

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA DISCIPLINARY GUIDELINES OF 2007

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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.