21, please review your existing MOU for current rates (see following table).

<b>Expense</b>	<b>Maximum Reimbursement For Actual Expense</b>
Breakfast	Up to \$7
Lunch	Up to \$11
Dinner	Up to \$23
Incidental	Up to \$5

### **Fewer Than 24 Hours**

The following table shows conditions under which a represented or non-represented employee may be reimbursed for meals while on travel status, if the trip is fewer than 24 hours:

<b>Starts Trip on OR Before</b>	<b>Returns from Trip on OR After</b>	<b>Entitled To</b>
6 a.m.	9 a.m.	Breakfast
4 p.m.	7 p.m.	Dinner

Note: Board and committee members are entitled to meals, including lunch, on a one-day trip only when attending official scheduled board or committee meetings. These meal expenses are excused from the travel status mileage requirement, but all-time requirements are applicable; for example, start trip at or before 11:00 a.m. and end at or after 2 p.m. to claim lunch. In addition, meals on trips of fewer than 24 hours will be reported as a taxable fringe benefit as required by the IRS.

### **More Than 24 Hours**

If a trip is more than 24 hours, but fewer than 31 consecutive days, a represented or non-represented employee is entitled to breakfast, lunch, and dinner for every full 24-hour period while on travel status. The following table shows the meal entitlements for the last fractional period:

<b>Starts Trip on OR Before</b>	<b>Returns from Trip on OR After</b>	<b>Entitled To</b>
6 a.m.	8 a.m.	Breakfast
11 a.m.	2 p.m.	Lunch
5 p.m.	7 p.m.	Dinner

## **Incidentals**

Incidental reimbursement is allowed for every full 24 hours of travel up to the maximum amount allowed per Bargaining Unit Contract for actual necessary expenses. Incidentals include expenses for fees and tips for services such as porters, baggage carriers, and hotel staff. No other items may be claimed as an incidental cost. (See [CalHR PML 2015-003](#) and [IRS Publication 463](#).)

## **Business-Related Meals**

In rare instances, the cost of business-related meal expenses may be allowed. It must be clearly shown that it was impractical to conduct the State's business during working hours and that the meal took place in conditions beyond the employee's control. Justification should be provided on the [TEC](#).

The statement must include the purpose or goal of each business-related meal and the unusual conditions that justify payment. The employee may claim expenses not to exceed the breakfast, lunch, or dinner allowance, whichever meal was consumed. The amount must be supported by a voucher or receipt for represented employees. Claims must include the establishment, the persons in attendance, and the business conducted during the meal period. No reimbursement is allowed for the meal if the employee claims per diem for that day.

Allowable meals may include: Participants from different cities hold a luncheon to allow one or more of them to make connections on a scheduled flight; an employee is required to go to lunch as a member of a group, such as a board or commission where official business is conducted; the meeting does not adjourn during the lunch and the employee has no choice of place to eat.

Non-allowable meals include: Two or more employees go to lunch together and continue their business as an incidental to the meal; the meal is strictly for public relations purposes; departments call meetings with their own and/or other department employees to conduct State business; the meeting could have taken place during regular working hours.

## **Receipts**

Although the Department does not require receipts for most meals or incidentals, except as noted above, the traveler must retain all their meal and incidental receipts for IRS purposes.

## **Overtime Meals and Rates**

Overtime meal reimbursement is allowed when the employee works two excess hours, either consecutive or contiguous to regular scheduled work hours. Rates and terms are defined by each bargaining unit contract as stated below. In determining the overtime hours worked for meal compensation, do not include any breaks for meals. Only one



meal allowance may be claimed each day unless the employee has worked a minimum of 16 hours. For every six additional hours worked in excess of ten hours, another meal allowance may be claimed, not to exceed three overtime meals within 24 hours.

<b>Bargaining Unit</b>	<b>Rate</b>	<b>Consecutive*</b>	<b>Contiguous*</b>
10	\$7.50	X	
1, 4, 11 & 14	\$8.00		X
2, 7, 9, 12, 16 & 19	\$8.00	X	
Excluded & 21 (exempt FLSA)	\$8.00	X	

### **Definitions**

Consecutive: Works either two hours before or two hours after normal work hours on a regular scheduled workday; works two hours in excess of normal work hours on weekends, holidays, or regular scheduled day off (RDO).

Contiguous: Works two or more hours in excess of the number of hours worked on regular scheduled workday.

Excluded: Work Week Group Exempt (WWGE) and Represented Employees Exempt from Fair Labor Standards Act (FLSA) are only entitled to overtime meals for extended arduous work.

### **Arduous Work OT Meal**

Meals for Extended Arduous Work: On those rare occasions when an employee who is in a Work Week Group other than Work Week Group 2 would be required to physically or mentally work ten hours or more (not including any breaks for meals) for an extended period. The employee, with approval of the appointing authority, may claim the actual cost of an arduous work meal up to \$8. Such meals should only be approved when the work schedule is consistently in excess of a normal full-time schedule. Occasional extra hours worked, consistent with the nature of other than a Work Week Group 2 schedule, do not meet the criteria for Extended Arduous Work Meals.

### **Excess Lodging Policy and Procedure**

Request for reimbursement of lodging expenses in excess of the State-specified rates, excluding taxes, must be received ten days prior to the trip. Approval is required from the DCA Accounting Administrator II up to \$250 and CalHR if more than \$250. Please note that although DCA has been delegated authority to make determinations regarding Excess Lodging Rate Requests up to \$250 per night, the Excess Lodging Rate Form (STD 255C) has been updated to reflect the increased amount. The [Excess Lodging Rate Request \(STD 255C\)](#) form located on [DCA Intranet](#) should be completed and contain the following:

- A list of at least three hotels contacted using the [Concur CalTravel Store](#) website to obtain State rate lodging. Contact additional hotels if no State rate hotels are found within the work area.
- Supporting documentation that a reasonable effort was made to locate lodging at State-specified rates. Using only higher-rate hotels in the documentation cannot be considered reasonable efforts.
- Explain any applicable reasons for the State business need for an exception to the State's standard lodging rate.
- Obtain all required signatures and submit the request to the DCA Travel Unit at least ten working days prior to the trip, when possible.
- Employees who incur expenses in excess of standard reimbursement will be responsible for the difference if the excess lodging request is denied.
- Attach agendas for any approved conference or convention that would assist in the travel justification.

### **Reasonable Accommodation**

A reasonable accommodation can be obtained with supporting documentation through DCA Office of Human Resources Health & Safety Unit when travel requirements are a hardship to the employee for medical reasons. Please obtain the reasonable accommodation approval prior to the trip. (See [Health & Safety Unit, Reasonable Accommodation, DCA Intranet.](#))

### **Exception to Travel Status Policy**

It is the policy of the DCA to adhere to the rules and regulations as defined by the CalHR regarding the approval of requests for reimbursement within 50 miles of the employee's home or headquarters when conducting official State business. Extreme acts of God and nature that place the employee in harm's way are automatic and will be approved after the fact, when fully documented ([SAM section 0715](#), [CalHR PML 93-28.](#))

Note: All exceptions to travel status reimbursements will be reported as a taxable fringe benefit as required by the IRS.

### **Exception Authority, Limits, and Criteria**

The CalHR delegated the exception to travel status authority to the Director of the DCA, who delegated the authority to the Chief Accounting Officer. There is no other allowable signature authority for this delegation. This delegation is extended with the provision that it will be administered according to the criteria, considerations, and

record-keeping requirements as stated below. All exceptions are subject to audit by CalHR. Exceptions are to be granted in advance of the occurrence by the appointing power.

This delegation does not extend to the approval of meals or lodging at either the home or headquarters location. There is no allowance for any increase in the standard short-term travel reimbursement rates for meals and lodging or partial exceptions, such as lodging allowance without meals. When exceptions meet all the requirements and are granted by the Chief Accounting Officer, the employee is entitled to full short-term travel reimbursement rates. This exception is not to be used in lieu of overtime for one-day travel.

Exception requests will be considered under a limited number of circumstances when the employee is required to be away from their home and headquarters locations for more than a single day, but fewer than 50 miles. These include the nature of the work performed, the hours of work, or the apparent road and/or weather conditions make it impractical for the employee to return home or to the headquarters location at night.

The CalHR has guidelines for an exception approval criterion that includes reasonable commute mileage. State departments are expected to demonstrate that every consideration has been given to minimize the cost to the State through responsible planning and scheduling.

### **Exception Process**

A written request must be submitted in advance of the occurrence to the Accounting Office for review and approval by the Chief Accounting Officer. The Executive Officer or the Division/Bureau/Program Chief must approve all exception requests. Requests must contain the following information for each attendee:

- Name and classification of employee(s) requesting exception. If the time period and reason for expense are the same, submit a group request listing each employee's name, classification, the time period, and reason.
- Home and Headquarters address with distance to location of the event.
- Name and address of the location where expenses will be incurred.
- Name of the sponsor of the event.
- Reason(s) for the exception request; attempts made to reduce the costs.
- Amount of the anticipated expenses, including tax.

- For a conference or convention with more than one attendee, explain why one employee could not achieve the goal and attach a training and development request with approval.

Note: Provide copies of the agenda, conference/convention announcements, and map/mileage printouts. Once the exception request has been processed, a copy will be forwarded to the requesting office by the DCA Accounting Office. The requesting office must maintain a record of each request for the standard five-year record retention schedule.

## **Chapter 3. Transportation.**

### **Introduction**

The cost of transportation while on official State business should be accomplished by using the most economical means for the State, according to the [SAM section 0700 \(General Policy\)](#).

All transportation costs related to State business travel should be entered on all [TECs](#).

Transportation expenses consist of:

- Commercial airfares;
- Private vehicle use;
- Commercial rental car use;
- Gasoline for State or rental cars;
- Taxis, shuttles, or streetcar fares;
- Transportation Network Companies (TNT) – Uber and Lyft;
- Parking of State, rental, or privately-owned vehicles;
- Bridge and road tolls;
- Emergency repairs (State cars only); and
- Commuting transit/vanpool (employee benefit) use.

### **Supervisor's Responsibility**

It is the supervisor's responsibility to ensure the method chosen for travel on State business is in the best interest of the State and not for the employee's convenience.

## Determining the Most Economical Mode of Travel

When determining the most economical mode of transportation, the following costs should be considered:

- Employee's time;
- Expenses for transportation (airline, bus, train, parking, shuttle, tolls, etc.);
- Expenses for meals, incidentals, lodging, and any other State business expense;
- Urgency of the situation;
- If the employee must carry specialized equipment;
- Number of stops and amount of equipment;
- Number of people to be transported (is it more economical?);
- Driving time one-way (is it more than two hours?);
- Availability of transportation to and from the destination; and
- Overtime wages.

### Cost Comparison

Reimbursement will be made for the mode of transportation which is in the best interest of the State, considering direct expenses as well as the employee's time. If the employee chooses a more expensive mode of transportation, reimbursement will be for the least expensive mode of travel. Expenses incurred at the travel destination will be reimbursed based on the actual business expenses incurred while at that location.

A [cost comparison](#) must:

- Be completed and attached to the [TEC](#), showing both methods of travel.
- Include the least costly methods of travel for those expenses being substituted.
- Include only the expenses of traveling from one location to another. Do not include any worksite expenses. Expenses incurred onsite are to be claimed separately.

- An employee choosing to use a more expensive mode of transportation will only be reimbursed for the amount it would have cost for the most economical mode of travel.
- A [cost comparison](#) showing actual cost incurred versus the most economical mode and cost must be submitted with an employee's [TEC](#). The [cost comparison form](#) is provided in Appendix A for your convenience.

### Example of Cost Comparison

The most common cost comparison is when the employee chooses to drive their personal vehicle versus using normal air transportation. For example, when an employee drives (having obtained supervisor's prior approval) to Los Angeles from Sacramento, the comparison is computed from the point the employee would normally have left on travel status in Sacramento to the point of landing in Los Angeles. Please note all cost comparisons should be calculated using the current mileage rate and State rates for airfare if applicable.

Air Costs		Vehicle Costs	
Ticket roundtrip	\$216.00	Mileage: City-to-city roundtrip:	
Mileage to/from airport			
30 miles x 58.0 cents per mile=	\$17.40	720 miles x 58.0 cents per mile =	<b><u>\$417.60</u></b>
Parking	<u>\$10.00</u>		

### Reimbursement

The least expensive method of transportation will be reimbursed on the [TEC](#). The time requirement for meals and lodging would be allowed for the time the employee would have left and returned had they flown. Additional meal and lodging expenses incurred as a result of using an alternative method of transportation is at the employee's own expense.

### Exception

An exception to the least-expensive requirement would be if an employee has a reasonable accommodation approval through the Department [Health & Safety Unit](#), which prevents the employee from specific modes of travel, such as air travel.

Request guidance from the Accounting Office Travel Unit ([calaters@dca.ca.gov](mailto:calaters@dca.ca.gov)) when special circumstances arise prior to commencing the trip.

### Direct and Indirect Travel Arrangements

All travel arrangements for air, auto rental, and lodging for official State business must be made through the Department's approved travel agency, Concur CalTravelStore.

## Air Travel

Before making airline reservations, be aware of the contract rates and where to book your flights. The State contracted rate includes airfare for origination and destination points known as city pairs for within California, out-of-State, and international destinations. The contract rates are unrestricted one-way fares and are not subject to limited seating.

When booking on Southwest Airlines, you should only select “Want to Get Away” and “Anytime” flights. You should never select Business Class-type flights; if selected, you will be responsible for the difference in cost.

The 2019–20 contract fares are with Alaska Airlines, Delta Air Lines, JetBlue, Southwest Airlines and Virgin America. You must purchase your airline tickets through the CalTravelStore, the certified State travel agency, using your Department’s centralized Citibank Business Travel Account (BTA). The CalTravelStore website contains the online booking tool Concur Travel (formerly Cliqbook), the online booking tool for all airline travel.

All travel arrangements for official State business must be made through the Department’s approved travel agency, CalTravelStore ([www.caltravelstore.com](http://www.caltravelstore.com)).

Current Airfare Contract: [TB1902 extensioncontractairfare.pdf](#)

Air Travel: [SAM section 741](#).

Airline Itinerary Requirements: [SAM section 8422.114](#).

## Airport Parking

Employees parking at the airport must use the most economical parking available. However, if the board, bureau, or division determines that additional parking costs above the lowest-cost option are in the best interest of the State, a justification explaining the necessity for the additional cost shall be submitted with the employee’s [TEC](#). Without a receipt, reimbursement is limited to \$10. Please note, [TECs](#) submitted without the required justification may be cut by the State Controller’s Office. (See [CalHR PML 2007-024](#).)

Agencies/departments may consider the following items when determining if additional parking costs are in the best interest of the State:

- The direct expense; and
- The officer’s or employee’s time.

Please contact your Department's Travel Liaison to initiate the start of your CalTravelStore profile. You must complete your registration before booking your travel.

Please use the links below for training and more information:

- After the initial profile setup, you'll access the reservation system at [www.caltravelstore.com](http://www.caltravelstore.com). Click on "Concur Login" to complete your profile.
- [Concur Travel Demo](#) (video) and [Concur Interactive Training](#).
- Concur Travel FAQs: [Concur Travel Booking Tool Training, Guides](#)

For security reasons, every traveler will need to contact their board or bureau Travel Liaison to initiate their CalTravelStore profile. Your user ID is your Department e-mail address. You must use your Department e-mail address as your user ID to have access to our Department's company ID. This e-mail address will be your user ID for future access to the reservation system. After you receive your temporary password, you can complete your profile and book your trips. In addition, you'll need to change the temporary password to ensure your account is secure. Once you've established a user ID and password, the system will request that you complete the profile. After you've completed the profile, you must save the information before you attempt to book a trip. The CalTravelStore has a travel reservation guide and video to help; they are provided on the website and link above.

### **Non-Employee Reservations (Airfare and Lodging)**

You can make reservations for non-State employees conducting State business for your program, such as subject matter experts, volunteers, witnesses, or contractors, and receive State rates when using the DCA State-contracted travel service agency. One-time travelers should be booked as a guest traveler; no profile should or needs to be established.

### **Frequent Flyer Programs**

Employees who earn travel premiums (frequent flier miles/points) while on official State business may use these travel premiums for their personal use. The value of these premiums will not be reimbursed to the employee if used for State business. (See [PML 2005-051](#).)

### **Receipts**

Airline itinerary or passenger receipts should include the traveler's name, dates and times of travel, destination, and amount of airfare. This document must be submitted with the employee's [TEC](#). The cost should always be entered on the claim as "Commercial Airfare," and "Department Paid" should be selected for payment type.



## **Privately Owned Aircraft Usage [SAM 0743](#) and [0746](#)**

Travel on official State business may be by privately owned, rented, or leased aircraft whenever this is the least costly means or is in the best interest of the State.

Employees must first obtain supervisor and agency approval. Employee pilots shall certify at least yearly to their employing agency that they have the required liability insurance during the period of official travel. These required limits are shown on [STD 265 \(New 2-91\)](#). Use [STD 265](#) for certification and insurance. (See [SAM section 0746](#).)

In all cases, the aircraft must be certified in accordance with Federal Aviation Administration regulations and properly equipped for the type of flying to be performed.

State employees who pilot aircraft on official State business must meet the requirements of CalHR Rule 599.628 and [SAM section 0747](#).

Reimbursement for use of privately-owned aircraft: [SAM section 0744](#)

The reimbursement rate for employee privately owned aircraft is \$1.27 per statute mile effective Jan.1, 2020 [Private Aircraft Mileage](#). Mileage is computed on the shortest air route from origin to destination, using airways whenever possible. Enter "Air Miles" and mileage on the [TEC](#). For expenses other than mileage, substantiate the expense with a voucher. Landing and parking fees are paid except at the site where the aircraft is normally stored.

## **State-Owned, Privately Owned, and Commercially Owned Rental Vehicle Use**

Agencies determine who will drive on official State business and the vehicle type to be used: State-owned, privately owned, or commercially owned vehicles. The definition of "use of a State vehicle in the conduct of State business" includes the use of State vehicles "when driven in the performance of, or necessary to, or in the course of, the duties of State employment and shall include the operation of State-owned or leased vehicles as commute vehicles in a carpool or vanpool program authorized by a State agency." ([SAM section 0750](#).)

State vehicles may be authorized when two or more employees are traveling together; the trip includes intermediate stops not feasible for public transportation; the schedule of public carriers does not fit the itinerary; transportation is not available at the destination; or an employee must carry specialized tools, books, etc.

Privately owned vehicles may be used by employees on official State business if this is approved by the DCA. If the use is not less costly, the supervisor may authorize the use, but the payment will be for the less-costly alternative. No agency will require an employee to use their privately-owned vehicle unless this is a formal condition for employment.

The following circumstances are prohibited uses of State vehicles:

- Using the State vehicle for anything other than conducting State business.
- Carrying in the vehicle non-Departmental employees, friends, or family members.
- Using the vehicle for private or recreational use.

**Commercially owned rental vehicles** may be rented when a State vehicle is not available and automobile travel is essential. The employee must return the rental car at the end of each work week State business is concluded. Refer to the [Department of General Services \(DGS\) website](#) to view the rental car contract and ensure adherence to State policy. (See Appendix.)

### **Commercial Rental Cars**

Transportation Services: [SAM Section 4100](#)

CalHR Policies for Method of Travel: [Travel Reimbursements - CalHR](#)

[DGS State Fleet Handbook \(revised May 2008\), at Page 5.](#)

DGS Rental Car Policies and Procedures: [Car Rental Resources for State Travel](#)

The State contract vendor for rental vehicles is Enterprise Rent a Car. The [current contract](#) is effective March 2019. Click on [www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx](http://www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx) for more information.

[Commercial Car Rental Car Rates](#) as of March 1, 2019:  
[http://inside.dca.ca.gov/documents/travel\\_rental\\_19-01.pdf](http://inside.dca.ca.gov/documents/travel_rental_19-01.pdf)[RentingaVehicle.aspx](#) for more information.

The rental of alternative fuel vehicles is encouraged, and their rental rate should be the same.

Here's a link to the complete [rental car contract](#).

### **Car Rental Reservation Information**

Rental Car reservation must be made on [Concur CalTravelStore \(www.caltravelstore.com\)](#).

To receive the contract rate, employees are required to provide a current driver license and a second form of identification (ID) to ensure a smooth delivery of service when

renting a vehicle. Acceptable second forms of ID can be an employee issued ID badge, a business card, a copy of a travel itinerary booked through CalTravelStore or Concur (the online reservation tool), or an authorization letter on Department letterhead. Reservations are required to be made in advance on Concur.

Employees must NOT:

- Extend rental agreements for personal business and pay the difference. When extending business trips for personal reasons, the employee must stop the State rental agreement and initiate a new personal rental agreement.
- Agree to purchase insurance. Insurance is included in the State contracted rates.
- Agree to purchase the fuel service option or prepaid fuel (i.e., a flat refueling rate).
- Agree to purchase higher rate, non-economy cars.
- Carry unauthorized, non-State employees in a rental or State vehicle. If travel plans change, please cancel the reservation.

## **Insurance**

The State contract includes insurance and employees should not accept additional insurance. Employees using a noncontracted vendor may not have insurance included in their rental rate. The employee will be personally responsible for the insurance costs when choosing to use a noncontracted vendor.

In the event an at-fault accident occurs when renting a noncontract vehicle, the employee and the Department may be legally responsible for all damages sustained by others as well as property damage to the rental vehicle. More information on SAM Insurance and Surety Bonds is available at [SAM section 2400](#).

## **Receipts**

DCA policy requires the final rental car receipt be attached to the expense reimbursement claim (STD 262 or CalATERS), whether charged to the Department or paid by the employee. The receipt must indicate the amount charged and payment method. Pre-calculations or reservation agreements are not acceptable. (See [SAM section 8422.115](#); [https://www.dgsapps.dgs.ca.gov/documents/sam/SamPrint/new/sam\\_master/sam\\_master\\_file/chap8400/8422.115.pdf](https://www.dgsapps.dgs.ca.gov/documents/sam/SamPrint/new/sam_master/sam_master_file/chap8400/8422.115.pdf).)

## **Forms of Payment**

The contract requires use of the Corporate Rental Business Traveler Account (CRBTA). Use of cash or the traveler’s personal credit card will not guarantee the State contract rate or the State’s insurance coverage.

A [Short-Term Vehicle Justification Form](#), signed by the employee's supervisor will be required for the following “exceptions” for State departments to submit to the State Controller’s Office (SCO):

- Renting a vehicle larger than compact/intermediate size;
- Renting a vehicle from a noncontracted vendor;
- Needing physical or medical accommodations; and
- Refueling charges incurred at rental branches.

All employees **are not** required to refuel the rental car vehicle prior to returning. When refueling the rental car, the employee must submit a detailed gasoline receipt for reimbursement. Gasoline receipts must show the date of purchase, method of payment, and an expense breakdown: number of gallons, price per gallon, and extended total purchased amount. Prepaid fuel receipts are not acceptable for reimbursement.

The SCO approval form should be attached to the invoice and travel expense claim associated with the justification. State departments are no longer required to receive approval from the DGS Statewide Travel Program. The Short-Term Vehicle Justification Form is available on the DGS website.

Rates include unlimited mileage and are not subject to blackout dates. Contracted vehicle rates information is available on the [DCA Intranet, Travel Bulletin](#). Examples of vehicles are listed in parentheses shown on the list below. The Maximum Cap Rate (MCR) includes the base rate, all fees, all charges, in addition to airport fees, vehicle license fees and, State, city and county, or local surcharges that apply to the commercial car rental industry as a whole and identified by airport. Sales tax and refueling charges are not included in the contract rate.

**Short-Term Commercial Car Rental Cost Table**  
**Base Rate with \$300,000 Insurance for Short-Term Rentals**  
 (Effective March 1, 2020 February 2021)

<b>Vehicle Class Type</b>	<b>Daily</b>	<b>Weekly</b>	<b>Max Cap Daily</b>
<b>Compact</b> (Nissan Versa, Toyota Yaris)	\$36.06	\$144.24	\$54.64
<b>Mid-Size/Intermediate</b> (Toyota Corolla, Nissan Sentra)	\$36.06	\$144.24	\$54.64

<b>Full-Size</b> (Chevy Impala, Nissan Altima)	\$38.25	\$152.98	\$57.91
<b>FWD/Sport Utility Vehicle</b> (Ford Escape, Jeep Liberty)	\$61.19	\$244.77	\$85.23
<b>Minivan</b> (Chrysler Town and Country, Dodge Grand Caravan)	\$61.19	\$244.77	\$85.23
<b>Pick-Up Trucks</b> (Chevy Silverado, Ford F150)	\$76.49	\$305.96	\$102.72
<b>Plug-In Hybrid Electric Vehicle/Zero Emission Vehicle</b> (Nissan Leaf, Chevy Volt)	\$45.89	\$183.58	\$67.75
<b>Hybrid Electric Vehicle</b>	\$45.89	\$183.58	\$67.75

Note: The State of New York is exempt from the Base Rate listed above. Such rates are subject to open market rates quoted at time of actual car rental.

### Private Vehicle Authorization and Use

The SAM requires that before any employee, including a board member, uses a privately owned vehicle to conduct State business, that employee must obtain authorization in writing from his or her supervisor and certify that the vehicle will be operated in compliance with [SAM section 0753](#). An Authorization to Use Privately Owned Vehicles on State Business form ([STD 261](#)) should be completed and on file with the immediate supervisor. The [STD 261](#) form must be updated and re-signed annually.

Employees should be aware that the insurance maintained by the State is for the liability above the amount of the employees' policies. All employees driving on State business must carry evidence of liability insurance coverage. Mileage rates paid to employees include an amount that reimburses employees for maintaining minimum insurance coverage.

### Mileage Rate Reimbursement

The following table shows the mileage reimbursement rates for privately owned vehicles: [Mileage Rate](#)

#### Mileage Reimbursement Rates for Privately Owned Vehicles

1/1/2016–12/31/2016	54.0 cents per mile
1/1/2017–12/31/2017	53.5 cents per mile
1/1/2018–12/31/2018	54.5 cents per mile

1/1/2019–12/31/2019	58.0 cents per mile
<b>1/1/2020 – current</b>	<b>57.5 cents per mile</b>

### **Alternate Worksite Mileage**

When an employee’s regular work assignment requires reporting to a second location other than headquarters (e.g., a training site), mileage reimbursement is limited to the actual mileage incurred less their normal commute distance.

### **Airport Dropoff**

When an employee is driven to a common carrier and no parking expenses are incurred during the employee’s absence, they may claim mileage reimbursement at double the number of miles from headquarters or residence, whichever is fewer, while the employee rides in the vehicle.

If travel commences or terminates one hour before or after normal work hours, or on a regularly scheduled day off, mileage may be computed from the residence.

Minimal parking expenses for pickup will be allowed, with justification and/or notation on the [TEC](#).

### **Motor Vehicle Accident Reporting**

All accidents involving a State-owned vehicle, or any vehicle being used on State business ([SAM section 0757](#)), must be reported. Report all accidents immediately to your manager and to the DCA Business Services Office. Accidents must be reported within 48 hours to the Office of Risk and Insurance Management on a Vehicle Accident Report [STD 270](#) form. State reporting requirements are in addition to a regular police report as required by law.

Accident reimbursement claims require special approval and processing. Therefore, contact the DCA Travel Unit for guidance.

### **Overtime and Callback Mileage**

Callback or scheduled overtime mileage incurred on a normal day off, from your home to established headquarters, is reimbursable for Non-represented employees and the reimbursement is a reportable fringe benefit. **Note: Overtime mileage for represented employees is not allowed for pre-scheduled overtime.**

### **State Vehicle Emergency Repairs**

Emergency State vehicle repairs can be reimbursed on a [TEC](#) with the appropriate receipt and written justification or explanation of the event. Repairs require Fleet

Administration approval. For non-emergency car repairs, the employee should have the vendor bill the program directly.

### **Taxis and Shuttles**

Taxis and shuttles should be used for trips within a reasonable distance (10 to 15 miles). Reimbursement can be made on a [TEC](#) for the actual cost of the expense with a receipt, or for no more than \$10 without a receipt. General Service charge cards are accepted for taxis and shuttle services within the Sacramento and Fresno areas. **Tips or gratuities to drivers are reimbursable up to \$2.00 or 20% whichever is greater.** Tips or gratuities for exceptional services, such as loading and/or unloading substantial luggage or multiple exam material, is allowable with written justification and receipt.

### **Uber and Lyft**

Per [CalHR PML2015-039, Assembly Bill 229 \(Stats. 2015, ch. 770\)](#), effective January 1, 2016 through December 31, 2018, Uber and Lyft are acceptable State travel modes of transportation. An original detailed receipt is required to be attached to the claim for reimbursement. (See [PML 2015-039](#).) **See above for changes on Tips.**

Zipcars are not authorized for use as State travel transportation.

### **Parking and Tolls ([SAM section 0755](#))**

Parking and tolls in excess of \$10 require a receipt and may be paid for:

- Day parking when the trip is away from the headquarters office and residence.
- Overnight public parking when the traveler is on travel status.
- Callback or scheduled overtime on a normal day off.

### **Commuting Transit and Vanpool**

Employees who commute to and from work via public transportation or qualifying vanpools may be eligible for up to a 75-percent discount or reimbursement on public transit passes up to a maximum reimbursement of \$100 per month for SEIU bargaining units 1, 3, 4, 9, 11, 14, 15, 17, 20, 21, effective November 1, 2019. For Excluded employees effective date is February 1, 2020. Reimbursement is based on actual cost supported by a receipt or proof of purchase. For more information, visit the CalHR webpage for [Miscellaneous Programs](#) related to State Employees, Benefits, and Compensation Plus.

Part-time employees' reimbursement may be prorated to correspond to their appropriate work schedule. Daily passes may be utilized for part-time employee reimbursement.

The State will pay \$135 per month to the primary driver of a qualifying vanpool consisting of 7 to 15 people in lieu of the vanpool/transit rider incentive for the bargaining units listed above. A qualifying vanpool must meet both IRS section 132 and CalHR 599.936 criteria. (See CalHR webpage for [Miscellaneous Programs](#).)

## **CHAPTER 4. BUSINESS EXPENSES AND RECEIPTS.**

### **Business Expenses**

Business expenses are costs that are necessary for the completion of State business.

Examples:

- Phone calls more than \$1 or calls totaling more than \$5. The Department phone log can be used for logging calls when there is no official receipt provided (See "Justification for Reimbursement for Telephone Charges" in the Appendix).
- Approved training request for all courses provided by outside vendors/entities and in-State conferences and conventions. Reimbursement for training classes will be processed after completion of the training class.
- When physical examinations are required for pre-employment or as a condition of employment, the State will provide or pay for them. The applicant must pay for any services beyond the approved level for such services. For information on the current rate, see Employee Physical Exams, [SAM section 0191](#).
- Excessive porter or baggage handling, such as for several boxes of exam materials, will be reimbursed with a receipt and justification.
- Professional licenses in occupational fields that may be required by the functions of a specific position or is beneficial to the performance of an employee's duties, for actual cost of the application or renewal fee.
- Each department, commission, board, or agency may reimburse an employee for up to the maximum allowed per BU Contract for membership dues in job-related professional societies or associations of the employee's choice or for a job-related professional license fee, in recognition of the professional nature of employees. Both parties agree and understand that a different amount of reimbursement, if any, may be provided to employees in the same or similar situation.
- State Bar Dues – [CalHR Rule 599.921](#)



- Employee designation: Manager, supervisor, confidential, and excluded.
- References: [2020 State Bar Membership Dues](#) memo dated December 31, 2019. Upon certification by the appointing power that the actual practice of law is required for the performance of duties of a specific position, employees shall be reimbursed for up to \$497 of the State Bar membership fee of \$544 for the cost of annual membership fees and specialty fees of the State Bar Association.
- The State does not pay:
  - The \$5 contribution for the Legislative Activity option, line 21 of the State Bar coupon.
  - The \$40 contribution for the Legal Services Assistance option, line 23 of the State Bar coupon.
  - The \$2 contribution for the Elimination of Bias option, line 22 of the State Bar coupon.
  - Optional Donations for Access to Justice, California Bar Foundation, Conference for California Bar Associations, or California Supreme Court Historical Society; or
  - Penalties resulting from late payment of dues, unless the State is responsible for the late payment.

### **Valid Receipts**

A valid receipt consists of the establishment's name, address, itemized expenses, including the total amount due and method of payment. When submitting a [TEC](#), the claimant is required to include original, itemized receipts for all State business expenses, unless specifically noted and accepted in another section of this Guide.

Reimbursement requires proof of payment by the employee. If the receipt does not show the employee paid for the expense, attach other viable information such as the canceled check, bank, or credit card statement. For security purposes, blacken out all nonrelated charges and only retain the employee's name, bank name, and the specific charge you are claiming.

### **Required Receipts**

Receipts shall be submitted for every item of expense of \$1 or more, except as noted in this chapter.

DCA policy is for all receipts to be attached to the [TEC](#), whether paid directly to the vendor or establishment by the State or paid by the employee. Examples are airline itineraries, final rental car expense receipts, etc.

### **Receipts Not Required**

The employee must retain copies of all receipts, including those original receipts not required for reimbursement by the Department, for IRS purposes.

Receipts are NOT required for reimbursement of actual expenses as a result of conducting State business for the following expenses:

- Per diem meals and incidentals,
- Overtime meals,
- Up to the published railroad and bus fares of less than \$10 when travel is within the State, and
- Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi shuttle or hotel bus fares, and parking fees of \$10 or less for each continuous period of parking or each separate transportation expense.

### **Lost Receipts**

In the absence of a receipt, reimbursement will be limited to the nonreceipted amount or the published expense, when lower than the nonreceipted amount.

### **Odd-Size Receipts**

If receipts are small, tape them to an 8 ½-inch x 11-inch sheet of paper so they will be the same size as the travel claim. More than one receipt can be on a sheet of paper if they do not overlap. Do not tape the receipts to both sides of the paper.

## **Chapter 5. Reportable Tax Items.**

### **Introduction**

Various reimbursements of State business expenses and fringe benefits are subject to Federal and State income taxes and applicable Social Security and Medicare taxes. The Department is required to report qualifying business expense reimbursements as income to the State Controller's Office each month.

Note: It is the State and Department's policy to adhere to all IRS reporting requirements.

## Reportable Items

The following items are the most common reportable employer-provided benefits

- Overtime meals;
- Callback mileage, including overtime mileage;
- Bicycle Commuter Program
- Meals on a one-day trip where there is no sleep period;
- Department-approved exceptions to the 50 miles travel status radius rule;
- Long-term assignments that exceed 30 consecutive days at one location for a period of more than one year. Contact the DCA Travel Unit for details when appropriate;
- The personal use of State vehicles for commute miles;
- Personal use of a State-provided electronic device;
- Travel advances that are not cleared within 30 days of the travel date; and
- Relocation: Contact the DCA Travel Unit ([calaters@dca.ca.gov](mailto:calaters@dca.ca.gov)) for details when appropriate.

Note: Any nonreceipted expense, such as meals and incidentals, becomes reportable *if* the IRS conducts an audit and finds no receipts in the employee's file.

## Reportable Withholdings

Below is a grid showing the percentages of taxes withheld from each agency, along with an example of the withholdings based on a \$66 reporting item. The actual total amount withheld from the \$66 item is \$24.60 for a represented employee. This amount would be deducted from the employee's next available pay warrant.

### Percentages of Taxes Withheld by Agency (includes example withholdings based on a \$66 reporting item)

Type of Tax (W-2s)	Withholding Rate	Monthly Value	Actual Withholding
--------------------	------------------	---------------	--------------------

Federal	22.0%	\$66	\$14.52
State	6.6%	\$66	\$4.36
* SSI	6.2 %	\$66	\$4.10
Medicare	1.45 %	\$66	\$0.96
** SDI	1.0%	\$66	\$0.66

\*Supplemental Security Income: Not applicable to Safety or Peace Officer Retirement.

\*\*State Disability Insurance: Applicable to Service Employees International Union (SEIU)-represented employees only. (See [Payroll Procedure Manual \(PPM\) Withholding Requirements section N171](#) for most recent rates.)

The reportable reimbursements will be listed under “Other Income,” or will be noted as “Included in Box 1” on the employee’s W-2 form.

It is the employee’s responsibility to maintain all reportable receipts with their records for IRS audit purposes.

### **Capturing Reportable Items**

There are many ways of capturing and reporting reportable items each month.

Examples:

- Overtime meals, callback mileage, and meals on a one-day trip are captured at the time of the [TEC](#) audit, and reimbursement is made.
- Department-approved exemptions to the “50 miles travel status radius” rule and long-term assignments that exceed 30 consecutive days are captured at the time that paperwork is submitted for approval to the Executive Office and the reimbursement of the [TEC](#) is made.
- Reporting personal mileage and/or use of a State vehicle is the responsibility of the employee. The IRS has determined that normal commute miles to and from work in a State vehicle are to be considered personal use. Only employees whose primary responsibilities are investigative law enforcement activities while they are performing law enforcement duties fit the IRS guidelines for exemption from reporting personal use of State vehicles. However, when these employees commute to and from the office for their office days or do not perform qualifying law enforcement activities on the way to or from work, the commute is reportable. All other employees who are permanently or temporarily assigned State vehicles must report personal use and/or their normal commute use. Each employee who drives a State vehicle is required to submit a monthly Employee Certification, Personal Use of State Provided Vehicles Form, [Personal Use of State-Provided Vehicle](#) to the DCA Accounting Office by the fifth day of the following month in which the personal use was incurred. Please note, this

requirement applies to all employees who drive a State vehicle; it is not limited to those employees whose assigned cars are stored at home or in off-site parking.

- Reporting personal use of a State-provided electronic device is the responsibility of the employee. Each employee who uses State-provided equipment for any personal use should prepare a memo stating the type of usage and the actual or estimated cost of the usage to be reported. To avoid the reporting of this type of fringe benefit, the employee can submit a personal check with the memo to reimburse the Department for their personal use.
- All travel advances are to be temporary. Any outstanding travel advances over 90 days are considered long-term and should be treated as wages or compensation; therefore, reported as taxable income.
- Reporting “relocation” taxable items varies depending on the type of expenses that occur; i.e., moving of household goods, sale of residence, etc. For actual reporting requirements, contact the DCA Accounting Office’s Travel Unit ([calaters@dca.ca.gov](mailto:calaters@dca.ca.gov)) for details.
- Continuing Medical Education (CME) expense reimbursement is a taxable fringe benefit for part time, full time, and intermittent BU 16 represented employees. CME expense reimbursement has been considered a taxable fringe benefit by the IRS since the program was established by the CalHR and BU 16 representatives. This program does not meet the criteria to be non-taxable business expenses under Internal Revenue Code section 127. All reimbursements made under this program will be issued in advance as payroll checks near the beginning of each fiscal year.

## **Chapter 6. Out-of-State, Out-of-Country, and Amended Claims.**

### **Introduction**

There are additional requirements and/or approvals when filing out-of-State, out-of-country, or amended [TECs](#).

### **Out-of-State Travel (OST)**

Before any State employee may travel out-of-State on official State business, specific written approval must be given by the Director, the Agency Secretary, the Department of Finance, and the Governor’s Office. (See [SAM section 0710](#).)

Approval must be obtained if either one of the following conditions exist:

1. The employee is on State time, or

2. The employee is representing the State in an official capacity or is acting in such a capacity that it will be perceived that he or she is representing the State.

If either of these two criteria exist, approval is necessary regardless of whether the State is paying for the employee's travel expenses. The trips are limited to the approved number of persons, days, and funds as specified for each blanket request. Expenses exceeding the blanket limits will require an approved blanket substitution request to cover the overages prior to travel. Any cost incurred prior to the blanket approval will be at the employee's own expense.

OST expenses must be submitted separately from in-State travel and note the approved blanket number on the claim. Actual lodging expense, supported by a receipt and the standard meal and incidental reimbursement, may be claimed for travel outside of California. Contact the DCA Budget (go to [DCA home page](#), under Office of Administrative Services) or Accounting Office ([calaters@dca.ca.gov](mailto:calaters@dca.ca.gov)) if you do not know the blanket number or require additional information. Refer to [SAM 0760-0765](#).

### **Out-of-Country Travel**

Employees will be reimbursed for actual lodging expenses, supported by a receipt, and will be reimbursed for actual meal and incidental expenses subject to maximum rates in accordance with the published government rates for foreign travel for the dates of travel. Failure to furnish lodging receipts will limit reimbursement to meals only. The government rates change monthly. (See CalHR webpage for [Travel Reimbursements](#) for current reimbursement rates.)

There is no allowance for blanket substitution of funds or authority for out-of-country trips. Any expenses that exceed the individual trip authority or funds will be at the traveler's expense. Claims must be submitted separately with the approved individual out-of-country trip request number written on the claim. Contact the DCA Budget Office if you do not know the trip number or require additional information.

### **Amended Claims**

When filing an amended claim, the following steps should be taken:

1. Submit a new claim.
2. Write "AMENDED CLAIM" in uppercase letters at the top of the claim.
3. Claim only the amount not submitted on the original claim.
4. Attach a copy of the original claim to the new claim.
5. Attach any required information, receipts, or justification not submitted with the original claim.

6. Obtain all required approval signatures and submit the claim to Accounting Office Travel Unit for payment.

## Chapter 7. Travel and Evidence Advances.

### Travel Advances

Short-term advances may be issued prior to the time travel is performed, to employees who must travel on State business. (See [SAM 8116](#).)

- Submit the travel advance request on CalATERS Global. In the event of non-access to CalATERS Global, please complete the [Request for Travel Advance \(AISD-008\)](#) form and send it to the DCA Accounting Office within 10 to 15 working days prior to the date of travel. Original signatures are required.
- Per the Governor's order, all departments are to keep outstanding travel advance balances (accounts receivables) to a minimum. Because of this order, DCA has limited travel advance amounts to lodging, meals, and airport parking that are fixed expenses to keep the outstanding receivables amount at a minimum. The employee will receive reimbursement for other expenses after the processing of their [TEC](#).
- If the trip is canceled, the advance must be returned immediately to the Accounting Office. If the travel advance check is cashed, a personal check or cashiers must be submitted as payment.
- For employees who are not required to travel on more than one trip per month, additional advances will not be issued for future travel unless the outstanding advances have been cleared. Departments may issue additional travel advances for employees who are required to travel on multiple trips within a month. Additional advances will not be allowed if the employee does not submit a [TEC](#) or return the excess advance amount within ten days of each trip.
- All advances must be cleared by submitting a [TEC](#) within 10 days after the date of travel. If the advance exceeds the expense claim, to clear the advance, the employee must submit a check with the claim, money order payable to DCA, or cash for the difference. If the claim exceeds the advance, the employee will receive the balance due to them by check within 10 to 15 working days.
- Add a notation regarding the advance information in section 11 or in the Note Section on CalATERS Global of the [TEC](#). (Example: March travel advance

\$200.) Do not deduct the advance amount from your claim total; the auditor will make the adjustment when the claim is processed for payment.

- Any outstanding advances of more than 15 days may be deducted from your next month's pay warrant per [SAM 8116.1](#). The DCA Accounting Office will notify the employee before this process occurs. The notification letter will allow the employee time to clear the advance balance. Failure to clear advances may preclude future advances being issued until the outstanding advances are cleared. Direct deposit will be canceled for those employees with uncleared balances to collect any advance balances not cleared within a reasonable time.
- Travel advances that are not cleared within 15 days must be reported as taxable income. (See [SAM 8116.3](#).) Taxes due will be withheld from the next available payroll warrant and reported as taxable income on the employee's W-2. When the advance is cleared, there is no method to refund the withheld taxes to the employee.
- Some restrictions apply to seasonal or part-time employees, including board and committee members, who may not be issued travel advances. Exception requests are granted by approval of the Chief Accounting Officer on a limited basis.

## Chapter 8. Filing Requirements.

### Claim Form and Correction Instructions

All Travel Expense Claims must be submitted on the CalATERS Global System. A [CalATERS Global Training Request](#) form should be completed and sent as an attachment to [CalATERS@dca.ca.gov](mailto:CalATERS@dca.ca.gov) to establish a CalATERS Global User ID and temporary password. There are two types of claims that can be submitted on the CalATERS Global System.

1. Regular TEC—Only one trip per claim should be entered on a Regular TEC. These claims consist of per diem, lodging, and mode of transportation cost to and from destinations. Expense reimbursements are determined by the date and time the trip started and/or ended. Therefore, this information must be entered for each trip. If a traveler traveled on more than one trip, each trip must be entered on a separate claim. The claim will be returned to the traveler or travel liaison for correction if more than one trip is entered on this type of claim.
2. Non-Travel Expense Claim—Consists of multiple days and months, up to a full fiscal year (July 1, 2018 through June 30, 2019). These claims consist of only parking, mileage, airfare, rental car, gas for rental car, business expenses, training, etc. This claim would not include meals, incidentals, or lodging. Please make sure when submitting this type of claim the amount is \$10 or more for budget and department cost efficiency.



The CalATERS Global TEC Transmittal should have the proper report name, index number, month and year of travel, original signature of the approver, dates, times, amounts, mode of transportation, purpose, normal work hours, etc. Original detailed receipts showing proof of payment and justifications, when necessary, are required documentation for the claim. The original CalATERS Global TEC and required receipts should be sent to the Accounts Payable, Travel Unit for processing.

In the event the employee is new to the Department and does not have a CalATERS Global User ID established, a [TEC](#) can be completed to submit their first request for reimbursement of State-related travel expenses. The original and one legible copy should be submitted to the Accounts Payable, Travel Unit for processing. Keep a third copy for your records with any non-required original receipts. All TEC forms should be completed in ink or typewritten. The original signature of the claimant and the approving officer are required to be completed in ink in the appropriate area of the form. For minor corrections, line-out the incorrect information and write in the corrected information. The claimant must initial all corrections. Travel claims with correction fluid or correction tape in critical areas of the form affecting the reimbursement amount will not be accepted. Travel claims may be returned as auditable if submitted with numerous changes or if it is difficult to read.

### **When to Submit Travel Expense Claims**

TECs should be filed at least once a month, but not more than twice in one month. If the amount claimed for any one month does not exceed \$10, filing can be deferred until the next month's travel or until June 30, whichever comes first. Several trips may be entered on one TEC. Only one Regular Trip at a time can be submitted on CalATERS Global. When more than one trip is being listed on the TEC, a blank line should be left between each trip. Trips that start at the end of one month and extend into the next month should be submitted after the trip has concluded. Although it is acceptable to put several trips on one claim, the following expenses must be submitted on a separate TEC: Out of State, out of country, long-term assignment, evidence and relocation expenses. Please label the TEC header when filing reimbursement claims for other than short-term travel.

All claims for the current fiscal year must be submitted by the published year-end deadline. Do not combine fiscal years. If a trip overlaps June and July, two separate TEC or CalATERS Global claims must be completed and submitted, one for each month. However, they should be submitted together for audit purposes.

### **Required Information**

The TEC must be completed in its entirety, including heading, dates, time, amounts, mode of transportation, purpose, normal work hours, etc., and have the claimant's and the authorized approving officer's original signatures. Itemized expenses and original receipts showing proof of payment and justifications, when necessary, are required documentation for the claim. The original TEC and required receipts should be sent to the Accounts Payable/Travel Unit for processing.

## Chapter 9. Completing a Travel Expense Claim.

### Introduction

The [TEC](#) requires various information, including employee information, trip information, reimbursement amounts, authorizations, and justifications be provided. This chapter provides a step-by-step description of what is required to complete a [TEC](#).

### Employee Information

This information describes to whom, classification, bargaining unit, and where expenses should be charged.

Field	Enter Into Field
<b>Claimant's Name</b>	First name, middle initial, last name
<b>Social Security Number or Employee Number*</b>	13-digit position number or write "on file"
<b>Department</b>	Department of Consumer Affairs
<b>Position</b>	Civil service classification (title)
<b>CB/ID Number</b>	Bargaining unit number for represented employees OR Confidential, exempt, board/committee member, volunteer, or other specific title
<b>Division or Bureau</b>	Board, committee, program, division, or unit name
<b>Index Number</b>	Index/PCA number (contact the DCA Accounting Office for assistance if you do not know your Index/PCA number)
<b>Residence Address* (including city, state, and ZIP code)</b>	Home address (do not use P.O. Box) <i>If confidential, contact the DCA Accounting Office for guidance.</i>
<b>Headquarters Address (city, state, and ZIP code)</b>	Complete headquarters (work) address
<b>Phone Number</b>	Office phone number (include area code)

\* Refers to the Privacy Statement provided on the reverse side of the form.

## Trip Information, Miscellaneous Information and Justifications, and Authorized Signatures

This section requests information regarding the when, where, and why the expenses occurred.

Field	Enter into Field																		
1	<b>Normal Work Hours:</b> Use the 24-hour clock																		
2	<b>Private Vehicle License Number:</b> Enter the license number of the private vehicle used on State business																		
3	<b>Mileage Rate Claimed:</b> Enter the rate claimed for private vehicle use																		
4	<b>Month/Year:</b> Month number (January = 1, December = 12) and four-digit																		
5	<b>Date:</b> Day of the month (one day per line) <b>Time:</b> Departure and return (using the 24-hour clock)																		
6	<b>Location Where Expenses Were Incurred:</b> (A brief statement describing the purpose may be entered immediately below the last entry for each trip.)																		
7	<b>Lodging:</b> Enter actual cost of lodging, plus tax (up to the maximum)																		
8	<b>Meals:</b> Enter actual cost of meals (up to the maximum reimbursement)																		
9	<b>Incidentals:</b> Enter actual cost of incidentals (up to the maximum)																		
10 (A)	<b>Transportation:</b> Enter the cost of transportation, if paid by employee																		
10 (B)	<b>Transportation:</b> Enter the method of transportation, using the following codes: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Type</th> <th style="text-align: left;">Code</th> </tr> </thead> <tbody> <tr> <td>Railway</td> <td>R</td> </tr> <tr> <td>Bus, air porter, light rail, Bay Area Rapid Transit (BART)</td> <td>B</td> </tr> <tr> <td>Commercial airline</td> <td>A</td> </tr> <tr> <td>Privately owned vehicle (motorcycles not allowed)</td> <td>PC</td> </tr> <tr> <td>Private air</td> <td>PA</td> </tr> <tr> <td>State car</td> <td>SC</td> </tr> <tr> <td>Rental car</td> <td>RC</td> </tr> <tr> <td>Taxi</td> <td>T</td> </tr> </tbody> </table>	Type	Code	Railway	R	Bus, air porter, light rail, Bay Area Rapid Transit (BART)	B	Commercial airline	A	Privately owned vehicle (motorcycles not allowed)	PC	Private air	PA	State car	SC	Rental car	RC	Taxi	T
Type	Code																		
Railway	R																		
Bus, air porter, light rail, Bay Area Rapid Transit (BART)	B																		
Commercial airline	A																		
Privately owned vehicle (motorcycles not allowed)	PC																		
Private air	PA																		
State car	SC																		
Rental car	RC																		
Taxi	T																		
10 (C)	<b>Transportation:</b> Enter carfare, bridge road tolls, or parking expenses																		
10 (D)	<b>Transportation:</b> Enter the number of miles driven with private and State vehicles, and then enter the amount due for private vehicles																		
11	<b>Business Expense:</b> Enter any other expenses necessary for completion of State business, with justification as required. <u>Note:</u> Expenses more than \$25 require Office of Administrative Services authorization. The DCA Accounting Office will obtain signatures.																		
12	<b>Total Expenses for Day:</b> Enter the total expenses for that day																		
13	<b>Subtotals:</b> Enter the total expenses for each column																		

14	<p><b>Purpose of Trip, Remarks, and Details:</b> Enter the justification and miscellaneous information, such as:</p> <ul style="list-style-type: none"> <li>Explanation of business expenses</li> <li>Phone expenses, including place, party, and number called</li> <li>Receipt justification, if needed</li> <li>Justification for obtaining rental cars, other than a compact, or use of a noncontract vendor</li> <li>Travel advances received</li> </ul>
----	---

## Appendix

### Resource Materials

Subject	Issue Date	Ex	Num
Short-Term Lodging Reimbursement Rates—Maximum Rates for All Represented and Excluded Employees	10/20/2016		<a href="#">Short-Term Lodging Reimbursement Rates</a>
Approval of Excess Lodging Rates	12/19/2013		<a href="#">PML 2013-044</a>  <a href="#">4.pdf</a>
FLSA Guidelines	04/16/2004		DCA DPM-PERS 02-06 <a href="http://inside.dca.ca.gov/documents/dpm_hr_02_06.pdf">http://inside.dca.ca.gov/documents/dpm_hr_02_06.pdf</a>
Travel and Relocation—Lodging Receipts	07/01/2014		<a href="http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx">www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx</a> CalHR PML 2013-022 <a href="http://www.calhr.ca.gov/travel-reimbursements">www.calhr.ca.gov/travel-reimbursements</a> <a href="#">Library/2013026.pdf</a>

Vanpool Incentives	7/23/2019		CalHR <a href="#">Commute Programs</a>
	09/27/2002		CalHR PML 2002-064 <a href="http://www.dot.ca.gov/hq/asc/travel/pdf/PML2002-064.pdf">http://www.dot.ca.gov/hq/asc/travel/pdf/PML2002-064.pdf</a>
			CalHR PML 2002-021

The list below includes memos, policies, procedures, and websites with information regarding travel reimbursement rules and regulations.

### Useful Websites and Addresses

Useful Websites	Internet Addresses
<a href="#">Department of General Services State Administrative Manual Forms</a>	<a href="http://www.dgs.ca.gov">www.dgs.ca.gov</a> <a href="http://sam.dgs.ca.gov/TOC/700.aspx">http://sam.dgs.ca.gov/TOC/700.aspx</a> <a href="http://www.dgs.ca.gov/osp/Forms.aspx">www.dgs.ca.gov/osp/Forms.aspx</a>
<a href="#">California Department of Human Resources Bargaining Unit Contracts Personnel Management Letters (PMLs)</a>	<a href="https://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx">https://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx</a> <a href="http://www.calhr.ca.gov/Pages/home.aspx">www.calhr.ca.gov/Pages/home.aspx</a>
Travel Agency	<a href="#">Caltravelstore</a>

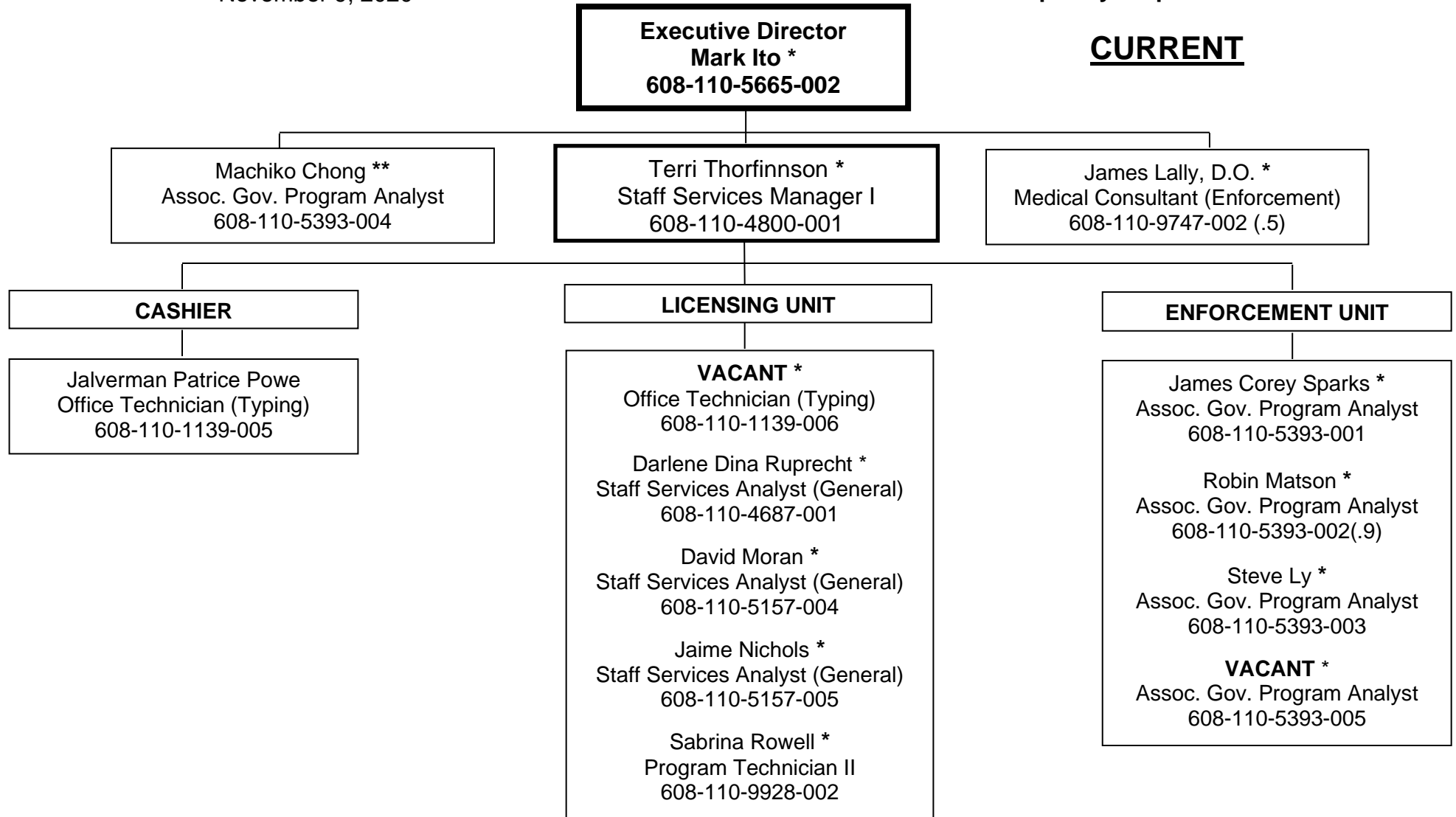
### List of Related Forms

The travel forms mentioned in this Travel Guide are available on the [Department of Consumer Affairs\(DCA\) Intranet](#) at <http://inside.dca.ca.gov/offices/accounting/travel.shtml> and in this Appendix.

Form	Number	<a href="#">DCA Intranet</a> and/or Internet Links
Authorization to Use Privately Owned Vehicles on State Business	STD 261	<a href="http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std261.pdf">www.documents.dgs.ca.gov/dgs/fmc/pdf/std261.pdf</a>
Cost Comparison Page	N/A	<a href="http://inside.dca.ca.gov/documents/cost_comparison.pdf">http://inside.dca.ca.gov/documents/cost_comparison.pdf</a>

Excess Lodging Rate Request/Approval	STD 255C	<a href="https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std255c.pdf">https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std255c.pdf</a>
Conference Attendance Request	N/A	<a href="http://inside.dca.ca.gov/documents/conf_attend.pdf">http://inside.dca.ca.gov/documents/conf_attend.pdf</a>
Hotel/Motel Transient Occupancy Tax Waiver	STD 236	<a href="http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std236.pdf">www.documents.dgs.ca.gov/dgs/fmc/pdf/std236.pdf</a>
Justification for Reimbursement for Postage Charges	AISD 12	<a href="http://inside.dca.ca.gov/documents/postal_charges.pdf">http://inside.dca.ca.gov/documents/postal_charges.pdf</a>
Justification for Reimbursement for Telephone Charges	AISD 11	<a href="http://inside.dca.ca.gov/documents/phone_charges.pdf">http://inside.dca.ca.gov/documents/phone_charges.pdf</a>
Request for Travel Advance	AISD 008	<a href="http://inside.dca.ca.gov/documents/travel_advance.pdf">http://inside.dca.ca.gov/documents/travel_advance.pdf</a>
Travel Advances and Travel Expenses Policy	SAM Ch. 8100	<a href="#">SAM Section 8116 Travel Advances and Travel Expenses</a>
Travel Expense Claim	STD 262a	<a href="http://inside.dca.ca.gov/documents/std262a.pdf">http://inside.dca.ca.gov/documents/std262a.pdf</a>

**CURRENT**



Mark Ito, Executive Director Date

\*CORI Cleared \*\*CORI Cleared/ Custodian of Records

Classification & Recruitment Analyst Date

# OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA DISCIPLINARY GUIDELINES OF 2007

## TABLE OF CONTENTS

### SECTION I

Business and Professions Code Section	Standard Terms & Conditions	Page No.
725	Excessive Prescribing.....	1
725	Excessive Treatments.....	1
726	Sexual Misconduct.....	2
810	Insurance Fraud.....	2
820	Mental or Physical Illness.....	2
2234(b)	Gross Negligence.....	2
2234(c)	Repeated Negligent Acts.....	2
2234(d)	Incompetence.....	2
2234(e)	Dishonesty.....	2
2236	Criminal Conviction.....	3
2237	Drug Related Conviction.....	3
2238	Violation of Drug Statutes.....	3
2239	Self-Abuse of Drug/Alcohol.....	3
2241	Furnishing Drugs to an Addict.....	3
2242	Prescribing Without Prior Examination.....	3
2250	Failure to Comply with Sterilization Consent Provision.....	3
2251	Use of Silicone.....	3
2252	Illegal Cancer Treatment.....	3
2261	Making or Signing False Document.....	2
2262	False Medical Record.....	2
2263	Violation of Professional Confidence.....	2
2264	Aiding and Abetting Unlicensed Practice.....	3
2265	Use of Qualified Physician Assistants Without Approval.....	4
2271 & 651	Deceptive Advertising.....	4
2272	Anonymous Advertising.....	4
2273	Employment of Runners, Cappers and Steerers.....	4
2274	Misuse of Title.....	4
2275	Use of "M.D.".....	4
2276	Misuse of "D.O.".....	4
2280	Intoxication While Treating Patients.....	4
2285	Use of Fictitious Name Without Permit.....	4
2305	Discipline by Another State or Federal Agency.....	4

### SECTION II

Sample Model Orders.....	5-9
--------------------------	-----



# 1. DISCIPLINARY PENALTIES

The following disciplinary penalties for selected Business and Professions Code violations are guidelines for use by administrative law judges at hearings as well as for use in the settlement of cases. Individual penalties may vary depending upon the particular circumstances of the case resulting in aggravation or mitigation of the offenses alleged. If probation is imposed as part of a penalty, the probation should include: (1) standard conditions, which will appear in all cases; and (2) the optional conditions, which will be tailored according to the nature of the offense.

## A. STANDARD CONDITIONS OF PROBATION

The standard of probation conditions are as follows:

- (1) Obey all laws (1) \*;
- (2) File quarterly reports (2);
- (3) Probation surveillance program (3);
- (4) Interviews with medical consultants (4);
- (5) Cost Recovery (5);
- (6) License Surrender (6);
- (7) Tolling of probation, if out of state (7); and
- (8) Probation violation/completion of probation (8).

*\* The number in the parentheses refers to the sample model orders found in Part II: Sample Model Orders.*

## B. OPTIONAL CONDITIONS OF PROBATION

The following conditions of probation, generally listed by statute order as set forth by the Business and Professions Code, are recommended by the Board for proven or stipulated violations. In all circumstances, the maximum penalty for any violation of the Business and Professions Code will be revocation. Additionally, violations of Business and Professions Code sections 2235 (obtaining license by fraud), 2288 (impersonation of an applicant in an examination), and 2306 (practice under suspension) shall all result in an order of revocation.

### **B&P 725 - EXCESSIVE PRESCRIBING**

Minimum penalty: Stayed revocation, 5 years probation

1. Drugs - Total DEA restriction (10)  
Surrender DEA permit (11)  
(or) - Partial DEA restriction (12)
2. Pharmacology course (18)
3. If warranted, education course (19)
4. If warranted, supervised structured environment (29)
5. If warranted, oral/practical examination (22)
6. If warranted, suspension of at least 90 days (9)
7. If warranted, maintain drug records for review (13)

### **B&P 725 - EXCESSIVE TREATMENTS**

Minimum penalty: Stayed revocation, 5 years probation

1. Education course (20)
2. If warranted, supervised structured environment (29)
3. If warranted, oral/practical examination (22)
4. If warranted, suspension of at least 90 days (9)

## **B&P 726 - SEXUAL MISCONDUCT**

Minimum penalty: Stayed revocation, 10 years probation

1. Education course (19)
2. Psychiatric evaluation (25)  
or, psychotherapy (26)
3. If warranted, supervised structured environment (29)
4. Require third party present when examining patients (23)

## **B&P 820 - MENTAL OR PHYSICAL ILLNESS**

Minimum penalty: Stayed revocation, 5 years probation

1. If warranted, restricted practice (24)
2. If warranted, monitoring (29)

## **B&P 2234(b) - GROSS NEGLIGENCE**

## **B&P 2234(c) - REPEATED NEGLIGENT ACTS**

## **B&P 2234(d) - INCOMPETENCE**

Minimum penalty: Stayed revocation, 5 years probation

1. Pharmacology course (18)
2. Education course (19)  
clinical training program (21) (where deficiency is noted but the physician is not a present danger to the public)
3. Oral/practical examination (22)
4. If warranted, supervised structured environment (29)
5. If warranted, restricted practice (24)
6. If warranted, medical evaluation (27)
7. If warranted, medical treatment (28)

## **B&P 810 - INSURANCE FRAUD**

## **B&P 2234(e) - DISHONESTY**

## **B&P 2261 - MAKING OR SIGNING FALSE DOCUMENT**

## **B&P 2262 - FALSE MEDICAL RECORDS**

## **B&P 2263 - VIOLATION OF PROFESSIONAL CONFIDENCE**

Minimum Penalty: Stayed revocation, 5 years probation.

1. If warranted, community service program (30)
2. If warranted, actual suspension (9)
3. If warranted, restitution (31)
4. Education course (19)

## **B&P 2236 - CRIMINAL CONVICTION**

Minimum Penalty: Stayed revocation, 5 years probation.

Terms and conditions depend on the underlying facts of the criminal offense.

**B&P 2237 - DRUG RELATED CONVICTION**

**B&P 2238 - VIOLATION OF DRUG STATUTE**

**B&P 2241 - FURNISHING DRUGS TO AN ADDICT**

**B&P 2242 - PRESCRIBING DRUGS WITHOUT PRIOR EXAMINATION**

Minimum penalty: Stayed revocation, 5 years probation

1. Drugs - total DEA restriction (10)  
    or   surrender DEA permit (11)  
        partial DEA permit (12)
2. Pharmacology course (18)
3. Education course (19) and/or a clinical training program (21)
4. If warranted, oral/practical examination (22)
5. If warranted, supervised structured environment (29)
6. If self-user of drugs: See B&P 2239
7. If warranted, suspension of at least 90 days (9)
8. If warranted, maintain drug records for review (13)
9. If warranted, monitoring (29)

*NOTE: Unless there is extensive mitigation, outright revocation for conviction of illegal sales of controlled drugs is the proper penalty.*

**B&P 2239 - SELF-ABUSE OF DRUGS OR ALCOHOL**

**B&P 2250 - FAILURE TO COMPLY WITH STERILIZATION CONSENT PROVISIONS**

**B&P 2251 - USE OF SILICONE**

**B&P 2252 - ILLEGAL CANCER TREATMENT**

Minimum penalty: Stayed revocation , 5 years probation

1. If warranted, period of actual suspension (9)
2. Community service (30)
3. Education (19)
4. If warranted, monitoring (29)

**B&P 2264 - AIDING AND ABETTING UNLICENSED PRACTICE**

Minimum penalty: Stayed revocation, at least 3 years probation

1. If warranted, suspension of at least 60 days (9)
2. If warranted, oral/practical or written examination (22)
3. If warranted, monitoring (29)
4. If warranted, restricted practice (24)

**B&P 2265 - USE OF QUALIFIED PHYSICIAN ASSISTANT WITHOUT APPROVAL**

Minimum penalty: 90 days stayed suspension, one year probation

1. If warranted, period of actual suspension (9)
2. If warranted, community service (30)

### **B&P 2271, 651 - DECEPTIVE ADVERTISING**

### **B&P 2272 - ANONYMOUS ADVERTISING**

### **B&P 2273 - EMPLOYMENT OF RUNNERS, CAPPERS AND STEERERS**

### **B&P 2274 - MISUSE OF TITLE**

### **B&P 2275 - USE OF "M.D."**

### **B&P 2276 - MISUSE OF "D.O."**

### **B&P 2280 - INTOXICATION WHILE TREATING PATIENTS**

Minimum penalty: Stayed revocation, 5 years probation

1. If drugs - total DEA restriction (10)  
or surrender of DEA permit (11)  
partial DEA restriction (12)
2. If alcohol - abstain from alcohol (16)
3. If warranted, in case of drug abuse, abstain from alcohol (16)
4. Drugs - abstain from use (15)
5. Biological fluid testing (17)
6. Psychiatric evaluation (25)
7. If warranted, psychiatric treatment (26)
8. If warranted, drug or alcohol rehabilitation program (14)
9. Medical evaluation (27) and/or medical treatment (28)
10. Pharmacology course (18)
11. Education Course (19)
12. If warranted, oral/practical examination (22)
13. If warranted, supervised structured environment (29)
14. If warranted, maintain drug records for review (13)

### **B&P 2285 - USE OF FICTITIOUS NAME WITHOUT PERMIT**

Minimum penalty: 90 days stayed suspension, 3 years probation

1. If warranted, actual suspension (9)
2. If warranted, community service (30)
3. If warranted, restitution (31)
4. If warranted, education course (19)

### **B&P 2305 - DISCIPLINE BY ANOTHER STATE OR FEDERAL AGENCY**

Minimum penalty: add actual period of suspension

Maximum penalty: impose penalty that was stayed

A repeated similar offense or a violation of probation evidencing an unreformed attitude should call for the maximum penalty. Other violations of probation should call for at least a meaningful period of actual suspension, preferably 90 days or more.

## II. SAMPLE MODEL ORDERS

### A. STANDARD CONDITIONS OF PROBATION

#### 1. Obey all laws -

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

#### 2. Quarterly reports -

Respondent shall submit to the Board quarterly declaration under penalty of perjury on the Quarterly Report of Compliance Form, OMB 10 (5/97) which is hereby incorporated by reference, stating whether there has been compliance with all the conditions of probation.

#### 3. Probation surveillance program -

Respondent shall comply with the Board's probation surveillance program. Respondent shall, at all times, keep the Board informed of his or her addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Board. Under no circumstances shall a post office box serve as an address of record.

Respondent shall also immediately inform the Board, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

#### 4. Interviews with medical consultants -

Respondent shall appear in person for interviews with the Board's medical consultants upon request at various intervals and with reasonable notice.

#### 5. Cost recovery -

The respondent is hereby ordered to reimburse the Board the amount of \$\_\_\_\_\_ within 90 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.

#### 6. License surrender -

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Board reserves the right to evaluate the 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. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

#### 7. Tolling for out-of-state practice or residence, or in-state non-practice (inactive license).

In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the board or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Section 2051 and/or 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Board or its designee in or out of state shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.

#### 8. Probation violation/completion of probation -

If respondent violates probation in any respect, the Board may revoke probation and carry out the disciplinary order that was stayed after giving respondent notice and the opportunity to be heard. If an Accusation and/or Petition to revoke is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. Upon successful completion of probation, respondent's certificate will be fully restored.

## B. OPTIONAL CONDITIONS OF PROBATION

### 9. Actual suspension -

Respondent shall be suspended from the practice of medicine for \_\_\_\_\_ beginning the effective date of this decision.

### 10. Controlled drugs - total restriction -

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined in the California Uniform Controlled Substance Act except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

### 11. Controlled drugs - surrender of DEA permit -

Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board.

### 12. Controlled drugs - partial restriction-

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule(s) \_\_\_\_\_ of the Act and prescribed to respondent for a bona fide illness or condition by another practitioner.

(or)

Respondent is permitted to prescribe, administer, dispense or order controlled substances listed in Schedule(s) \_\_\_\_\_ of the Act for in-patients in a hospital setting, and not otherwise.

*NOTE:* Use the following paragraph only if there is an actual elimination of the authority to prescribe a Scheduled Controlled Substance.

Respondent shall immediately surrender his/her current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order.

### 13. Controlled drugs - maintain record -

Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during probation, showing all the following: (1) the name and address of the patient, (2) the date, (3) the character and quantity of controlled substances involved and (4) the pathology and purpose for which the controlled substance was furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

### 14. Diversion program - alcohol and drugs -

Within 30 days of the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that further treatment and rehabilitation is no longer necessary. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by respondent.

### 15. Drugs - abstain from use -

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by the Business and Professions Code, or any drugs requiring a prescription except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

16. Alcohol - abstain from use -

Respondent shall abstain completely from the use of alcoholic beverages.

17. Biological fluid testing -

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.

18. Pharmacology course -

Within 60 days of the effective date of this decision, respondent shall enroll in a course in Pharmacology course, approved in advance by the Board or its designee, and shall successfully complete the course during the first year of probation.

19. Education course -

Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Board for its prior approval an educational program or course related to the violations charged in the accusation. This shall be completed during the first year of probation. This program shall be in addition to the Continuing Medical Education requirements for re-licensure. Following the completion of each course, the Board or its designee may administer an examination to test the respondent's knowledge of the course. Respondent shall provide proof of attendance for both continuing medical education requirements and education course on a yearly basis.

20. Medical ethics course -

Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course in medical ethics which respondent shall successfully complete during the first year of probation.

21. Clinical training program -

Within 90 days of the effective date of this decision, respondent shall submit to the Board for its prior approval, an intensive clinical training program. The exact number of hours and the specific content of the program shall be determined by the Board or its designee and shall be related to the violations charged in the accusation. Respondent shall successfully complete the training program and may be required to pass an examination administered by the Board or its designee related to the program's contents.

22. Written Examination -

Within 60 days of the effective date of this decision, (or upon completion of the required education course) (or upon completion of the required clinical training program) respondent shall take and pass a written examination to be administered by the Board or its designee. Written examination will be the Comvex. If respondent fails this examination, respondent must wait three months between reexaminations, except that after three failures respondent must wait one year to take each necessary reexamination thereafter. The respondent shall pay the costs of all examinations.

(Use either of the following two options with the above paragraph.)

OPTION #1: Condition precedent

Respondent shall not practice medicine until respondent has passed this examination and has been so notified by Board in writing.

*NOTE:* The condition precedent option is preferred in all cases involving findings of gross negligence or incompetence or repeated acts of negligence where the physician is a present danger to the public.

OPTION #2: Condition subsequent

If respondent fails to take and pass this examination by the end of the first six months of probation, respondent shall cease the practice of medicine until this examination has been successfully passed and respondent has been so notified by the Board in writing.

23. Third party presence - sexual violations -

During probation, respondent shall have a third party present while examining or treating (male, female, minor) patients. Respondent shall, within 30 days of the effective date of the decision, submit to the Board or its designee for its approval name(s) of persons who will act as the third party present. The respondent shall execute a release authorizing the third party(s) present to divulge any information that the Board may request during interviews by the probation monitor on a periodic basis.

*NOTE:* Sexual transgressors should normally be placed in a supervised structured environment.

24. Prohibited practice -

During probation, respondent is prohibited from practicing\_\_\_\_\_.

25. Psychiatric evaluation -

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric evaluation by a Board appointed psychiatrist who shall furnish a psychiatric report to the Board or its designee. The respondent shall pay the cost of the psychiatric evaluation.

If respondent is required by the Board or its designee to undergo psychiatric treatment, respondent shall within 30 days of the requirement notice submit to the Board for its prior approval the name and qualifications of a psychiatrist of respondent's choice. Upon approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment until further notice from the Board. Respondent shall have the treating psychiatrist submit quarterly status report to the Board indicating whether the defendant is capable of practicing medicine safely.

(OPTIONAL)

Respondent shall not engage in the practice of medicine until notified by the Board of its determination that respondent is mentally fit to practice safely.

26. Psychotherapy -

Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require respondent to undergo psychiatric evaluation by a board appointed psychiatrist. Respondent shall pay all costs of the psychiatric evaluation.

*NOTE:* This condition is for those cases where the evidence demonstrated that the respondent has had impairment (impairment by mental illness, alcohol abuse and drug self-abuse) related to the violations but is not at present a danger to his/her patients.

27. Medical evaluation -

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board appointed physician who shall furnish a medical report to the Board or its designee. Respondent shall pay all costs of the medical evaluation.

If respondent is required by the Board or its designee to undergo medical treatment, respondent shall within 30 days of the requirement notice submit to the Board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval of the treating physician, respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall not engage in the practice of medicine until notified by the Board of its determination that respondent is medically fit to practice safely. Respondent shall pay the costs of such medical treatments.



*NOTE:* This condition is for those cases where the evidence demonstrates drug or alcohol impairment or medical illness or disability was a contributing cause of the violations.

28. Medical treatment -

Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports of the periodic medical evaluations by a Board appointed physician. Respondent shall pay the costs of such medical treatments.

29. Supervised structured environment -

Respondent is prohibited from engaging in solo practice. Within 30 days of the effective date of this decision, respondent shall submit to the Board and receive its prior approval, for a plan of practice limited to a supervised structured environment in which respondent's activities will be overseen and supervised by another physician, who shall provide periodic reports to the Board.

30. Community services -

Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least \_\_\_\_\_ hours a month for the first \_\_\_\_\_ months of probation.

*NOTE:* Not for quality of care issues.

31. Restitution -

Respondent shall provide restitution to \_\_\_\_\_ in the amount of \_\_\_\_\_ prior to the completion of the first year of probation.

*NOTE:* For patients only.

# Tab 7

# **EXECUTIVE DIRECTOR'S REPORT**



## MEMORANDUM

<b>DATE</b>	January 14, 2021
<b>TO</b>	Board Members
<b>FROM</b>	Mark Ito Executive Director
<b>SUBJECT</b>	<b>Executive Director's Report – Agenda Item 10</b>

This report provides the Board Members with information on the following topics:

- Licensing Statistics
- Staffing
- Regulations
- COVID-19
- CURES
- Enforcement Report/Discipline

### **Licensing Statistics:**

The table below shows the OMBC's total licensee count as of December 16, 2020. The table shows the number of licensees practicing or residing in California, and the total number of licensees under the OMBC's jurisdiction. The total number of licensees under the OMBC's jurisdiction is 12,062.

License Status	Practicing/Residing in CA	Total Licensees
Active/Current	8,894	10,225
Inactive/Current	70	563
Delinquent		1,274
<b>Total:</b>	<b>8,964</b>	<b>12,062*</b>

\* Total licensees under the OMBC's jurisdiction

The table below shows the Licensing Unit's workload for fiscal years 2019-20 and 2020-21. The workload for 2020-21 is from July 1, 2020 – December 17, 2020. The licensing workload for the OMBC continues to increase and we are looking into different ways to increase efficiency in the Licensing Unit. Creating efficiencies will allow the OMBC to process this increasing workload within our existing resources.

Licensing Workload				
	Fiscal Year 2019-20		Fiscal Year 2020-21*	
	Total	Monthly Average	Total	Monthly Average
Applications Received	983	82	238	40
Applications Approved	1,020	85	231	39
Certificates Issued	997	83	231	39
PTL Apps Received	641	53	263	44
PTL Apps Approved	232	19	577	96
Licenses Renewed	4,456	371	2,292	382
Fictitious Name Permits Received	119	10	64	11
Fictitious Name Permits Approved	112	9	62	10
Fictitious Name Permits Renewed	678	56	486	81

\* Fiscal Year 2020-21 data is from July 1, 2020 – December 17, 2020

The number of days to approve a license application during the current fiscal year is 90 days. Applications with missing documents took an average of 135 days to complete and approve.

### **Staffing:**

The Board is in the process of hiring one Administrative Governmental Program Analyst position to process the enforcement workload associated with the implementation of the Postgraduate Training License (PTL). The Board anticipates that the position will alleviate the backlog in the Enforcement Unit.

### **Regulations:**

#### **Substantial Relationship and Rehabilitation Criteria**

This regulatory proposal would implement the provisions of Assembly Bill 2138. This proposal would increase opportunities for those with prior convictions or disciplinary action to obtain licensure if evidence points to rehabilitation. This proposal was submitted to the Office of Administrative Law (OAL) for final approval on December 2, 2020.

#### **Notice to Consumers**

This regulatory proposal outlines the requirements for licensees to provide notice to consumers that D.O.s are licensed by the OMBC, how patients can check the status of D.O.s and how patients can file a complaint against a D.O. This regulatory proposal is currently under review by DCA and will be submitted to OAL in the coming weeks for final approval.

### **COVID-19**

In response to COVID-19, the OMBC follows guidelines set forth in the attached OMBC Resiliency Map and Reopening Plan. The OMBC continues to encourage telework for employees whose duties can be performed remotely. OMBC has identified several workplace safety protocols to reduce the risk of COVID-19 exposure to employees. These protocols include encouraging the utilization of telework, staff rotation schedules, and staggered employee office visits. OMBC has implemented new cleaning and disinfecting protocols, office equipment practice, front counter protocols, signage, remote meeting opportunities, limited in-person meetings, and revised meeting conference room capacities.

The OMBC's operations have been slightly impacted by the measures taken to combat the COVID-19 pandemic. There have been several lessons learned balancing being consistent with COVID-19 safety guidelines and ensuring that the OMBC's operational needs are being met. The OMBC has

been adjusting teleworking schedules and staggered office visits to ensure that operational needs are being met.

# **ENFORCEMENT REPORT**

# OMBC Enforcement Report

January 14, 2021

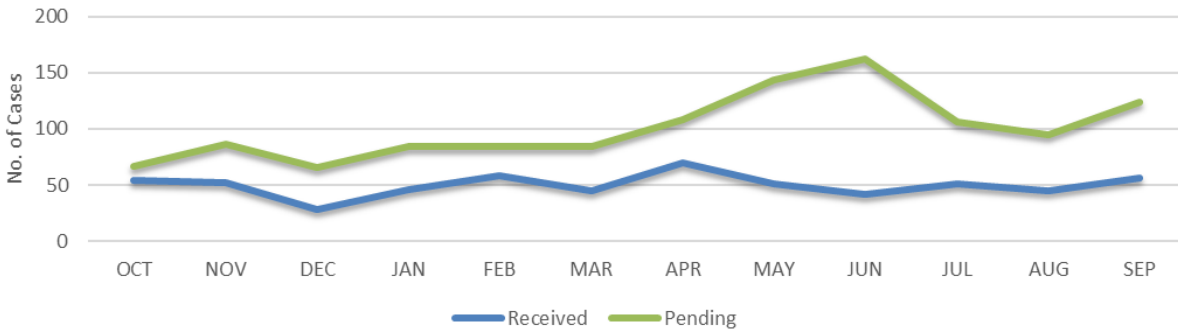
The following OMBC Enforcement Report covers a 12-month period starting from October 1, 2019 through September 30, 2020. The OMBC Enforcement Report is divided into five sections: Intake, Investigations, Enforcement, Performance Measures, and Probation. The data is collected from the Breeze Enforcement Reports and DCA QBIRT (IBM Cognos Analytics).

## COMPLAINT INTAKE

	4Q 2019			1Q 2020			2Q 2020			3Q 2020			Totals
TOTAL INTAKE	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	
Received	54	52	28	46	58	45	70	51	42	51	45	56	598
Aging	41	50	43	56	52	60	31	36	83	86	61	41	53
Pending	67	86	66	84	84	84	108	144	162	106	95	124	

**Data Table 1: Complaint Intake with Convictions/Arrests**

In Data Table 1 above, under TOTAL INTAKE, OMBC received 598 complaints (25 convictions/arrests). The aging for intake measures the period from the date the complaint was received (date stamped) to the date the complaint was assigned. In Figure 1.1 below we see pending complaints were hovered below 100 from July 2019 until March 2020 when it started to increase and reached 150 cases at the end of June 2020.



**Figure 1.1: Intake Totals Per Month**

## INVESTIGATIONS

### Desk (internal) Investigations

	4Q 2019			1Q 2020			2Q 2020			3Q 2020			Totals
Desk Inv.	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	
Assigned	68	33	48	27	57	45	46	17	23	108	53	29	554
Completed	65	42	53	49	45	26	37	35	26	32	24	33	467
Aging	77	79	115	104	125	210	53	88	82	21	68	72	91
Pending	205	196	190	167	182	201	211	194	193	269	298	288	193

**Data Table 2: Desk Investigations**

For all desk investigations during this period, Data Table 2 above breaks down the monthly totals for how many complaints were assigned and completed; the monthly aging and cases pending. During this period, a total of 554 cases were assigned to desk investigations and 467 cases were completed. The average number of days to complete a desk investigation was 91 days. In Figure 2.2, the assigned and completed caseloads averaged around 50 per month until July 2020 when assigned cases increased to 100 and then receded. Pending desk investigations averaged in the 200's during this period until June 2020 when began to increase and peak at 300 in August.



# OMBC Enforcement Report

January 14, 2021

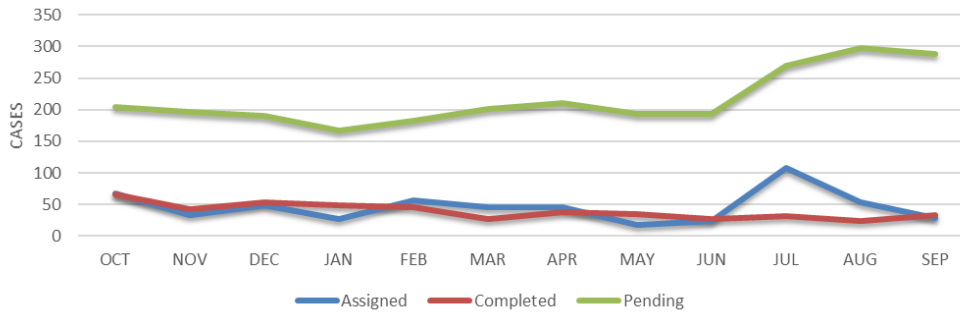


Figure 2.1: Desk Investigations Monthly Totals

## Division of Investigation (DOI) Field Investigations

	4Q 2019			1Q 2020				2Q 2020			3Q 2020			Totals
Field Inv.	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP		
Assigned	5	4	2	5	3	3	5	2	0	1	1	1	32	
Completed	3	4	3	5	4	1	1	0	2	1	3	4	31	
Aging	550	209	365	374	452	128	366	0	82	962	365	437	357	
Pending	48	48	47	47	47	49	53	55	53	53	51	49		

Data Table 3: Field Investigations

Data Table 3 above breaks down the monthly totals for cases assigned to the Division of Investigations. Completed cases are either closed with insufficient evidence or referred to the Attorney General’s office for disciplinary action. During this 12-month period, 32 cases were assigned to field investigations; 31 were completed; and 49 cases were pending at the end of 3Q 2020. The average number of days to complete a field investigation was 357.

The case complexity is the breakdown of the specific allegations. In Figure 3.1, for all completed field investigations (31 cases), there were 7 excessive prescribing cases (22%); 8 Unprofessional conduct (26%); 2 sexual misconduct cases (6%); 1 Criminal (3%); 3 fraud cases (10%); 0 Impairment (0%); 3 negligent/injury cases (10%); 3 substance abuse cases (10%); and 4 Unlicensed practice (13%).

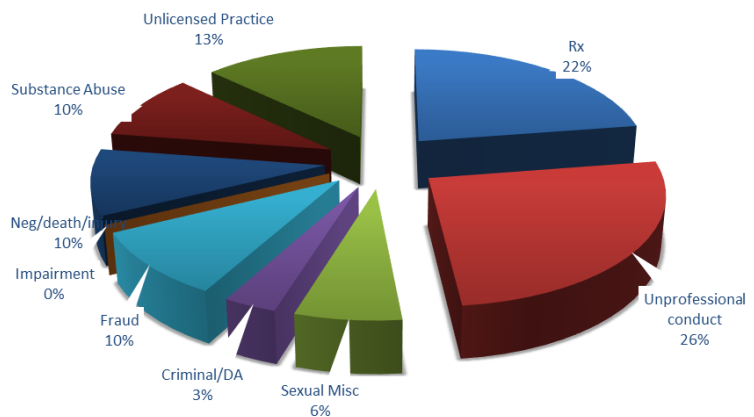


Figure 3.1 Complexity for completed Field Investigations

# OMBC Enforcement Report

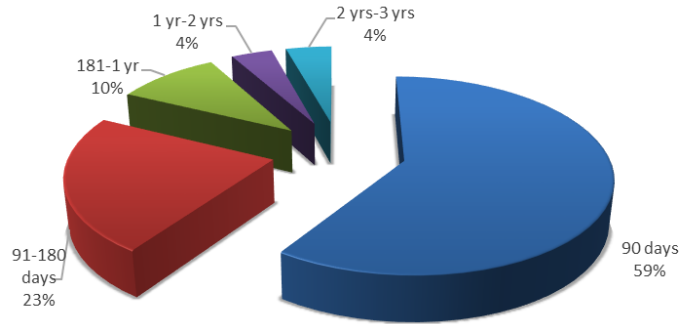
January 14, 2021

## Aging for Desk and Field Investigations

All Inv Aging	4Q 2019			1Q 2020			2Q 2020			3Q 2020			Totals
	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	
90 days	49	24	26	20	16	12	32	18	15	28	16	22	278
91-180 days	7	8	21	20	21	6	0	11	5	3	3	1	106
181-1 yr	5	2	3	4	4	2	2	4	5	0	5	9	45
1 yr-2 yrs	3	2	1	4	0	1	1	0	1	0	2	3	18
2 yrs-3 yrs	1	3	2	3	3	5	1	1	0	0	0	1	20
<b>Totals</b>	<b>65</b>	<b>39</b>	<b>53</b>	<b>51</b>	<b>44</b>	<b>26</b>	<b>36</b>	<b>34</b>	<b>26</b>	<b>31</b>	<b>26</b>	<b>36</b>	<b>467</b>

**Data Table 4: All Investigations Aging**

In Data Table 4 and Figure 4.1 we see the aging matrix for the number of all investigations that were closed per month within a specific time-period. 278 cases (59%) were completed within 90 days; 106 cases (23%) were completed between 91-180 days; 45 cases (10%) were completed between 181-365 days; 18 cases (4%) were completed between 1 – 2 years; and 20 cases (4%) were completed between 2-3 years. 82% of the investigations were completed within 6 months; and 92% were completed within a year.



**Figure 4.1 All Investigations Aging**

## ENFORCEMENT ACTIONS

	4Q 2019			1Q 2020			2Q 2020			3Q 2020			Totals
	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	
AG Cases Initiated	2	2	1	0	0	1	5	1	1	0	1	0	14
Acc/SOI Filed	0	1	1	0	2	1	3	1	0	0	1	1	11
Final Disciplinary Order	1	3	0	1	0	1	2	0	0	1	0	5	14
Acc W/drawn/declined	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed w/out Disc Acti	0	0	0	0	0	0	0	1	0	0	0	1	2
Citations	0	1	0	2	1	0	0	0	0	2	1	0	7
Suspension Orders	0	0	0	0	0	0	0	0	0	0	1	1	2
<b>AG Cases Pending</b>	<b>24</b>	<b>23</b>	<b>23</b>	<b>22</b>	<b>22</b>	<b>22</b>	<b>26</b>	<b>26</b>	<b>27</b>	<b>26</b>	<b>27</b>	<b>21</b>	

**Data Table 5: Enforcement Actions**

For all enforcement actions, Data Table 5 above breaks down the monthly totals for each disciplinary action. During this 12-month period, 14 cases were transmitted to the Attorney General’s Office for disciplinary actions; 11 Accusations/SOI were filed; 14 Final Disciplinary Orders were filed; 0 accusation withdrawn; 2 cases were closed without disciplinary action; 7 citations issued; and 2 Suspension Order was filed. 21 AG cases pending at the end of 3Q 2020.

# OMBC Enforcement Report

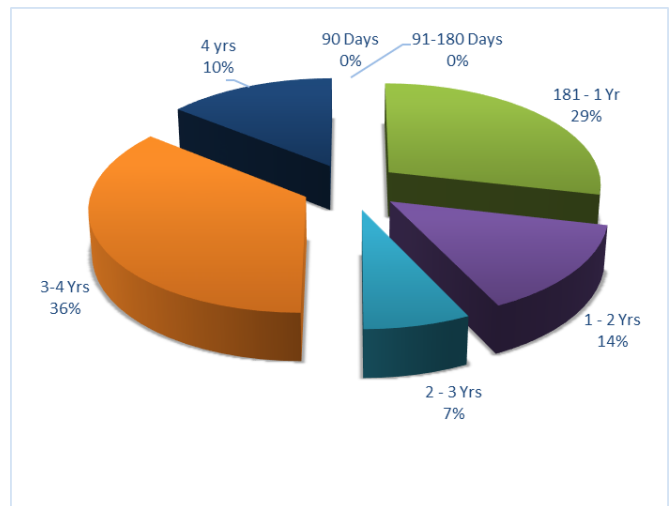
January 14, 2021

## Aging for Final Disciplinary Orders

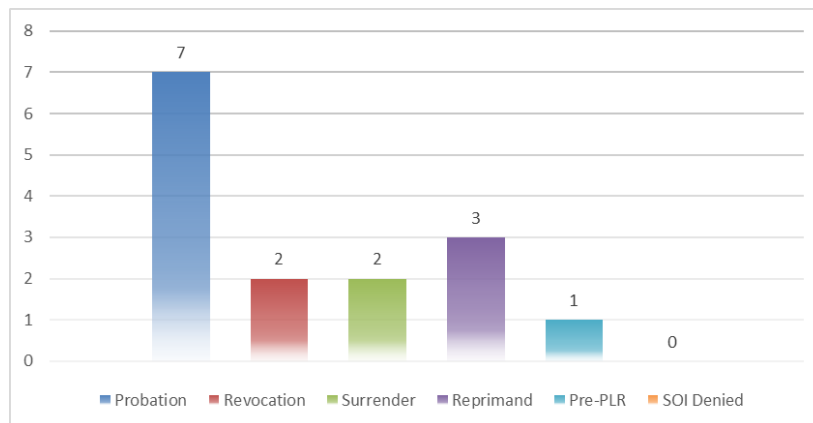
Total Orders Aging	4Q 2019			1Q 2020			2Q 2020			3Q 2020			Totals
	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	
90 Days	0	0	0	0	0	0	0	0	0	0	0	0	0
91-180 Days	0	0	0	0	0	0	0	0	0	0	0	0	0
181 - 1 Yr	0	1	0	1	0	0	1	0	0	0	0	1	4
1 - 2 Yrs	0	0	0	0	0	1	0	0	0	0	0	1	2
2 - 3 Yrs	0	1	0	0	0	0	0	0	0	0	0	0	1
3-4 Yrs	1	1	0	0	0	0	0	0	0	1	0	2	5
4 yrs	0	0	0	0	0	0	1	0	0	0	0	1	2
<b>Totals</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>5</b>	<b>14</b>

**Data Table 6: Final Orders Aging Matrix**

In Data Table 6 and Figure 6.1 we see the aging matrix of the 14 Final Disciplinary Orders that were completed during this 12-month period. The chart shows the percentage of cases distributed within each aging period. Of the 14 final disciplinary orders, 4 cases completed (29%) within 181-365 days; 2 cases (14%) within 1-2 years; 1 case (7%) within 2-3 years; 5 cases (36%) within 3-4 years; and 2 cases (10%) after 4 years. Of the 14 Disciplinary Orders imposed (Figure 6.2 below), there were 7 probationary orders; 2 revocation; 2 surrender; 3 reprimand; and 1 Pre-accusation public reprimand.



**Figure 6.1: Final Orders Aging**



**Figure 6.2: Final Disciplinary Actions Imposed**

\* Pre-accusation public letter for reprimand

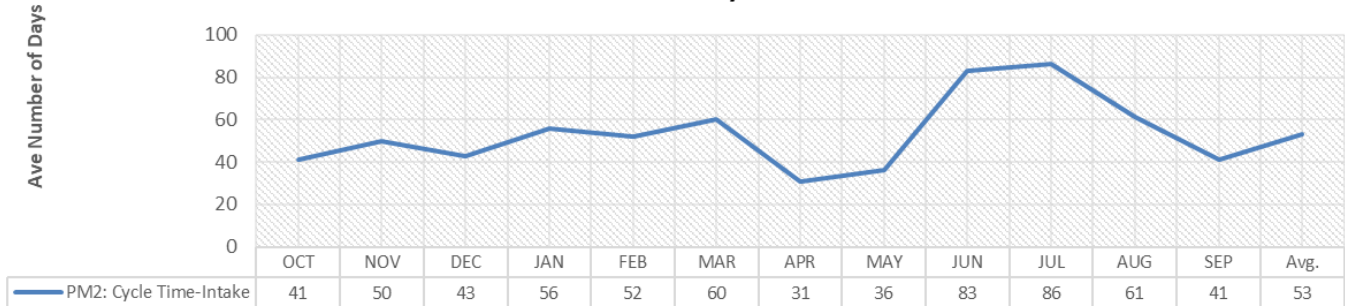
# OMBC Enforcement Report

January 14, 2021

## PERFORMANCE MEASURES

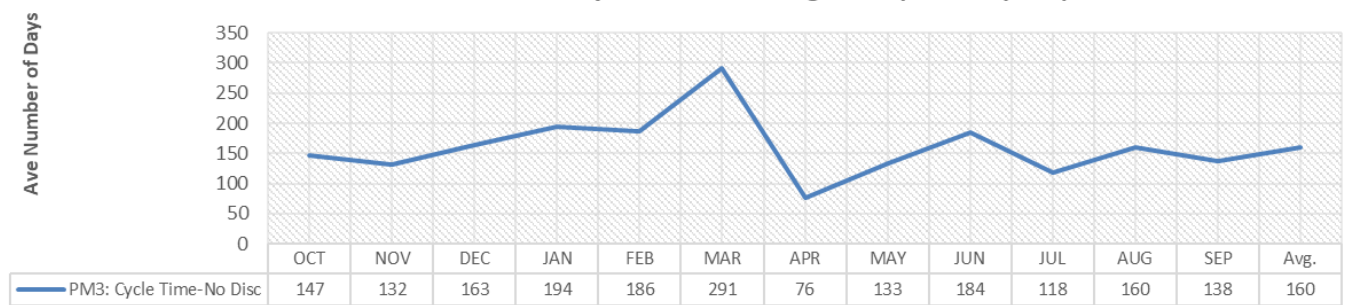
PM2: CYCLE TIME-INTAKE: Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

**Performance Measures 2: Cycle Time - Intake**



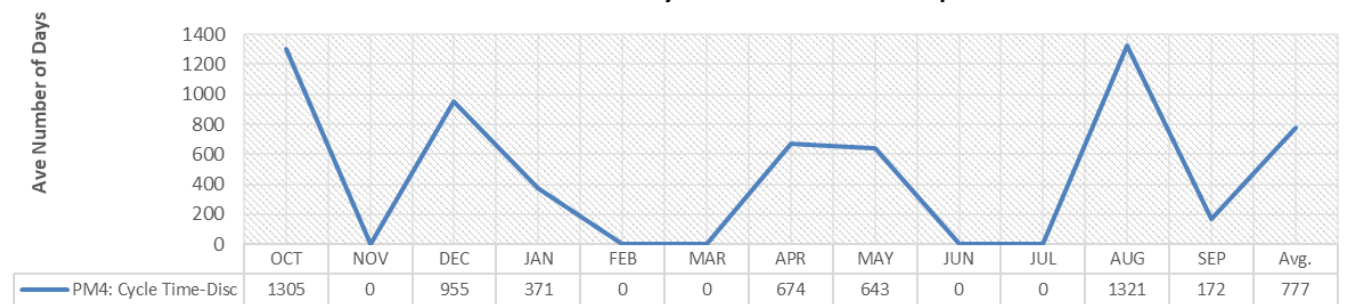
PM3: CYCLE TIME – INTAKE & INVESTIGATION: Average number of days to complete the entire enforcement process for cases not transmitted to the Attorney General. (Includes intake and Investigation)

**Performance Measures 3: Cycle Time - Investigations (No Discipline)**



PM4: CYCLE TIME – FORMAL DISCIPLINE: Average number of days to complete the entire enforcement process for cases transmitted to the Attorney General for formal discipline. (Includes intake, investigation, and transmittal outcome)

**Performance Measures 4: Cycle Time - Formal Discipline**

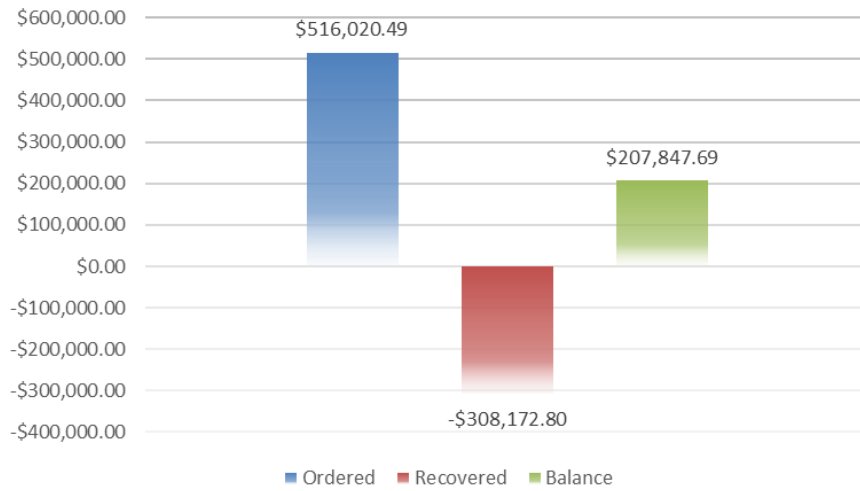


# OMBC Enforcement Report

January 14, 2021

## PROBATION

There are currently 39 probation cases; of which 9 cases are tolled. During this period 7 probationary cases were closed, and 5 cases opened. The total cost recovery ordered is currently \$516,020.49. To date, \$308,172.80 has been paid, leaving a balance of \$207,847.69.



# Tab 8

**This page has  
intentionally  
been left blank**

# Tab 9



# Osteopathic Medical Board

## Future Agenda Items

Agenda Item	Requestor

# Tab 10

# Osteopathic Medical Board

## Future Meeting Dates

Date	Place	Time
Thursday May 13, 2021	TBD	10:00 am

*\*Please note that all meetings should be held in the best interest of the Board. Meetings in resorts or vacation areas should not be made. Using Conference areas that do not require contracts and or payment is the best option for the Board. No overnight travel. If an employee chooses a mode of transportation which is more costly than another mode, a Cost Comparison form must be completed. Reimbursement by the State will be made at the lesser of the two costs. Taxi Service should be used for trips within but not over a 10-mile radius. Receipts are required for taxi expenses of \$10.00 and over. Tips are not reimbursable.*