

State of California
Department of Consumer Affairs
Board of Barbering and Cosmetology



Disciplinary Guidelines

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INTRODUCTION

The Board of Barbering and Cosmetology (Board) is a consumer protection agency with an obligation to protect the consumers of California from the unsafe, incompetent, and/or negligent practices of its licensees. The Board has adopted the following guidelines for disciplinary orders and conditions of probation for violations of the Barbering and Cosmetology Act. The guidelines are intended for the use of those involved in the disciplinary process: Administrative Law Judges (ALJ), Deputy Attorney Generals, Attorneys for respondents, licensees, and Board staff members.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. The Board recognizes that the disciplinary orders and conditions of probation listed on the following pages are merely guidelines and that individual cases will require variations, which take into account unique circumstances. Consequently, the Board requests that the ~~Administrative Law Judge~~ ALJ hearing the case include an explanation of the deviations or omissions, including all mitigating factors considered by the ~~Administrative Law Judge~~ ALJ in the proposed Decision so that the Board is better able to understand the ~~Administrative Law Judge~~ rationale during ~~his/her~~ their review and consideration of the proposed ALJ's Decision.

DESCRIPTION OF PENALTIES

REVOCATION

This action revokes a respondent's license(s) and prohibits respondent from conducting services in the practice for which discipline is imposed. Prior to the effective date of the ~~a~~ Decision, the respondent may request reconsideration or reduction of the penalty. If the Board denies the request or does not grant a reduction of the penalty, the earliest date respondent may petition the Board for reinstatement of the revoked license is one year from the effective date of the Decision.

PROBATION

This action, usually taken in conjunction with a stayed revocation or suspension, places a licensee on probation with the Board for up to five years. During the probationary period, the Respondent must comply with specific terms and conditions of probation. If the respondent does not comply with all the terms and conditions of probation, the Board may pursue additional disciplinary action against the Respondent which can result in suspension or revocation of the Respondent's license(s).

SUSPENSION

This action prohibits a licensee from performing services in the practice for which they have been disciplined for a specific period of time. The licensee must cease operating during the suspension period. License suspensions can last five (5) to forty-five (45) working days. During the period of suspension, Respondent is required to post a notice which describes the nature of the violation for which Respondent is being disciplined.

FULL-COST RECOVERY

Section 7403 of the Business and Professions Code allows the Board to recover all its costs of investigating and adjudicating a disciplinary case. Full cost recovery includes both all charges incurred by the Board for investigating the case (including charges from the Division of Investigation, expert consultants, and services provided by Board employees or representatives), and, Office of Administrative Hearings, and Office of the Attorney General costs, as specified in Section 7403. A payment schedule can be specified, if warranted. It is the Board's policy that all disciplinary matters, including those resolved by stipulation, include recovery of all of the Board's costs.

DESCRIPTION OF PENALTIES (Continued)

PARTIAL COST RECOVERY

~~Section 7403 of the Business and Professions Code allows the Board to recover its costs of investigating and adjudicating a disciplinary case. Partial cost recovery in this instance includes Division of Investigation costs only. A payment schedule can be specified, if warranted.~~

PUBLIC NOTICE

Any disciplinary action imposed as a result of a Decision may be published in the appropriate Board newsletter or other publication. Additionally, the Board or its designee may issue press releases or other public notices of disciplinary action taken by the Board.

EXAMINATIONS

This action requires the Respondent to take and pass an examination administered by the examination staff of the Board. Respondent shall pay all costs associated with the examination.

STAY OF ORDER

This action allows the Board to adopt an order of revocation or suspension but allows the order to be put aside. This means a respondent has time to serve a lesser penalty, which normally includes probation. However, if the Respondent fails to comply with the terms outlined in the final Decision, the Board or its designee can pursue additional disciplinary action against the Respondent and reinstate the order that was stayed.

FACTORS TO BE CONSIDERED

When considering whether revocation, suspension or probation is to be imposed in a given case, ~~factors such as the following should be considered:~~ the Board shall consider the following rehabilitation criteria set forth in subsection (b) of Section 971 of Title 16 of the California Code of Regulations:

(1) When considering the suspension or revocation of a license under Section 490, 7362, 7403, 7404, or 7405 of the Business and Professions Code on the ground that the licensee has been convicted of a crime, the Board shall consider whether the licensee made a showing of rehabilitation if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:

(A) The nature and gravity of the crime(s).

(B) The length(s) of the applicable parole or probation period(s).

(C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(D) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.

(E) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(2) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the licensee did not make the showing of rehabilitation based on the criteria in paragraph (1), the suspension or revocation is based on acts underlying a disciplinary action as described in Section 141 of the Business and Professions Code, or the suspension or revocation is based on one or more of the grounds other than a criminal conviction that are specified in Section 7362(b), 7403, or 7404 of the Business and Professions Code, the Board shall apply the following criteria in evaluating the licensee's rehabilitation:

(A) The nature and gravity of the act(s), disciplinary action(s), or crime(s) under consideration as grounds for suspension or revocation.

(B) Evidence of any act(s), disciplinary action(s), or crime(s) committed subsequent to the act(s), disciplinary action(s), or crime(s) under consideration as grounds for suspension or revocation.

(C) The time that has elapsed since commission of the act(s), disciplinary action(s), or crime(s) referred to in subparagraphs (A) or (B).

(D) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.

(E) The criteria in paragraph (1)(A)-(E), as applicable.

- ~~1. Nature and severity of the act(s) or offense(s).~~
- ~~2. Total criminal record.~~
- ~~3. The time that has elapsed since the commission of the act(s) or offense(s).~~
- ~~4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.~~
- ~~5. If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.~~
- ~~6. Evidence, if any, of rehabilitation submitted by the licensee.~~

(F) Evidence, if any, or rehabilitation submitted by the licensee.

When considering whether denial of a license is to be imposed, factors such as the following should be considered: the Board shall consider the following rehabilitation criteria set forth in subsection (a) of Section 971 of Title 16 of the California Code of Regulations:

(1) When considering the denial of a license pursuant to section 480, 7362, 7403, or 7405 of the Business and Professions Code or a section of the Barbering and Cosmetology Act (Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code) citing Section

480 of the Business and Professions Code as providing grounds for denial of licensure on the ground that the applicant has been convicted of a crime, the Board shall consider whether the applicant made a showing of rehabilitation, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:

(A) The nature and gravity of the crime(s).

(B) The length(s) of the applicable parole or probation period(s).

(C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(D) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(E) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(2) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the applicant did not make the showing of rehabilitation based on the criteria in paragraph (1), the denial is based on professional misconduct, or the denial is based on one or more of the grounds other than a criminal conviction that are specified in Section 7362(b) or 7403 of the Business and Professions Code, the Board shall apply the following criteria in evaluating an applicant's rehabilitation:

(A) The nature and the gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(B) Evidence of any act(s), professional misconduct, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(C) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subparagraph (A) or (B).

(D) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(E) The criteria in subparagraph (1)(A)-(E), as applicable.

(F) Evidence, if any, or rehabilitation submitted by the applicant.

- ~~1. The nature and the severity of the act(s) or crimes(s) under consideration as grounds of denial.~~
- ~~2. Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial.~~
- ~~3. The time that has elapsed since commission of the act(s) or crime(s) referred to in (1) and (2).~~
- ~~4. The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.~~
- ~~5. Evidence, if any, of rehabilitation submitted by the applicant.~~

CONDITIONS OF PROBATION

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

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

For purposes of implementation of these conditions of probation, the term "designee" shall refer to the Executive Officer, Assistant Executive Officer, Enforcement Manager or probation monitor of the Board of Barbering and Cosmetology.

Upon successful completion of probation, respondent's license(s) will be fully restored.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

A. **Standard** conditions that should appear in all probation orders;

B. **Optional** conditions are those that are appropriate based on the nature and circumstances of the particular violation.

MITIGATION EVIDENCE

The Respondent is permitted to present mitigating circumstances and rehabilitation evidence at a hearing and the Board will review the evidence submitted. The same opportunity is provided in the settlement process.

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

A) List of improvements made to the Establishment:

- Policy & Procedures Established
- Photographs of Improvements
- Rental Agreements

B) Declaration stating how Respondent has corrected the violations cited.

C) Certification of courses completed.

D) If Respondent was convicted of a criminal offense:

- A letter describing the underlying circumstances of the arrest(s) as well as any rehabilitative efforts or changes in life since that time to prevent future problems.
- Letters of reference from past and/or current employers.
- Evidence of compliance with and completion of terms of probation, parole, restitution or any other sanctions (proof of enrollment/completion of court ordered programs, classes, fines) for each conviction.
- Letters from recognized recovery programs attesting to current sobriety, length of time of sobriety, and recovery programs, if there has been a history of alcohol or drug abuse.

STANDARD CONDITIONS OF PROBATION [**Page numbers cross-referenced in this section are to be updated after OAL approval*]

Each disciplinary order is required to contain the introductory language described on page ~~28-34~~* of this pamphlet, and each of the following ~~46-13~~ conditions (for an explanation and recommended language for each condition, turn to pages ~~29-32-33-42~~*):

- ~~1) Suspension of License~~
- ~~2) Posting of Suspension Sign~~
- ~~3) Cost Recovery (Does not apply to Applicants)~~
- ~~4) Quarterly Reports of Compliance~~
- 1) Obey all Laws
- 2) Cost Recovery (Does not apply to Applicants)
- 3) Quarterly Reports of Compliance
- ~~5)4) Notification to Employer Establishment Owner(s)~~
- ~~6)5) Change of Employment~~
- ~~7)6) Participation in Apprenticeship or Externship Program~~
- ~~8)7) Publication of Disciplinary Action~~
- ~~9) Obey all laws~~
- ~~10)8) Comply with the Board's Probation Program~~
- ~~11)9) Violation of Probation~~
- ~~12) Report in Person~~
- ~~13) Residency Outside of State~~
- ~~14)10) Failure to Practice — California Resident /Tolling~~

~~15)~~11) Maintain Valid License

12) Petition for Reduction of Penalty

~~16)~~13) License Surrender While on Probation

OPTIONAL CONDITIONS OF PROBATION [*Page numbers to be updated after OAL approval]

Any of the optional conditions may be included if relevant to the violation (for an explanation and recommended language for each condition, refer to pages 33-35 43-45*:

- 1) Remedial Education Courses
- 2) Written Licensing Examination
- ~~3) Practical Licensing Examination~~
- ~~4)3) Notice to Employees of Discipline~~
- ~~5)4) Criminal Probation~~
- ~~6)5) Proof of Advertising Correction~~
- ~~7)6) Restitution~~
- ~~8)7) Reimbursement of Probation Program~~
- ~~9)8) Manager or Licensee in Charge~~
- ~~10)9) Abstain from Controlled Substances / Submit to Biological Fluid Testing~~
- ~~11)10) Abstain from Use of Alcohol / Submit to Biological Fluid Testing~~
- 11) Suspension of License
- 12) Posting of Suspension Sign

THE BARBERING AND COSMETOLOGY ACT VIOLATIONS AND RECOMMENDED ACTIONS

The Barbering and Cosmetology Act (Business and Professions Code, Division 3, Chapter 10) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. The following are code numbers of the offenses and the recommended Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and resolutions.

**7320 ~~If the violation is for the practice of medicine~~
VIOLATION INVOLVING THE PRACTICE OF MEDICINE OR
SURGERY, then the recommended penalty is as
follows:**

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 5 years
~~Suspension, 15 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
Optional Terms of Probation Nos.
(1) Remedial Education
(2) Written Licensing Exam
(~~43~~) Notice to Employees of Discipline
(~~76~~) Restitution
(11) Suspension of License, 15 consecutive
working days
(12) Posting of Suspension Sign

**7320.1 ~~If the violation is for the use of metal instruments~~
VIOLATION INVOLVING UNAUTHORIZED USE OF METAL
INSTRUMENTS IN PROVIDING MANICURE OR PEDICURE
~~then the recommended penalty is as follows:~~**

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 2 years
Suspension, 5 consecutive working days
Partial Cost Recovery
Standard Terms of Probation Nos. 4-16-1-13
Optional Terms of Probation Nos.
(1) Remedial Education
(2) Written Licensing Exam
(43) Notice to Employees of Discipline
(76) Restitution
(11) Suspension of License, 5 consecutive working days
(12) Posting of Suspension Sign

7320.2 ~~If the violation is for practicing illegal treatment methods~~
VIOLATION INVOLVING ILLEGAL USE OF X-RAY APPLIANCE, APPARATUS, OR MACHINE
~~then the recommended penalty is as follows:~~

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 5 years
Suspension, 15 consecutive working days
Partial Cost Recovery
Standard Terms of Probation Nos. 4-16-1-13
Optional Terms of Probation Nos.
(1) Remedial Education
(2) Written Licensing Exam
(43) Notice to Employees of Discipline
(76) Restitution
(11) Suspension of License, 15 consecutive working days
(12) Posting of Suspension Sign

7404(a) UNPROFESSIONAL CONDUCT

Recommended Penalty:

- **Maximum:** Revocation/Denial of License
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 3 years
~~Suspension, 5 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
Optional Terms of Probation Nos.
(1) Remedial Education
(2) Written Licensing Exam
(~~43~~) Notice to Employees of Discipline
(~~54~~) Criminal Probation
(11) Suspension of License, 5 consecutive working days
(12) Posting of Suspension Sign

7404(a)(1) INCOMPETENCE OR GROSS NEGLIGENCE, INCLUDING FAILURE TO COMPLY WITH GENERALLY ACCEPTED STANDARDS FOR THE PRACTICE OF BARBERING, COSMETOLOGY, OR ELECTROLOGY OR DISREGARD FOR THE HEALTH AND SAFETY OF PATRONS.

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 3 years
~~Suspension, 10 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
Optional Terms of Probation Nos.
(1) Remedial Education
(2) Written Licensing Exam
(~~43~~) Notice to Employees of Discipline
(~~76~~) Restitution

(11) Suspension of License, 10 consecutive working days
(12) Posting of Suspension Sign

7404(a)(2) REPEATED SIMILAR NEGLIGENT ACTS.

Recommended Penalty:

- **Maximum:** Revocation
Full Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 2 years
~~Suspension, 10 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. 1-16 1-13
Optional Terms of Probation Nos.
(1) Remedial Education
(2) Written Licensing Exam
~~(3) Practical Licensing Exam~~
~~(43) Notice to Employees of Discipline~~
(11) Suspension of License, 10 consecutive working days
(12) Posting of Suspension Sign

7404(a)(3) CONVICTION OF ANY CRIME SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS, OR DUTIES OF THE LICENSEHOLDER, IN WHICH CASE, THE RECORDS OF CONVICTION OR A CERTIFIED COPY SHALL BE CONCLUSIVE EVIDENCE THEREOF.

(Refer to sections in this document relating to penalties for violating “Section 480” for recommended guidelines for denial of a license based upon a criminal conviction.)

~~Conviction of a felony involving a crime of violence (including, but not limited to: murder, attempted murder, assault with a deadly weapon) or prostitution (soliciting) within the past three years or is currently on parole or probation for such a conviction.~~

Recommended Penalty:

- **Maximum:** Revocation
Denial of license
Full Cost Recovery
- **Minimum:** Revocation, stayed
License issued with Terms and Conditions appropriate to crime
Probation, 3 years
Partial Cost Recovery
Standard Terms of Probation Nos. 1-16 1-13
Optional Terms of Probation No. (54) Criminal Probation

~~Conviction of three or more felonies involving crimes of violence (including, but not limited to: murder, attempted murder, assault with a deadly weapon) or prostitution (soliciting) within the past five years (or six in a ten year period).~~

Recommended Penalty:

- ~~**Maximum:** Revocation
Denial of License
Full Cost Recovery~~
- ~~**Minimum:** Revocation, stayed
License issued with Terms and Conditions appropriate to crime
Probation, 5 years
Partial Cost Recovery
Standard Terms of Probation Nos. 1-16
Optional Terms of Probation No. (5) Criminal Probation~~

~~Conviction of a crime of a sexual nature (other than those involving a minor) within the past three years or is currently on parole or probation (including, but not limited to: rape, sexual assault, and molestation).~~

Recommended Penalty:

- ~~**Maximum:** Revocation
Denial of License
Full Cost Recovery~~
- ~~**Minimum:** Revocation, stayed
License issued with Terms and Conditions~~

~~appropriate to crime~~
~~Probation, 5 years~~
~~Partial Cost Recovery~~
~~Standard Terms of Probation Nos. 1-16~~
~~Optional Terms of Probation No.~~
~~(5) Criminal Probation~~

~~Conviction of any crime committed by a licensee in an establishment subject to regulation by the Board.~~

Recommended Penalty:

- ~~Maximum:~~ ~~Revocation~~
~~Full Cost Recovery~~
- ~~Minimum:~~ ~~Revocation, stayed~~
~~License issued with Terms and Conditions~~
~~appropriate to crime~~
~~Probation, 3 years~~
~~Partial Cost Recovery~~
~~Standard Terms of Probation Nos. 1-16~~
~~Optional Terms of Probation No.~~
~~(5) Criminal Probation~~

7404(a)(4) ADVERTISING BY MEANS OF KNOWINGLY FALSE OR DECEPTIVE STATEMENTS.

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 1 year
Suspension, 5 consecutive working days
Partial Cost Recovery
Standard Terms of Probation Nos. 4-16 1-13
Optional Terms of Probation No.s
(65) Proof of Advertising Correction
(11) Suspension of License, 5 consecutive
working days
(12) Posting of Suspension Sign

7404(b) FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER.
(All other Business and Professions Code sections cited.)

Recommended Penalty:

- **Maximum:** Revocation
~~Full~~ Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 3 years
~~Suspension, 5 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
Optional Terms of Probation Nos.
(2) Written Licensing Exam
(43) ~~Notice to Employees of Discipline~~
(11) Suspension of License, 5 consecutive working days
(12) Posting of Suspension Sign

7404(c) FAILURE TO COMPLY WITH THE RULES GOVERNING HEALTH AND SAFETY ADOPTED BY THE BOARD AND APPROVED BY THE STATE DEPARTMENT OF HEALTH SERVICES, FOR THE REGULATION OF ESTABLISHMENTS, OR ANY PRACTICE LICENSED AND REGULATED UNDER THIS CHAPTER.

Recommended Penalty:

- **Maximum:** Revocation
~~Full~~ Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 3 years
~~Suspension, 5 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
Optional Terms of Probation Nos.
(2) Written Licensing Exam
(43) ~~Notice to Employees of Discipline~~

(11) Suspension of License, 5 consecutive working days
(12) Posting of Suspension Sign

7404(d) FAILURE TO COMPLY WITH THE RULES ADOPTED BY THE BOARD FOR THE REGULATION OF ESTABLISHMENTS OR ANY PRACTICE LICENSED AND REGULATED UNDER THIS CHAPTER.

Recommended Penalty:

- **Maximum:** Revocation
Full Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 3 years
~~Suspension, 5 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
Optional Terms of Probation Nos.
(2) Written Licensing Exam
(43) Notice to Employees of Discipline
(11) Suspension of License, 5 consecutive working days
(12) Posting of Suspension Sign

7404(e) CONTINUED PRACTICE BY A PERSON KNOWINGLY HAVING AN INFECTIOUS OR CONTAGIOUS DISEASE.

Recommended Penalty:

- **Maximum:** License is suspended until Respondent provides written proof from a physician stating that he/she is they are no longer contagious/infectious. Upon verification, license is suspended for 30 consecutive working days and license is placed on 3 years probation.
~~Full Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
- **Minimum:** License is suspended until Respondent provides written proof from a physician stating that he/she

~~is they are~~ no longer contagious/infectious. Upon verification, license is placed on 1 year probation.

~~Partial Cost Recovery~~

Standard Terms of Probation Nos. ~~1-16~~ 1-13

7404(f) HABITUAL DRUNKENNESS, HABITUAL USE OF OR ADDICTION TO THE USE OF ANY CONTROLLED SUBSTANCE.

Recommended Penalty:

- **Maximum:** ~~Revocation~~
Cost Recovery
- **Minimum:** License is suspended until Respondent completes a drug/alcohol rehabilitation program. Upon verification of completion, license is placed on 3 years probation.

~~Full Cost Recovery~~

Standard Terms of Probation Nos. ~~1-16~~ 1-13

Optional Terms of Probation No.

(~~54~~) Criminal Probation

7404(g) OBTAINING OR ATTEMPTING TO OBTAIN PRACTICE IN ANY OCCUPATION LICENSED AND REGULATED UNDER THIS CHAPTER, FOR MONEY, OR COMPENSATION IN ANY FORM, BY FRAUDULENT MISREPRESENTATION.

Recommended Penalty:

- **Maximum:** Revocation
~~Full Cost Recovery~~
- **Minimum:** Revocation, stayed
Probation, 2 years
~~Suspension, 10 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. ~~1-16~~ 1-13
Optional Terms of Probation Nos.
(~~54~~) Criminal Probation

(11) Suspension of License, 10 consecutive working days
(12) Posting of Suspension Sign

NOTE: If Respondent has a pending application on file, the application shall be denied.

7404(h) FAILURE TO DISPLAY THE LICENSE OR HEALTH AND SAFETY RULES AND REGULATIONS IN A CONSPICUOUS PLACE.

Recommended Penalty:

- **Maximum:** Suspension, 5 consecutive working days
~~Full-Cost Recovery~~
- **Minimum:** Public Letter of Reprimand
~~Partial-Cost Recovery~~
Standard Terms of Probation Nos. 4-16-1-13
Optional Terms of Probation No.
(43) Notice to ~~Employees of~~ Discipline

7404(i) ENGAGING, OUTSIDE OF A LICENSED ESTABLISHMENT AND FOR COMPENSATION IN ANY FORM WHATEVER, IN ANY PRACTICE FOR WHICH A LICENSE IS REQUIRED UNDER THIS CHAPTER, EXCEPT THAT WHEN THE SERVICE IS PROVIDED BECAUSE OF ILLNESS OR OTHER PHYSICAL OR MENTAL INCAPACITATION OF THE RECIPIENT OF THE SERVICE AND WHEN PERFORMED BY A LICENSEE OBTAINED FOR THE PURPOSE FROM A LICENSED ESTABLISHMENT.

Recommended Penalty:

- **Maximum:** Revocation
~~Full-Cost Recovery~~
- **Minimum:** Revocation, stayed
Probation, 2 years
~~Suspension, 5 consecutive working days~~
~~Partial-Cost Recovery~~
Standard Terms of Probation Nos. 4-16-1-13

Optional Terms of Probation Nos.
(43) Notice to Employees of Discipline
(11) Suspension of License, 5 consecutive
working days
(12) Posting of Suspension Sign

**7404(j) PERMITTING A LICENSE TO BE USED WHERE THE
HOLDER IS NOT PERSONALLY, ACTIVELY, AND
CONTINUOUSLY ENGAGED IN BUSINESS.**

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 5 years
~~Suspension, 15 consecutive working days~~
~~Full Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
Optional Terms of Probation Nos.
(43) Notice to Employees of Discipline
(11) Suspension of License, 15 consecutive
working days
(12) Posting of Suspension Sign

**7404(k) THE MAKING OF ANY FALSE STATEMENT AS TO A
MATERIAL MATTER IN ANY OATH OR AFFIDAVIT, WHICH
IS REQUIRED BY THE PROVISIONS OF THIS CHAPTER.**

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 2 years
~~Suspension, 5 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. ~~4-16~~ 1-13
Optional Terms of Probation Nos.

(11) Suspension of License, 5 consecutive working days
(12) Posting of Suspension Sign

NOTE: If Respondent has a pending application on file, the application shall be denied.

7404(l) REFUSAL TO PERMIT OR INTERFERENCE WITH AN INSPECTION AUTHORIZED UNDER THIS CHAPTER.

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 2 years
~~Suspension, 5 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. 4-16-1-13
Optional Terms of Probation Nos.
(43) Notice to Employees of Discipline
(11) Suspension of License, 5 consecutive working days
(12) Posting of Suspension Sign

7404(m) ANY ACTION OR CONDUCT WHICH WOULD HAVE WARRANTED THE DENIAL OF A LICENSE.

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Revocation, stayed
Probation, 2 years
~~Suspension, 5 consecutive working days~~
~~Partial Cost Recovery~~
Standard Terms of Probation Nos. 4-16-1-13
Optional Terms of Probation Nos.
(43) Notice to Employees of Discipline
(54) Criminal Probation

(11) Suspension of License, 5 consecutive working days
(12) Posting of Suspension Sign

NOTE: If Respondent has a pending application on file, the application shall be denied.

7404(n) FAILURE TO SURRENDER A LICENSE THAT WAS ISSUED IN ERROR OR BY MISTAKE.

Recommended Penalty:

- **Maximum:** Revocation
Full-Cost Recovery
- **Minimum:** Public Letter of Reprimand
Partial Cost Recovery
Standard Terms of Probation Nos. 4-16-1-13

480(a)(1) ~~BEEN CONVICTED OF A CRIME. A CONVICTION WITHIN THE MEANING OF THIS SECTION MEANS A PLEA OR VERDICT OF GUILTY OR A CONVICTION FOLLOWING A PLEA OF NOLO CONTENDERE. ANY ACTION WHICH A BOARD IS PERMITTED TO TAKE FOLLOWING THE ESTABLISHMENT OF A CONVICTION MAY BE TAKEN WHEN THE TIME FOR APPEAL HAS ELAPSED, OR THE JUDGEMENT OF CONVICTION HAS BEEN AFFIRMED ON APPEAL, OR WHEN AN ORDER GRANTING PROBATION IS MADE SUSPENDING THE IMPOSITION OF SENTENCE, IRRESPECTIVE OF A SUBSEQUENT ORDER UNDER THE PROVISIONS OF SECTION 1203.4 OF THE PENAL CODE.~~

DENIAL OF AN APPLICATION BASED UPON CONVICTION OF A CRIME AS SPECIFIED IN BUSINESS AND PROFESSIONS CODE SECTION 480.

Recommended Penalty:

- **Maximum:** Denial of Application for Licensure
- **Minimum:** Revocation, stayed
Probation, 2 years ~~(for misdemeanor)~~

~~3 years (less than 3 felonies)~~
~~5 years (more than 3 felonies)~~
~~Standard Terms of Probation Nos. 4-16-1-13~~
~~Optional Terms of Probation No.~~
~~(54) Criminal Probation~~

480(a)(2) THE APPLICANT HAS BEEN SUBJECTED TO FORMAL DISCIPLINE BY A LICENSING BOARD IN OR OUTSIDE CALIFORNIA WITHIN THE PRECEDING SEVEN YEARS FROM THE DATE OF APPLICATION BASED ON PROFESSIONAL MISCONDUCT AS SPECIFIED IN BUSINESS AND PROFESSIONS CODE SECTION 480(a)(2).
~~DONE ANY ACT INVOLVING DISHONESTY, FRAUD, OR DECEIT WITH THE INTENT TO SUBSTANTIALLY BENEFIT HIMSELF OR ANOTHER, OR SUBSTANTIALLY INJURE ANOTHER.~~

Recommended Penalty:

- **Maximum:** Denial of Application for Licensure
- **Minimum:** Revocation, stayed
Probation, 2 years
~~Standard Terms of Probation Nos. 4-16-1-13~~
~~Optional Terms of Probation No.~~
~~(54) Criminal Probation~~

480(a)(3) ~~DONE ANY ACT WHICH IF DONE BY A LICENTATE OF THE BUSINESS OR PROFESSION IN QUESTION, WOULD BE GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE. THE BOARD MAY DENY A LICENSE PURSUANT TO THIS SUBDIVISION ONLY IF THE CRIME OR ACT IS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF THE BUSINESS OR PROFESSION FOR WHICH APPLICATION IS MADE.~~

Recommended Penalty:

- ~~**Maximum:** Denial of Application for Licensure~~
- ~~**Minimum:** Revocation, stayed
Probation, 3 years
Standard Terms of Probation Nos. 4-16
Optional Terms of Probation No.~~

~~480(c) A BOARD MAY DENY A LICENSE REGULATED BY THIS CODE ON THE GROUND THAT THE APPLICANT KNOWINGLY MADE A FALSE STATEMENT OF FACT REQUIRED TO BE REVEALED IN THE APPLICATION FOR SUCH LICENSE~~

~~Recommended Penalty:~~

- ~~• **Maximum:** Denial of Application for Licensure~~
- ~~• **Minimum:** Revocation, stayed
Probation, 2 years
Standard Terms of Probation Nos. 4-16
Optional Terms of Probation No.
(5) Criminal Probation~~

480(e) THE APPLICANT KNOWINGLY MADE A FALSE STATEMENT OF FACT REQUIRED TO BE REVEALED IN THE APPLICATION FOR SUCH LICENSE AS PROVIDED IN BUSINESS AND PROFESSIONS CODE SECTION 480(e).

Recommended Penalty:

- **Maximum:** Denial of Application for Licensure
- **Minimum:** Revocation, stayed
Probation, 2 years
Standard Terms of Probation Nos. 1-13
Optional Terms of Probation No.
(4) Criminal Probation

496 A BOARD MAY DENY, SUSPEND, REVOKE, OR OTHERWISE RESTRICT A LICENSE ON THE GROUND THAT AN APPLICANT OR LICENSEE HAS VIOLATED SECTION 123 PERTAINING TO SUBVERSION OF LICENSING EXAMINATIONS.

Recommended Penalty:

- **Maximum:** Revocation or Denial
Full-Cost Recovery
- **Minimum:** Probation, 2 years

~~Suspension, 10 consecutive working days~~
~~Partial Cost Recovery (only if respondent~~
~~holds another license)~~
~~Standard Terms of Probation Nos. 4-16-1-13~~
~~Optional Terms of Probation Nos.~~
~~(5-4) Criminal Probation~~
~~(11) Suspension of License, 10 consecutive~~
~~working days~~
~~(12) Posting of Suspension Sign~~

499

**A BOARD MAY REVOKE, SUSPEND, OR OTHERWISE
RESTRICT A LICENSE ON THE GROUND THAT THE
LICENSEE, IN SUPPORT OF ANOTHER PERSON'S
APPLICATION FOR LICENSE, KNOWINGLY MADE A
FALSE STATEMENT OF A MATERIAL FACT OR
KNOWINGLY OMITTED TO STATE A MATERIAL FACT TO
THE BOARD REGARDING THE APPLICATION.**

Recommended Penalty:

- **Maximum:** Revocation
Cost Recovery
- **Minimum:** Probation, 5 years,
Standard Terms of Probation Nos. 1-13
Optional Terms of Probation Nos.
(11) Suspension of License, 10 consecutive
working days.
(12) Posting of Suspension Sign

OTHER SITUATIONS IN WHICH REVOCATION IS THE RECOMMENDED PENALTY

1. Failure to file a Notice of Defense.
2. Failure to appear at the administrative hearing.
3. Failure to comply with the conditions of probation.
4. Subsequent acts, offenses, or convictions, which warrant the revocation of license.

~~CONDITIONS OF PROBATION~~

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

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

~~For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Board of Barbering and Cosmetology.~~

~~PROBATIONARY CONDITIONS~~

~~Probationary conditions are divided into two categories:~~

~~**A. Standard** conditions should appear in all probation orders;~~

~~**B. Optional** conditions that are appropriate based on the nature and circumstances of the particular violation.~~

INTRODUCTORY LANGUAGE FOR DISCIPLINARY ORDERS

The following introductory language and all standard conditions of probation are to be included in probationary decisions/orders. For applicants, Condition 32, Cost Recovery, does not apply. For licensees, all standard conditions of probation apply. (Note: See alternative introductory language for applicants and reinstatements in next section of guidelines.)

INTRODUCTORY LANGUAGE FOR ALL ORDERS— It is hereby ordered that (license type) License No. (number) issued to Respondent (name) is revoked. However, revocation is stayed, and Respondent is placed on probation for a period of (number of years) years on the following conditions.

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

RECOMMENDED LANGUAGE FOR STANDARD CONDITIONS OF PROBATION

(1) SUSPENSION OF LICENSE- Respondent is suspended from the practice of (type of practice) for (number of days) consecutive working days. Respondent shall cease operating during the suspension period. During the suspension period, all conditions of probation are in full force and effect. The period of suspension shall be determined by the Board's designee and Respondent shall be notified in writing. Probation shall not terminate until the suspension period is served.

(2) POSTING OF SUSPENSION SIGN- During the period of suspension, Respondent shall post a notice which describes the nature of the violation for which the license is being disciplined. If only an individual's license is disciplined, the notice shall be conspicuously posted in the establishment where the Respondent performs barbering and cosmetology services. If an establishment license is disciplined, the notice shall be conspicuously posted, unobstructed and visible to the public from the outside of the main entrance. The sign to be posted will be provided by the Board of Barbering and Cosmetology designee prior to the commencement of the suspension and will include the Respondent's name and license number(s).

(1) OBEY ALL LAWS- Respondent shall obey all federal, state, local laws, criminal orders of probation or parole if applicable, and all rules and regulations governing any practice for which the respondent is licensed by the Board. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing to their assigned probation monitor within seventy-two (72) hours of occurrence.

(32) COST RECOVERY- Respondent shall pay to the Board of Barbering and Cosmetology costs associated with its investigation and enforcement pursuant to Business and Professions Code Sections 125.3 and 7403 in the amount of \$ _____. Upon written request to their assigned probation monitor and approval by the Board or its designee, Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six months prior to the end of the probation term. Respondent shall make payments pursuant to a payment plan specified by the Board or its designee taking into consideration all of the following: (1) Respondent's ability to pay, (2) the total amount of cost recovery owed, and (3) the length of the probationary period. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment

schedule Respondent shall be considered to be in violation of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. ~~The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for these costs.~~

Modification to an authorized payment plan, including an extension of time to complete payments or a revised payment schedule, may be requested by the Respondent in writing to their assigned probation monitor and granted upon a showing of "good cause" by the Respondent. The Respondent's request for modification shall contain an explanation for why the requested modification to an authorized payment plan should be granted and is subject to approval by the Board or its designee. For purposes of this section "good cause" shall include:

- (A) Death of an immediate family member (spouse, child, or parent). Documentation, such as a copy of the death certificate, must be submitted.
- (B) Catastrophic illness, contagious disease, or major traumatic injury to the applicant or immediate family member (spouse, child, or parent). Documentation, such as an original letter on letterhead from the physician, which includes the date(s), nature of the illness, and the physician's signature, must be submitted.
- (C) Natural disaster (earthquake, flood, fire, etc.).
- (D) Other cause based on extenuating circumstances and decided on a case-by-case basis by the Board or its designee.

(43) QUARTERLY REPORTS OF COMPLIANCE - Respondent shall submit Quarterly Reports of Compliance to the Board of Barbering and Cosmetology's designee in accordance with a specified schedule. The form, "Quarterly Report of Compliance," which is provided by the Board's Enforcement Program, must be completed and signed under penalty of perjury regarding compliance with all conditions of probation. A complete "Quarterly Report of Compliance" shall contain:

- (A) Respondent's personal information, including:
 - (i) Respondent's full legal name (first, last, middle, suffix (if any)),
 - (ii) Case number,
 - (iii) License number,
 - (iv) License expiration date

- (v) Telephone number,
- (vi) Email address, if any,
- (vii) Address of record with the Board (mailing address), and,
- (viii) Residence Address (if different than address of record).

(B) For Respondents who own an establishment, identifying establishment information including:

- (i) the establishment's name,
- (ii) the establishment's license number,
- (iii) the establishment's license expiration date,
- (iv) the establishment's address of record with the Board.

(C) Respondent's employment information, including the following information regarding where Respondent works:

- (i) the establishment's name,
- (ii) the establishment's license number,
- (iii) the establishment's physical address,
- (iv) the establishment's telephone number,
- (v) the Respondent's total work schedule for a standard week (Monday-Sunday), including Respondent's scheduled work hours for each day of a standard week (e.g., state work week hours: "Mondays (8 hours), Tuesdays (4 hours), etc.). For days not worked Respondent shall indicate "N/A" next to each day of the standard week where they are not scheduled to work when reporting their total work schedule.

(D) Written disclosures regarding whether Respondent has complied with each condition of probation contained in this Decision since their last quarterly report or as of this report (if this is their first quarterly report); and, if applicable,

(E) If Respondent discloses they are not in compliance with any condition of probation, a written statement explaining why Respondent is not in compliance with any particular condition(s) of probation.

Omission or falsification in any manner of any information on these reports or failure to submit the information required by this section by the due date(s) specified in this section shall constitute a violation of probation. Quarterly reports are due for each year of probation and the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

- For period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th

(54) NOTIFICATION TO EMPLOYER/ESTABLISHMENT OWNER(S) -

Respondent shall be required to inform ~~his/her~~ their employer and any subsequent employer and/or the holder of the establishment license where Respondent practices ("employer") during the probation period of the discipline imposed by this Decision by providing a written notice to the employer containing the information required by this section and also providing the employer with a copy of the Decision and Order and the Accusation or Statement of Issues, as applicable, in this matter. Written notice to the employer shall be provided within 30 days of the effective date of the Decision or within 30 days after change of employer, as applicable, and shall contain the following:

- A. Name of the Respondent,
- B. Name of the employer,
- C. Duration of the probation or suspension, and,
- D. A copy of the Decision.

Within 30 days of the effective date of the Decision or change of employer, Respondent shall submit to their assigned probation monitor at the Board a copy of the written notice provided to the employer in compliance with this section. ~~The employer will be requested to inform the Board of Barbering and Cosmetology, in writing, that he/she is aware of the discipline. This applies to independent contractors (booth renters) as well as employees.~~ The Respondent shall provide to their probation monitor the following information for all establishments where the Respondent is providing services during the period of probation:

- A. Name(s) of their employer(s),
- B. Physical address(es),
- C. Mailing address(es), and,
- D. Telephone number(s).

(65) CHANGE OF EMPLOYMENT – Respondent shall notify the Board of Barbering and Cosmetology in writing of any and all changes in employment status, employment location, and address within 30 days of such change. The written notice shall include the name, address, and

telephone number of the holder of the establishment license where Respondent practices, and the date Respondent changed work locations.

(76) PARTICIPATION IN APPRENTICESHIP OR EXTERNSHIP

PROGRAM – Respondent shall not participate as a trainer or supervisor in an apprenticeship or externship program during the course of this probation. If Respondent is the holder of an establishment license, Respondent's establishment shall not participate in an apprenticeship or externship program during the course of this probation. Respondent shall terminate any such program in existence on the effective date of this decision.

(87) PUBLICATION OF DISCIPLINARY ACTION – Any disciplinary action imposed as a result of this Decision may be published in the appropriate Board of Barbering and Cosmetology newsletter or other publication. Additionally, the Board or its designee may issue press releases or other public notices of disciplinary action taken by the Board of Barbering and Cosmetology.

~~**(9) OBEY ALL LAWS**~~ Respondent shall obey all federal, state, local laws, and all rules and regulations governing any practice for which the Respondent is licensed. ~~A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence.~~

(108) COMPLY WITH THE BOARD'S PROBATION PROGRAM –

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Board's Probation Program. Respondent shall keep the Board informed of Respondent's business address and address of record (physical and mailing). Respondent shall inform the Board in writing within ~~fifteen (15)~~ thirty (30) days of any address change and claim all certified mail issued by the Board. Respondent shall respond to all notices of reasonable requests timely, and appear for any scheduled meeting as directed by the Board or its designee. Respondent shall ~~and~~ submit reports, remedial education documentation, verification of employment, or other similar reports, as requested and directed by the Board or its representative. Failure to appear for any scheduled meeting or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation.

(119) VIOLATION OF PROBATION – If Respondent violates the any conditions of his/her probation, the Board, after giving the Respondent notice and the opportunity to be heard, may set aside the Order and impose the stayed discipline (revocation/suspension) of the Respondent's license.

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

~~**(12) REPORT IN PERSON** Upon written notification, Respondent may be required to appear in person before the Board of Barbering and Cosmetology or its designee at any time during the period of suspension or probation.~~

~~**(13) RESIDENCY OUTSIDE OF THE STATE** Respondent shall immediately notify the Board's designee of any and all address changes. If Respondent should travel outside California for a period greater than sixty (60) days, Respondent must notify the Board's designee, in writing, of the dates of departure and return. Periods of residence outside the State of California shall not apply toward a reduction of this probation time period.~~

~~Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.~~

(1410) FAILURE TO PRACTICE CALIFORNIA RESIDENT /TOLLING - In the event Respondent₁ resides in the State of California and for any reason₁, Respondent stops ceases practicing in California, Respondent shall notify the Board or its designee in writing within 30 ten (10) calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, or temporary or permanent residency or practice outside of California will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation ("non-practice").

Respondent's probation is tolled for as long as Respondent is in a period of non-practice. The period of probation shall be extended for the period of time Respondent's probation is tolled.

It shall be a violation of probation for Respondent to remain in a period of non-practice for a total of two years.

(1511) MAINTAIN VALID LICENSE – Respondent shall maintain a current, active, and valid license for the length of the probation period, including any period during which probation is tolled. Failure to pay all fees prior to the license expiration date shall constitute a violation of probation.

(12) PETITION FOR REDUCTION OF PENALTY- Pursuant to Government Code Section 11522, Respondent may petition for a reduction of penalty after a period of not less than one (1) year has elapsed from the effective date of this Decision or from the date of the denial of a similar petition filed by Respondent, whichever is applicable. The Board shall give notice to the Attorney General of the filing of any petition by Respondent and the Attorney General and the Respondent shall be afforded an opportunity to present either oral or written argument before the Board if a petition is filed in accordance with Section 11522. The Board shall determine if a reduction in penalty is warranted based on Respondent's compliance with the terms and conditions of probation, and demonstration of their ability to practice safely as evidenced by inspections of the workplace since the effective date of the Decision.

(1613) LICENSE SURRENDER WHILE ON PROBATION- Following the effective date of this Decision, if Respondent ceases practicing ~~due to retirement or health reasons,~~ or is otherwise unable to satisfy the terms and conditions of probation, Respondent may voluntarily request, in writing, the surrender of ~~his/her~~ their license to the Board. Respondent's written request to surrender their license shall include the following: their name, license number, case number, address of record, and an explanation of the reason(s) why respondent seeks to surrender their license.

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. If Respondent owes any outstanding costs associated with the investigation and enforcement of this disciplinary action, the outstanding amount shall be paid in full at the time the request is submitted to the Board.

Upon formal acceptance of the surrender, Respondent shall within 30 calendar days deliver Respondent's license to the Board or its designee and Respondent shall no longer engage in any practice for which ~~a~~ that license is required. Upon formal acceptance of the ~~tendered license~~ surrender, Respondent will no longer be subject to the terms and conditions of probation. Voluntary surrender of Respondent's license shall be considered to be a disciplinary action and shall become a part of Respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. Should Respondent at any time after voluntary surrender ever reapply to the Board for licensure Respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

RECOMMENDED LANGUAGE FOR OPTIONAL CONDITIONS OF PROBATION

(1) REMEDIAL EDUCATION COURSES – Respondent shall complete remedial education courses directly relevant to the violation(s) as specified by the Board of Barbering and Cosmetology within 180 days from the effective date of this Decision. The education courses shall be completed in a Board approved school. Respondent shall provide proof of attendance and satisfactory completion of the courses. Failure to satisfactorily complete the required courses as scheduled shall constitute a violation of probation. Respondent shall be responsible for all costs associated with such remedial education.

(2) WRITTEN LICENSING EXAMINATION – If Respondent fails to pass the examination within 180 days from the effective date of this Decision, Respondent's license shall be suspended and Respondent shall cease practice until Respondent takes and successfully passes the examination, has submitted proof of same to the Board, and has been notified by the Board that ~~he/she~~ Respondent may resume practice. The examination will be administered by the examination staff of the Board of Barbering and Cosmetology. Respondent shall pay the established examination fee and any other costs associated with taking the examination.

~~**(3) PRACTICAL LICENSING EXAMINATION** – If Respondent fails to pass the examination within 180 days from the effective date of this Decision, Respondent's license shall be suspended and respondent shall cease practice until Respondent takes and successfully passes examination, has submitted proof of same to the Board, and has been notified by the Board that he/she may resume practice. The examination will be administered by the examination staff of the Board of Barbering and Cosmetology. Respondent shall pay the established examination fee and any other costs associated with taking the examination.~~

(43) NOTICE OF DISCIPLINE EMPLOYEES – A Respondent who is an establishment owner a holder of an establishment license shall, upon or before the effective date of this Decision, post or circulate a copy of the Accusation or Statement of Issues, as applicable, and this Decision and Order to each employee or independent contractor practicing at Respondent's establishment. ~~a notice to all employees working in the establishment which accurately recites the terms and conditions of this Decision. Respondent shall be responsible for said notice being immediately available to employees. "Employees" as used in this provision includes all~~

~~full-time, part-time, temporary, and independent contractors employed or hired at any time during probation.~~

(54) CRIMINAL PROBATION – If Respondent is on criminal probation for the acts upon which disciplinary action is based, Respondent shall submit reports from the criminal court probation officer regarding Respondent's progress during criminal probation, if available. Available Reports shall be filed quarterly and continue until Respondent is no longer on criminal probation or the Board's probation is terminated, whichever occurs first.

(65) PROOF OF ADVERTISING CORRECTION – If the advertising violation that led to the disciplinary action has not been corrected, Respondent shall not practice until proof of correction has been submitted to the Board of Barbering and Cosmetology or its designee.

(76) RESTITUTION – Respondent shall make restitution to any injured party in the amount of (specify amount). Proof of compliance with this term shall be submitted to the Board of Barbering and Cosmetology's or its designee within (specify time) of the effective date of the Decision. The name and address of the injured party may be inserted in the body of this condition. The amount and time period in which to comply shall be based upon the facts of the case.

Note: Business and Professions Code section 143.5 prohibits the Board from requiring restitution in disciplinary cases when the Board's case is based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties in the civil action.

(87) REIMBURSEMENT OF PROBATION PROGRAM- Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration for the probation period. Reimbursement costs shall be \$_____ per year/\$_____ per month.

(98) MANAGER OR LICENSEE IN CHARGE – Respondent shall not act as manager or licensee in charge of any establishment during the course of this probation. Respondent shall terminate any such duties on the effective date of this decision.

(409) ABSTAIN FROM CONTROLLED SUBSTANCES /SUBMIT TO BIOLOGICAL FLUID TESTING – Respondent shall completely abstain from the use or possession of controlled or illegal substances during the period of probation unless lawfully prescribed by a medical practitioner for a bona fide

illness. Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding shall constitute a violation of probation.

(11) ABSTAIN FROM USE OF ALCOHOL / SUBMIT TO BIOLOGICAL FLUID TESTING- Respondent shall completely abstain from the use of alcoholic beverages during the period of probation Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding shall constitute a violation of probation.

(12) SUSPENSION OF LICENSE – Respondent is suspended from the practice of (type of practice) for (number of days) consecutive working days beginning on the effective date of this Decision. Respondent shall cease operating during the suspension period. During the suspension period, all conditions of probation are in full force and effect. Probation shall not terminate until the suspension period is served.

(13) POSTING OF SUSPENSION SIGN - During the period of suspension, Respondent shall post a notice which describes the nature of the violation for which the license is being disciplined. If only an individual's license is disciplined, the notice shall be conspicuously posted in the establishment where the Respondent performs barbering, ~~and cosmetology, hairstyling,~~ skin care, nail care, or electrolysis services, as applicable. If an establishment license is disciplined, the notice shall be conspicuously posted, unobstructed and visible to the public from the outside of the main entrance. The 8-inch by 11-inch notice to be posted will be provided by the Board of Barbering and Cosmetology designee in the form of a sign to be posted by Respondent prior to the commencement of the suspension and will include the Respondent's name and license number(s).

RECOMMENDED LANGUAGE FOR APPLICANTS AND REINSTATEMENTS

In order to provide clarity and consistency in its decision, the Board of Barbering and Cosmetology recommends the following language in proposed decisions or stipulated agreements for examination applicants, establishment license applicants, schools, school applicants, and for petitioners for reinstatement who are issued a license that is placed on probation.

▪ **Examination Applicants who are placed on probation:**

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

▪ **Establishment License Applicants who are placed on probation:**

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

▪ **Reinstatement of Licensure with conditions of probation:**

“The application of Respondent _____ for reinstatement of license number _____ is hereby granted. License number _____ shall immediately be revoked, the order of revocation stayed, and Respondent placed on probation for a period of _____ years on the following conditions:”

~~It is important to note that, in many cases, petitioners for reinstatement have not practiced for at the least one (1) year. It is recommended that Respondent retake and successfully complete the licensing examination prior to reinstatement of the license if the case involved consumer harm.~~

~~In addition to the licensing examination requirement, it is recommended that Respondent take and successfully complete remedial education courses relevant to the violation(s) prior to reinstatement of the license.~~

▪ **Grant Petition and Place Licensee on Probation After Completion of Conditions Precedent:**

“The petition for reinstatement filed by petitioner _____ is hereby granted, and petitioner’s license shall be fully reinstated upon completion of the following conditions precedent: [Note: Insert conditions such as take and successfully complete the Board’s [insert license type] licensing examination and/or remedial education courses relevant to the violation(s).]”

Upon completion of the conditions precedent above, and satisfaction of all statutory and regulatory requirements for issuance of a license, petitioner’s license shall be reinstated and immediately revoked; however, the revocation shall be stayed, and petitioner shall be placed on probation for a period of _____ years on the following terms and conditions:”

It is important to note that, in many cases, petitioners for reinstatement have not practiced for at least one (1) year. It is recommended that petitioner retake and successfully complete the licensing examination prior to reinstatement of the license if the case involved consumer harm.

In addition to the licensing examination requirement, it is recommended that petitioner take and successfully complete remedial education courses relevant to the violation(s) prior to reinstatement of the license.

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

RECOMMENDED LANGUAGE FOR COST RECOVERY FOR SURRENDERS

▪ **When the Order is a surrender of license, cost recovery should be included as follows:**

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

TIME FRAMES FOR PETITIONS FOR REINSTATEMENT AND MODIFICATION OF PENALTY

Pursuant to the California Administrative Procedure Act, Government Code Section 11522, “A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction or penalty after a period of not less than one (1) year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General, and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition or reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.”