

# Exhibit

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# **BPM MISSION**

The mission of the Board of Podiatric Medicine is to ensure protection of consumers under the laws of California through the setting and enforcement of contemporary standards and the provision of accurate and timely information that promotes sound consumer decision-making.

Approved March 3, 2006

# Exhibit B



NEIL B. MANSDORF, D.P.M., *President*  
KRISTINA M. DIXON, M.B.A.

JAMES J. LONGOBARDI, D.P.M., *Vice President*

EDWARD E. BARNES  
KAREN L. WRUBEL, D.P.M.

## California Board of Podiatric Medicine Public Board Meeting Minutes Sacramento, California February 24, 2012

A public meeting of the California Board of Podiatric Medicine (BPM) was held February 24, 2012 in the Hearing Room, suite 1150, Department of Consumer Affairs, 2005 Evergreen Street, Sacramento, CA.

Due notice had been sent to all known interested parties.

### 1. Call to order/Member roll call

President Mansdorf called the meeting to order at 10:10 AM.

A quorum was established with the following Members present:

- Kristina M. Dixon, MBA
- Karen L. Wrubel, DPM
- Edward E. Barnes
- James J. Longobardi, DPM
- Neil B. Mansdorf, DPM

Dr. Mansdorf welcomed attendees:

- Dr. Le Ondra Clark, Senate Business, Professions and Economic Development Committee
- Amanda Friedman, Center for Public Interest Law (CPIL)
- Anita Scuri, Supervising Senior Counsel, Legal Affairs, Department of Consumer Affairs
- Ryan M. Arnold, JD, Division of Legislative & Policy Review, Department of Consumer Affairs

Also present were the Board's Legal Counsel Gary Duke and staff members Bethany DeAngelis, Christine Raymond, Mischa Matsunami and Jim Rathlesberger.

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3 **2. President's Report**  
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5 Ms. Dixon and Mr. Barnes moved and seconded approval of the September 23 minutes, which  
6 passed 5-0.  
7

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9 **3. Regulatory Hearing**  
10

11 Mr. Duke conducted a noticed, public hearing on the proposed regulation to update the  
12 reference to the Board's *Manual of Disciplinary Guidelines* in Article 11, Section 1399.710,  
13 Division 13.9, Title 16, California Code of Regulations. At the September 23 meeting, the  
14 Board amended Conditions 9-11 and the Violation of Probation section of the *Manual of*  
15 *Disciplinary Guidelines*, using language identical to the Medical Board's, pursuant to SB 1441  
16 of 2008 and the Department's *Uniform Standards Regarding Substance-Abusing Healing Arts*  
17 *Licensees*.  
18

19 There were no written or oral comments from the public. Mr. Duke adjourned the hearing at  
20 10:26. Ms. Dixon moved and Mr. Barnes seconded approval of the proposed regulation and  
21 the motion passed 5-0 at 10:28.  
22

23 **4. Financial Report**  
24

25 Mr. Barnes requested that Mr. Matsunami prepare an analysis of the Expenditure Trends  
26 exhibited at Tab H showing expenditures for the first six months (through December 31) of  
27 Fiscal Years 2006-07 through 2011-12. Specifically, Mr. Barnes asked for staff analysis and  
28 commentary on the high Medical Board Investigations amount of \$53,710 in FY 2010-11 and  
29 the high Attorney General figure of \$116,895 in 2011-12.  
30

31 **5. Enforcement Committee**  
32

33 The Board requested that Mr. Duke review standard enforcement and disciplinary procedures  
34 at the next meeting, including the Enforcement Process Overview chart mentioned by Ms.  
35 Scuri.  
36

37 Dr. Longobardi presented the credentials of two new podiatric medical consultant candidates.  
38 Ms. Dixon moved and Mr. Barnes seconded approval of Dr. Victoria M. Foley, who was  
39 approved 5-0. Dr. Longobardi and Ms. Dixon moved and seconded approval of Dr. Amir  
40 Hajimirsadeghi, who passed 5-0.  
41

42  
43 **6. Public Outreach Committee**  
44

45 Mr. Barnes expressed interest in assisting with outreach to senior citizens, and staff indicated it  
46 would follow up with him regarding supplies of BPM brochures and outreach plans.  
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**7. Adjournment**

Upon completing its agenda and acting on all action items, the Board adjourned at 11:52 AM.

Submitted to the Board for approval on July 20, 2012.

**APPROVED:**

.....  
President  
California Board of Podiatric Medicine

# Exhibit C



# STRATEGIC PLAN

2011-2014

Adopted February 11, 2011

## OUR MISSION

The mission of the Board of Podiatric Medicine is to ensure protection of consumers under the laws of California through the setting and enforcement of contemporary standards and the provision of accurate and timely information that promotes sound consumer decision-making.

## OUR VISION

The Board's public policy leadership will enhance continuing competence standards, informed consumer choice, and open access to high-quality foot and ankle care.

## OUR VALUES

BPM values . . .

- representing the public
- responsiveness to consumers and licensees
- public access to information, assistance and service
- integrity and competence in serving the public
- collaboration with other organizations
- proactive approaches that prevent patient harm

## GOALS AND OBJECTIVES

GOAL 1. *Maintain excellence of service within current resources.*

Objectives:

1.1 Continue operations without backlogs.

Major activities:

- Manage licensing and enforcement programs to stay current daily without additional staff
- Support licensing and enforcement coordinators as chief program officers of Board
- Keep focused on core functions of licensing and enforcement

1.2 Maintain the issuance of licenses the same day all requirements met.

Major activities:

- Maintain close communication with applicants
- Maintain primary source verification and enforce it

1.3 Keep expediting investigation of consumer complaints and prosecution of open cases.

Major activities:

- Support Enforcement Coordinator
- Achieve Staff Manager promotion recognizing breadth of responsibility
- Continue monitoring enforcement matrix reports on case processing timeframes

1.4 Maintain quality probation monitoring.

Major activities:

- Continue retired annuitant program
- Insure Board's final orders are effectively enforced

### 1.5 Support Continuing Competence initiatives.

#### Major activities:

- Support the Licensing Coordinator, recognizing the importance of good licensing in Licensing Board effectiveness in consumer protection and efficient use of public resources
- Monitor the longitudinal decline in consumer complaints and respond appropriately to opportunities to serve as ambassadors for preventing patient harm rather than responding to it once harm has been done
- Urge Federation of Podiatric Medical Boards (FPMB) to encourage other State licensing agencies to implement its *Model Law* Continuing Competence provisions
- Support Department of Consumer Affairs (DCA) and other boards in Continuing Competence as appropriate

### 1.6 Continue licensure of all residents and annual review and approval of graduate medical education programs.

#### Major activities:

- Maintain the Residency License requirement
- Seek sunseting of the four-year cap on graduate medical training
- Consider whether residency approvals should be nationalized now or in the future, or if California's program should be maintained

GOAL 2. *Maintain credibility and respect of BPM's integrity.*

Objectives:

2.1 Continue the public-service ethic so many have contributed to over succeeding decades, realizing BPM as an institution is of great importance to patients and the profession.

Major activities:

- Emphasize the statutory mission
- Support Board development and the Members' importance as a Board
- Promote the goals and objectives of the Board

2.2 Remain open, candid and responsive.

Major activities:

- Maintain unspotted positive press coverage
- Build on confidence from profession to enhance consumer outreach
- Support Departmental programs

2.3 Represent the public

Major activities:

- Maintain BPM culture that licensee and lay Board Members are equal
- Maintain BPM culture that licensee and lay Board Members have same statutory role
- Maintain BPM culture that licensee and lay Board Members all represent the public at large

2.4 Maintain good government values

Major activities:

- Reflect well on California State government
- Focus on the positive aspects and developments
- Take opportunities as they present themselves to advance public policy

GOAL 3. *Work collaboratively with other organizations.*

Objectives:

3.1 Utilize Departmental services and follow its lead.

Major activities:

- Implement BreEZe in 2012-13 for online credit card transactions
- Distribute *You and Your DPM* brochure
- Pursue Spanish language *You and Your DPM*
- Participate in DCA Board and Bureau Conferences

3.2 Maintain liaison with California Podiatric Medical Association.

Major activities:

- Maintain good liaison with CPMA Board
- Continue participation at House of Delegates
- Continue exhibiting at Western Foot and Ankle Conference

3.3 Continue involvement with Federation of Podiatric Medical Boards.

Major activities:

- Seek election of a California representative on FPMB Board
- Support updates to *Model Law* as indicated, e.g., equivalent exams

GOAL 4. *Remove barriers to podiatric medical care.*

Objectives:

4.1 Support Legislative consideration of full FPMB *Model Law* scope of practice for benefit of Californians.

Major activities:

- Coordinate with CPMA in five-year follow-up to AB 932 of 2004
- Support efficient delivery of high quality care in all California health facilities
- Work with the profession as it develops its evolution, standards and direction for the future

4.2 Support inclusion in State's publicly-supported health science teaching centers.

Major activities:

- Support complementary CPMA and podiatric medical school initiatives
- Keep focus on obtaining UC-sponsored podiatric medical residency programs

## OUR STAKEHOLDERS -- THEIR NEEDS AND WANTS

BPM's success depends on a clear understanding of our statutory mission and the needs of the public. Our public stakeholders include:

- ❑ Consumers, who seek accurate and timely information about providers.
- ❑ Licensees, who seek expeditious and accurate services, fair administration of the law, and timely and accurate communication on issues of interest to them.
- ❑ Applicants, who seek expeditious and accurate services, fair administration of the application process, and timely and accurate communication on issues of concern.
- ❑ Health facilities, which seek clear licensing information.
- ❑ Staff, who seek clear direction, recognition by management, and training programs to better serve our stakeholders and grow professionally.
- ❑ Other state agencies, which seek accurate and timely information.
- ❑ The Legislature, exercising its lawmaking, authorization, budgeting and oversight roles.

## ENVIRONMENTAL SCAN

External environment factors include:

- ❑ Fiscal Challenges -- BPM must do the best job possible with the resources available.
- ❑ Accountability -- BPM seeks to follow the soundest possible administrative procedures.
- ❑ Advancing Technology -- BPM attempts to stay current to the fullest extent practicable.
- ❑ Business and the Economy -- As an agency that licenses doctors treating millions of Californians annually, the health care community expects BPM to operate efficiently and partner to protect podiatric medical patients.
- ❑ Changing Demographics -- California's population is increasing, aging and growing more diverse every day.

Exhibit

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## POSTION DESCRIPTION FOR BOARD MEMBERS

As a **Board of Directors**, the Board is responsible for good governance of the agency. Appointed as representatives of the **public**, the Board presses for realization of opportunities for service and fulfillment of its obligations to all constituencies. The Board meets fiduciary responsibility, guards against the taking of undue risks, determines priorities, and generally directs organizational activity. It delegates administration to its executive officer, but remains involved through oversight and policy making. The board members are ultimately accountable for all agency actions.

As a **judicial body**, the Board serves as a jury. The members must be careful to avoid *ex parte* communications with licensees, attorneys, and staff regarding upcoming proposed decisions from administrative law judges that the Board must review based only on the legal record.

### Specific Contributions

1. Articulate agency mission, values, and policies.
2. Review and assure executive officer's performance in faithfully managing implementation of Board policies through achievement of staff goals and objectives.
3. Ensure that staff implementation is prudent, ethical, effective, and timely.
4. Assure that management succession is properly being provided.
5. Punctuate ongoing review of executive officer performance with annual evaluation against written Board policies at a noticed public meeting.
6. Ascertain that management effectively administers appropriate staff policies including a code of ethics and conflict of interest statements.
7. Ensure staff compliance with all laws applicable to the Board.
8. Maximize accountability to the public.

Adopted by the Board of Podiatric Medicine 12/6/91



## **POSITION DESCRIPTION FOR BOARD PRESIDENT**

The President is responsible for the effective functioning of the Board, the integrity of Board process, and assuring that the Board fulfills its responsibilities for governance. The President instills vision, values, and strategic thinking in Board policy making. She/he sets an example reflecting the Board's mission as a state licensing and law enforcement agency. She/he optimizes the Board's relationship with its executive officer and the public.

### Specific Contributions

1. Chair meetings to ensure fairness, public input, and due process.
2. Appoint Board committees.
3. Support the development and assist performance of Board colleagues.
4. Obtain the best thinking and involvement of each Board member. Stimulate each one to give their best.
5. Coordinate evaluation of the executive officer.
6. Continually focus the Board's attention on policy making, governance, and monitoring of staff adherence to and implementation of written Board policies.
7. Facilitate the Board's development and monitoring of sound policies that are sufficiently discussed and considered and that have majority Board support.
8. Serve as a spokesperson.
9. Be open and available to all, remaining careful to support and uphold proper management and administrative procedure.

Adopted by the Board of Podiatric Medicine 12/6/91



## **POSITION DESCRIPTION FOR EXECUTIVE OFFICER**

The chief executive officer reports and is accountable to the full Board. He/she accepts responsibility for the success or failure of all Board operations.

### Specific Contributions

1. Lead staff planning to achieve Board goals and ensure that implementation adheres to Board policies, and is effective, prudent, ethical, and timely.
2. Ensure that the Board is properly informed on the condition of the agency and major factors influencing it, without bogging it down in detailed staff work or with unorganized information.
3. Annually evaluate the agency's performance.
4. Make certain there is adequate funding to achieve the Board's policies.
5. Manage agency's enforcement program so as to ensure both (a) vigorous prosecution of Medical Practice Act violations and (b) fairness, due process, and proper administrative procedures as required under the Administrative Procedure Act.
6. See that there is adequate, effective staffing. Motivate staff. Develop training, professional development, and career ladder opportunities. Build teamwork. Delegate responsibilities without abdicating accountability.
7. Develop an office climate and organizational culture that attracts and keeps quality people.
8. Provide for management succession.
9. Develop annual goals and objectives and other appropriate staff policies.
10. Serve as the agency's chief spokesperson and see that the Board is properly presented to its various publics.

Adopted by the Board of Podiatric Medicine 12/6/91



**POLICY DECISION: Delegation of Authority Concerning Stay Orders**

The authority to approve or deny a Petition for Stay Order is delegated to the board's executive officer.

Method of Adoption: Board Vote

Date of Adoption: May 5, 1995



**POLICY DECISION: Promotional Reference to the Board of Podiatric Medicine (BPM) by Consultants, Expert Reviewers/Witnesses, Practice Monitors and Examination Commissioners**

Licensees acting as medical consultants, expert reviewers/witnesses, practice monitors and/or examination commissioners shall not reference their affiliation with the BPM in any promotional activity or advertisement.

Method of Adoption: Board Vote

Date of Adoption: February 28, 1986

Revision Date: May 3, 2002  
October 15, 2010



**POLICY DECISION: Minimum Requirements for New Medical Consultants, Experts, and Examiners**

1. Hold a current, valid and unrestricted California license to practice podiatric medicine.
2. Be active in the practice of podiatric medicine in the subject area being reviewed.
3. Have completed a postgraduate medical education program approved by the Council on Podiatric Medical Education.
4. Be certified by the American Board of Podiatric Surgery and must maintain a current certificate.
5. Have surgical staff privileges in at least one general acute care hospital facility.
6. Must not have been subject to disciplinary action by the BPM, i.e., the filing of an Accusation or Statement of Issues that was not withdrawn or dismissed.
7. Must not be under BPM investigation for a violation of any laws relating to the practice of medicine at the time of appointment or be the subject of such a case pending in the Attorney General's office.
8. Must not have been the subject of a field investigation by the BPM within the last five (5) years that was not closed and deleted from Medical Board records.
9. In the event of a conflict of interest, must recuse themselves from the review or examination.
10. Must not misrepresent his or her credentials, qualifications, experience or background.

Method of Adoption: Board Vote  
Date of Adoption: June 5, 1987  
Revision Date(s): December 7, 1990  
January 25, 1994  
November 6, 1998  
May 5, 2000  
November 3, 2000  
June 6, 2003  
October 15, 2010  
February 11, 2011



**POLICY DECISION: Selection, Training and Evaluation of Board of Podiatric Medicine (BPM) Medical Consultants**

1. Potential DPM Medical Consultants shall be reviewed and nominated to the Consultant pool by the Board's Enforcement Committee.
2. New candidates must be approved by unanimous vote of the Board Members present at a noticed public meeting.
3. Following approval by the Board, Consultants shall certify in writing prior to beginning work that they have received and read the current *BPM Enforcement Manual*.
4. Likewise, all consultants shall so certify receipt and reading of each revision to the *BPM Enforcement Manual*.
5. Consultants shall be evaluated at least on an annual basis.
6. Staff shall organize training sessions for consultants every two years as practicable, and each working consultant must have participated in a BPM training session before beginning work and within the past four years at all times.
7. Consultants may serve for eight consecutive years, and have at least a two-year break in service before being eligible for re-nomination by the Enforcement Committee.

Method of Adoption: Board Vote

Date of Adoption: February 11, 2011

Exhibit

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**COMPLAINT RECEIVED FROM:**

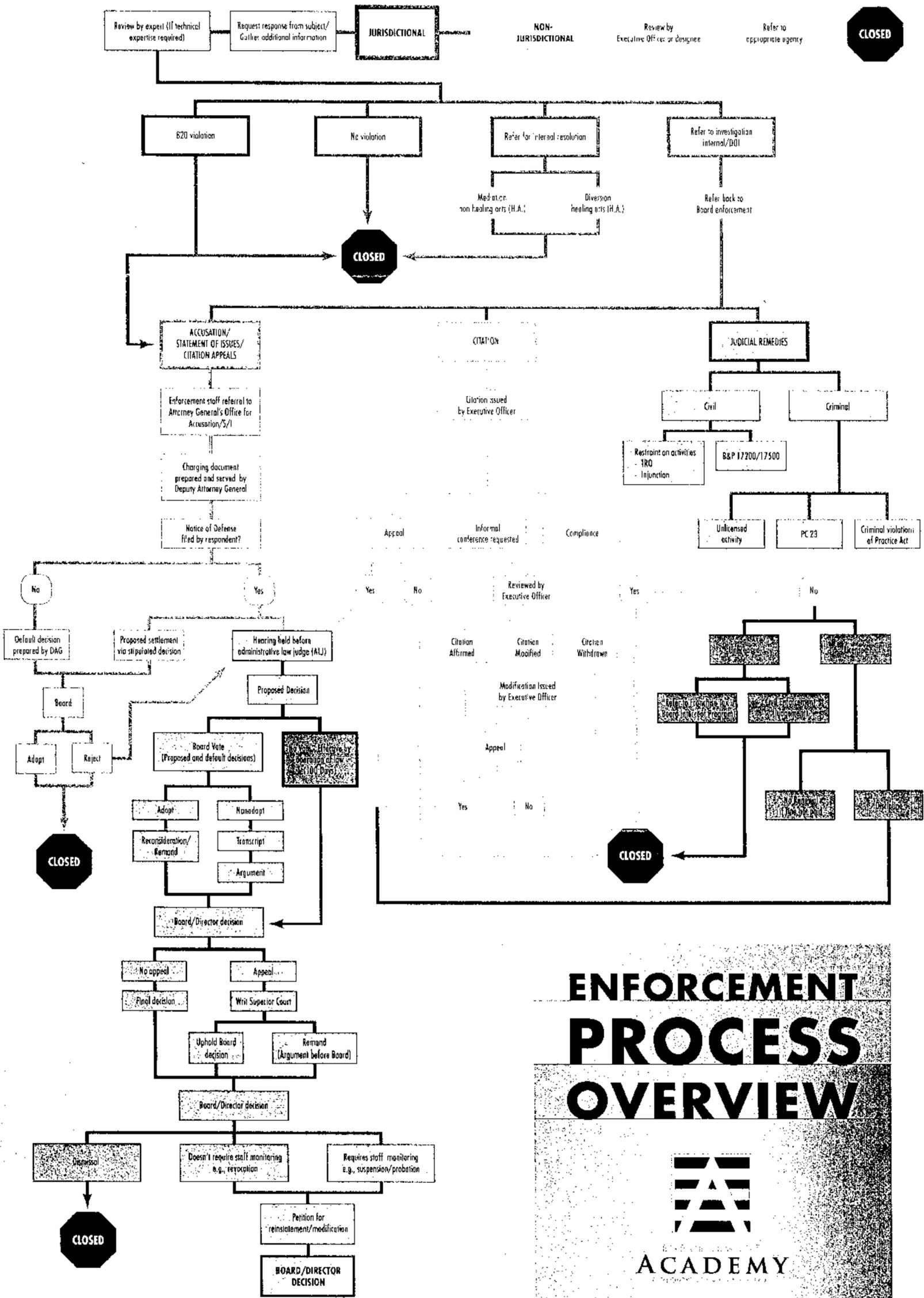
- General Public
- Mandatory Reporting (e.g., malpractice insurance carriers, courts, coroner, peer review committees)
- Subsequent arrest reports
- Own initiative/Field Inspection

**ENTERED INTO THE COMPLAINT TRACKING SYSTEM (CAS):**

- Acknowledgement letter sent
- Complaint files referred to analyst for review

**ANALYST REVIEW TO DETERMINE:**

- Board jurisdiction
- Type of complaint/priority



**ENFORCEMENT PROCESS OVERVIEW**



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**WELCOME TO  
THE MEDICAL BOARD OF CALIFORNIA**  
*Department of Consumer Affairs*

[Home](#) → [Consumer](#)

## **Consumer Information**

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### **COMPLAINT INFORMATION**

- [How to File a Complaint](#)
- [Information and Services for Consumers](#)
- [Enforcement Process](#)
  - [Conviction - How it Might Affect a Medical License](#)
- [Frequently Asked Questions:](#)
  - [Complaint Process](#)
  - [General Office Practices/Protocols](#)
  - [Internet Prescribing and Practicing](#)
  - [Medical Records](#)
  - [Physician Credentials/Practice Specialties](#)
  - [Public Information/Disclosure](#)

### **GENERAL INFORMATION FOR MEDICAL CONSUMERS**

## The Medical Board has no authority over the following:

- **Chiropractors** (contact Board of Chiropractic Examiners)
- **Dentists** (contact Board of Dental Examiners)
- **Ethical/Office Issues** (contact local medical society)  
*Ethical issues include "bedside manner" (attitude, demeanor) and office staff.*
- **Health Maintenance Organizations (HMOs)** (contact Department of Managed Health Care)
- **Hospitals** (contact Dept. of Public Health)
- **Insurance Companies** (contact Department of Insurance)
- **Malpractice actions/civil lawsuits**  
*If you are seeking damages and restitution only, you need to seek legal advice. The Medical Board cannot share information or assist with lawsuits.*
- **Medi-Cal** (contact Department of Health Care Services or Department of Justice, Medi-Cal Fraud)
- **Medicare** (contact the federal centers for Medicare and Medicaid)
- **Nurses** (contact the Board of Registered Nursing or the Board of Vocational Nurse and Psychiatric Technicians)
- **Optometrists** (contact Board of Optometry)
- **Osteopathic Physicians (DOs)** (contact Osteopathic Medical Board of California)
- **Prices Charged** (contact your local medical society for medical services actually provided to the patient)  
*The Medical Board also has no authority to obtain a refund from a medical provider unless there is a double payment by the insurance company.*

## MEDICAL BOARD OF CALIFORNIA

Central Complaint Unit  
2005 Evergreen Street, Suite 1200  
Sacramento, CA 95815

- **To check on a specific doctor or obtain information about the complaint process, call our Consumer Information Unit:**

1-800-633-2322  
or (916) 263-2424  
Fax: (916) 263-2435

- **Or visit our Web site:**

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

## How Complaints Are Handled



Central Complaint Unit

## Medical Board of California

the state agency that licenses medical doctors, investigates complaints, and disciplines those who violate the law

## **OVERVIEW OF THE COMPLAINT REVIEW PROCESS**

The Medical Board of California has authority over licensed medical doctors (MDs) in California and has the authority to enforce the provisions of the Medical Practice Act (within the California Business & Professions Code). The Board also handles complaints against certain allied health care professionals: podiatrists, physician assistants, registered dispensing opticians, research psychoanalysts and midwives.

Your complaint will be assigned to a consumer services analyst for review. The analyst will gather the information necessary to evaluate your complaint. The initial review of your complaint will be undertaken immediately; however, depending on the complexity of the case, it may take several months to resolve.

Below are the most common types of complaint issues filed with the Board as well as an outline of the normal review process.

### **Quality of Care Complaints**

When you file a complaint involving medical care and treatment, the Medical Board will obtain copies of all your medical records pertaining to that treatment. If you have not completed the "Authorization for Release of Medical Records" on the back of the Consumer Complaint Form, the analyst handling your complaint will send you one to complete and sign. The release form must be completed and signed to avoid a delay in processing your complaint.

When a completed release form is received, the analyst will request the needed records, as well as a written summary of the care from each of the treating medical providers. Once all records and summaries are received, the entire file will be forwarded to one of the Board's medical consultants for a thorough review. You will be notified by letter when this occurs.

The medical consultant's evaluation will determine whether the complaint requires further review by one of the Board's investigative offices, or whether the Central Complaint Unit will close the complaint.

If the review determines that the actions of the doctor were not below the acceptable

standard of medical care, the Board has no authority to proceed, and the complaint will be closed. If the Board finds that the treatment fell



below the standard of care but does not represent gross negligence, the complaint will be closed but will be maintained on file for the Board's future reference. If a complaint is referred to an investigative office and a violation is confirmed, the case may be submitted to the Office of the Attorney General for a formal charge that may lead to disciplinary action against the doctor's license.

**The Board cannot review matters that occurred more than seven years ago (with some limited exceptions) or 10 years ago on complaints alleging sexual misconduct.**

### **Failure to Provide Medical Records**

If a medical provider fails to release a copy of your medical records to you upon your written request, he or she may be in violation of Health and Safety Code Section 123110. If you have difficulty obtaining a copy of your records, please call us as we may be able to assist you in obtaining your records.

### **High Priority Complaints**

Complaints alleging negligence that involve patient death or serious bodily injury are given the highest priority. Complaints alleging sexual misconduct, excessive prescribing, unlicensed practice of medicine or a physician's substance abuse will usually be forwarded to one of our district offices for investigation. However, if the complaint allegations are not clear, you may be contacted for further information before determining whether an immediate field investigation is warranted.

### **Injury, Disability, Fitness for Duty Evaluations**

Medical providers often conduct evaluations to determine an individual's medical condition related to an injury, disability, or fitness for duty. The Medical Board has limited jurisdiction in this area as no "care and treatment" is provided. If you are dissatisfied with the results of your evaluation, appeal processes may be available through the agency or individual who requested the evaluation. It is recommended that the appeal options be pursued.

# Medical Board of California

## The Enforcement Process

### Complaint/Information Source

- ❖ Public
- ❖ B&P Code mandated reports
- ❖ Licensee/Professional Group
- ❖ Governmental Group
- ❖ Anonymous/Miscellaneous

### Central Complaint Unit (CCU)

Complaint Unit Analyst reviews the complaint to determine:

- ❖ If immediate investigation is needed. If yes, refer complaint to appropriate district office.
  - ❖ If more information is needed, the Complaint Unit Analyst requests this from the complainant.
  - ❖ Whether the complaint is within the Board's jurisdiction. If not, it is referred to the appropriate agency.
  - ❖ Whether the complaint involves care and treatment provided by the physician. If so, medical records are obtained and a medical consultant reviews.
  - ❖ Whether a minor violation of the Medical Practice Act has occurred (e.g., failure to provide patient records, misleading advertisement, dispensing violations, etc.). If so, the physician is then contacted and advised of the violation to bring him or her into compliance, or the matter is referred for a cite and fine.
  - ❖ Complaint may be mediated at this point if that is appropriate. If no apparent violation is found, the case may be closed.
- A Deputy Attorney General works with CCU to evaluate and screen new complaints.

### District Office

If it appears following initial review that a violation may have occurred, case is referred to a Board district office for investigation.

Investigations are jointly assigned to an investigator and a Deputy Attorney General who work together until the investigation is closed for lack of sufficient evidence or charges (Accusation) are filed. Upon completion, the file may be:

- ❖ Closed, but retained for one year if a violation could not be confirmed.
- ❖ Closed, but retained for five years because the complaint is found to have some merit, but insufficient evidence is found to take action against the licensee.
- ❖ Referred to Attorney General's Health Quality Enforcement Section for determination whether to initiate disciplinary action.
- ❖ Referred for other disciplinary, non-disciplinary, or criminal action.

### Citation & Fine Program

Minor violations of the Medical Practice Act may result in administrative citation and fine rather than formal accusation and disciplinary action.

### Attorney General

If he or she believes the case can pass the legal standard, a Deputy AG drafts formal charges (Accusation), and a hearing is scheduled.

During pre-hearing conferences, a stipulated settlement (plea bargain) of the charges/penalties may be accepted by both sides; if this occurs, no hearing is needed. The Board may direct the AG to file a petition to compel the licensee to submit to a competency examination or a psychiatric examination in lieu of, or preceding the filing of, an Accusation.

### Criminal Prosecution

A completed investigation may be referred to a local district attorney for prosecution of suspected criminal violations.

### Administrative Hearing

If the licensee contests the charges, the case is heard by an Administrative Law Judge (ALJ), who then drafts a proposed decision. The proposed decision is reviewed by a panel of members of the Board, who have the option to:

- ❖ Adopt the decision as proposed
  - ❖ Reduce the penalty and adopt the decision; or,
  - ❖ Increase the penalty and adopt the decision.
- In this instance, the panel members must read the entire record of the hearing prior to acting. The physician is given the opportunity to submit written and oral arguments.

### Appeal: MBC

Physicians may petition for reconsideration of a decision for 30 days after it is adopted. Thereafter, physicians may petition for reinstatement of a revoked license, reduction of terms of penalty, or termination of a period of probation. Various time periods apply before petitions can be filed with the Board.

### Courts:

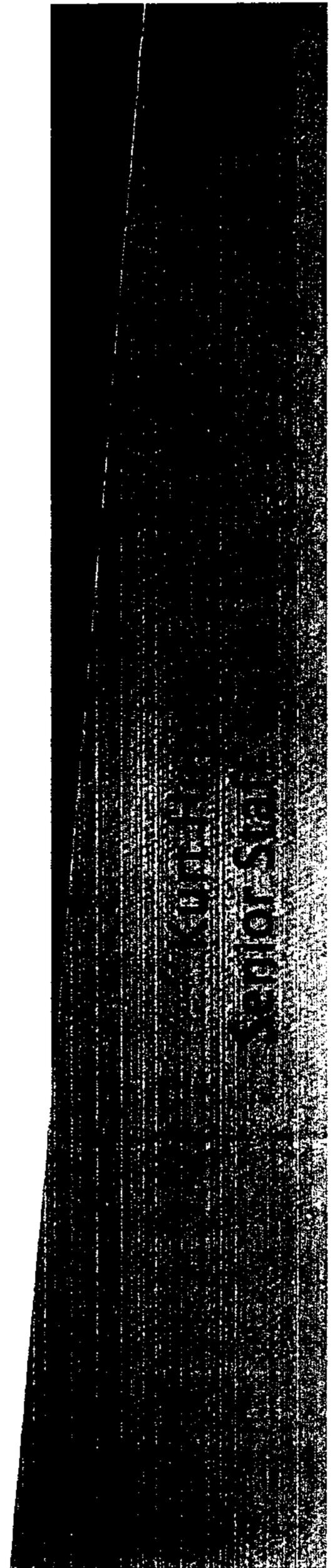
Final decision may be appealed to the Superior Court, the District Court of Appeal, and to the California Supreme Court.

Exhibit

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# Enforcement Core Concepts



# Important Concepts

- ▶ Due Process
- ▶ Consumer Protection
- ▶ Statutes and Regulations

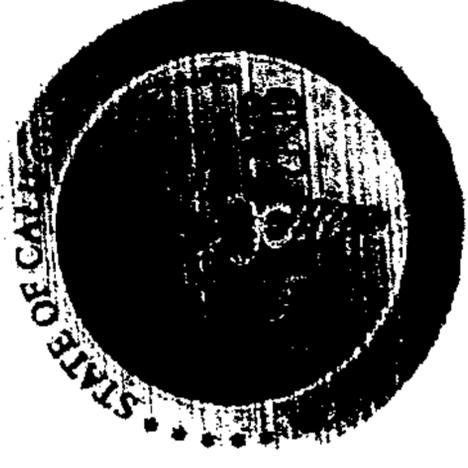


# Due Process

## ▶ What is Due Process?

- Something a lawyer says has been violated or argues for more of for his or her client
- An Imaginary Concept
- I don't know. Can I phone a friend?

Due Process is a Limitation on Governmental Action



# Due Process Defined

▶ At its core, due process is two things:

- Notice
- Opportunity to Be Heard

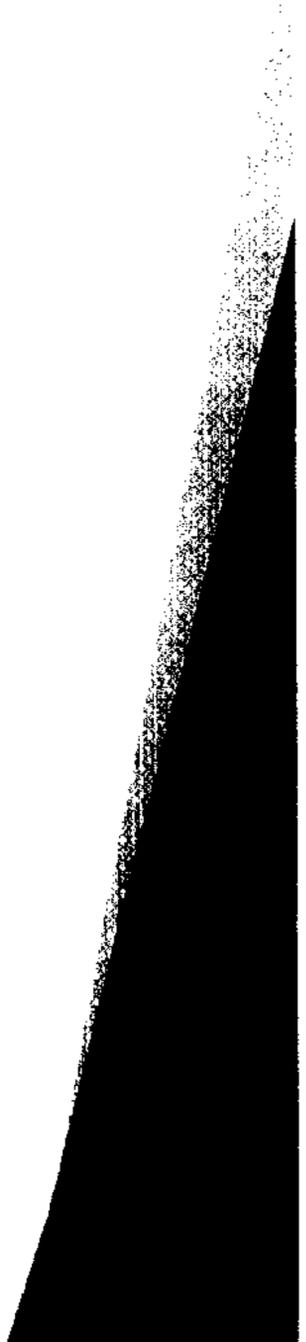
Due Process requirements are triggered when the Government intends to impair life, liberty or property rights.



# More Due Process

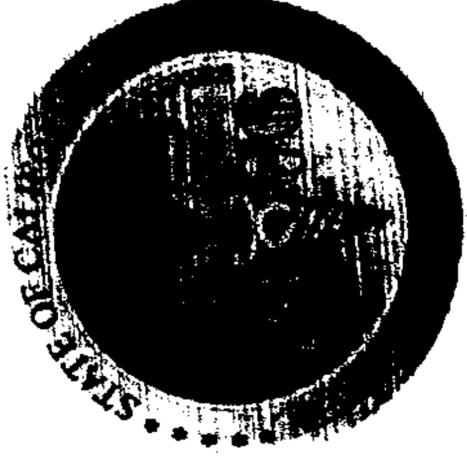


The United States Supreme Court opined that 'due process' is the opportunity to be heard at a meaningful time and in a meaningful manner. (*Mathews v. Eldridge* (1976) 424 U.S. 319.)



# Still More Due Process

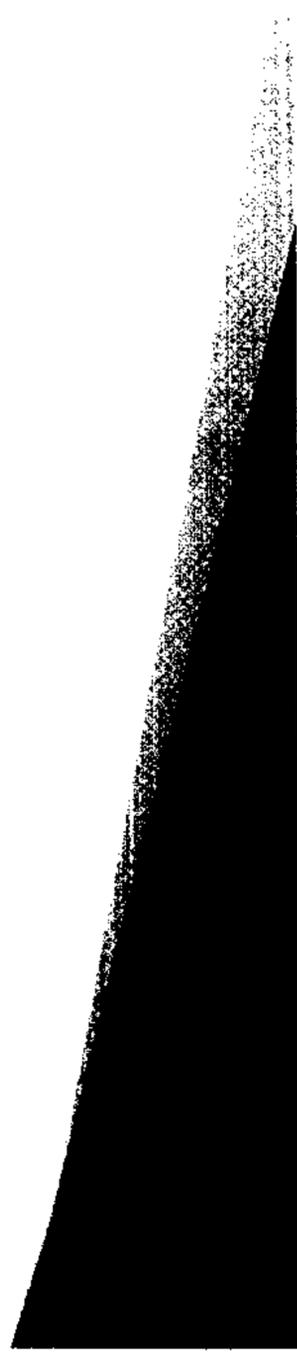
- ▶ Two Types of Due Process
  - Procedural
  - Substantive
    - Involves Policy Enactments
    - Not Processes

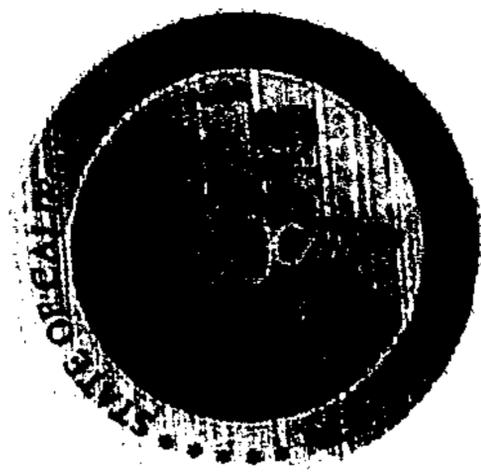


# Return to Basics



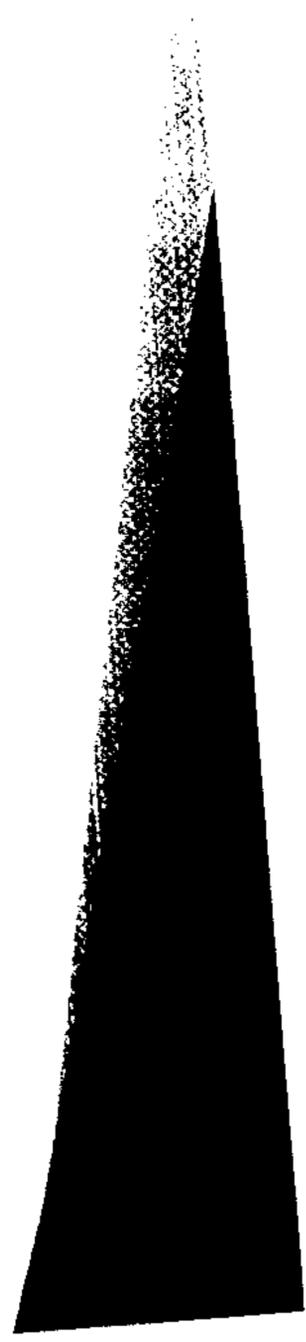
- ▶ What the Board does:
  - Licenses qualified applicants
  - Carries out disciplinary actions
  - Promulgates regulations
- ▶ What we do NOT do:
  - Determine civil liability
  - Award monetary damages



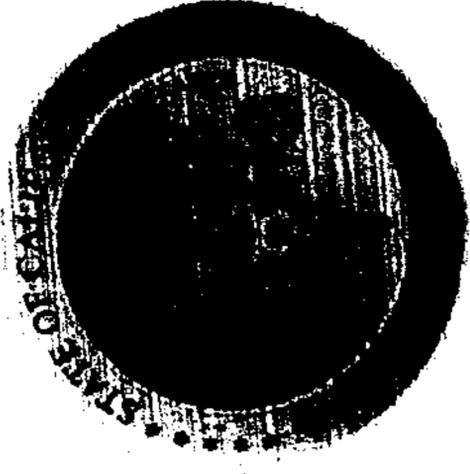


# Definition of a License

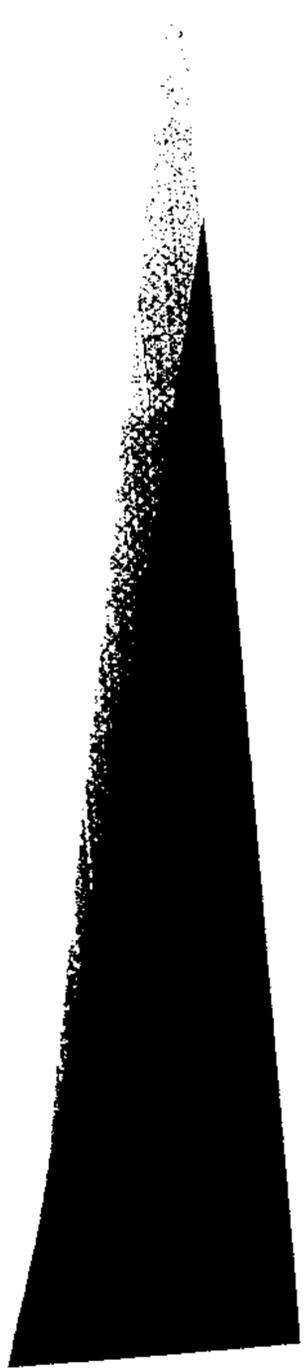
- ▶ Generally speaking, a license is a grant of permission to do a particular thing, carry on a particular business, or pursue a given occupation.
- ▶ License also means a certificate or registration.



# Kurt's Rules of Three



- ▶ Administrative Agencies like the Board:
  - Investigate
  - Prosecute
  - Adjudicate – This is the part of the process when Board Members become involved

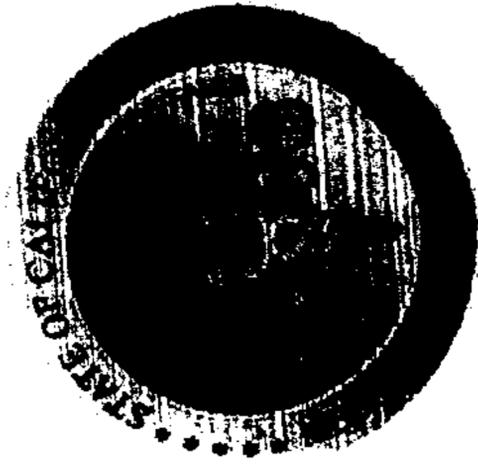


# The Second Rule of Three



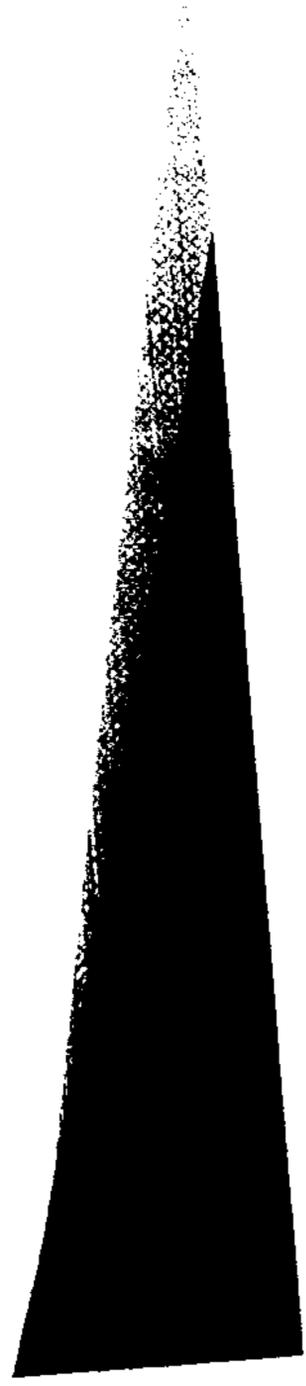
## ► In Real World Terms, Boards:

- In developing licensing standards, reviewing applications and issuing licenses, determine who gets into the profession
- In developing regulations and policies, direct the actions of a licensee
- In pursuing disciplinary actions, may determine how a person leaves the profession or if his or her license is restricted



# Reviewing an Agency's Act

- ▶ Statutes
- ▶ Regulations
- ▶ Disciplinary Guidelines
- ▶ Business and Professions Code
- ▶ Administrative Procedures Act



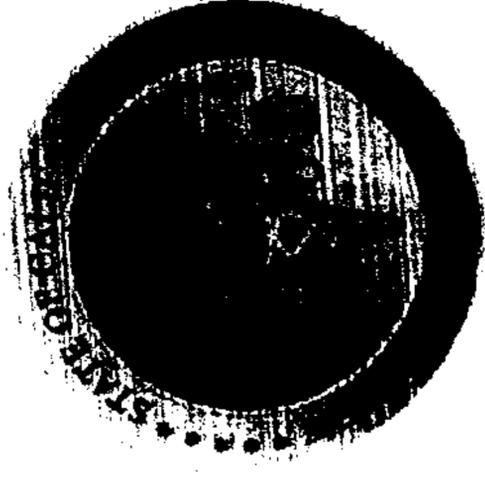
# Statutes



- ▶ Title Act
  - Kurt Heppler, M.D.
- ▶ Practice Act
  - Can't do this or that without a license. This means that I can't perform open heart surgery
  - Can't repair motor vehicles for compensation
  - Can't dispense spectacle lenses

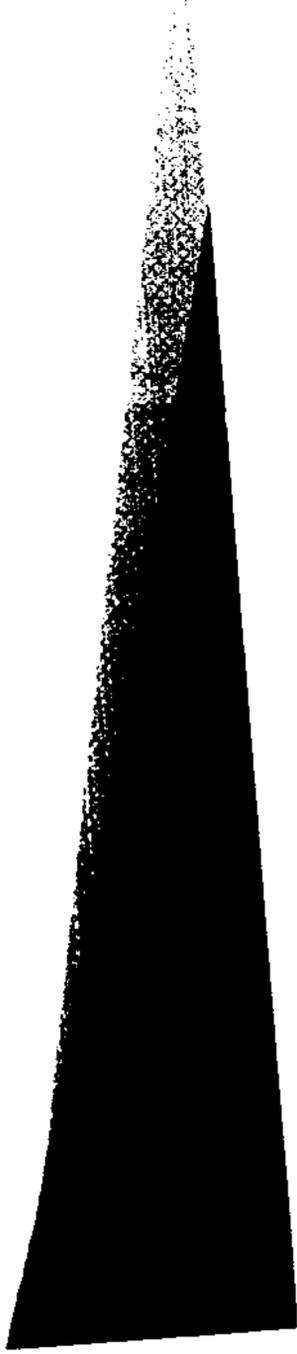
# More Statutes

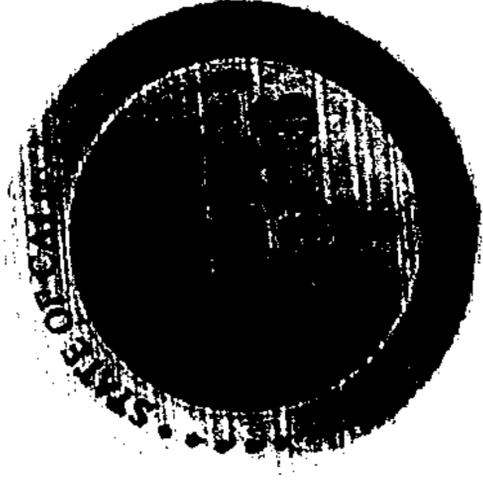
- ▶ Consumer Protection
  - Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions.
- Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. ( Bus. & Prof. Code, § 2001.1)



# Even More Statutes

- ▶ Critically important because they authorize agencies like the Board to discipline licenses and specify the causes to take such actions:
- ▶ “The [Agency] shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:





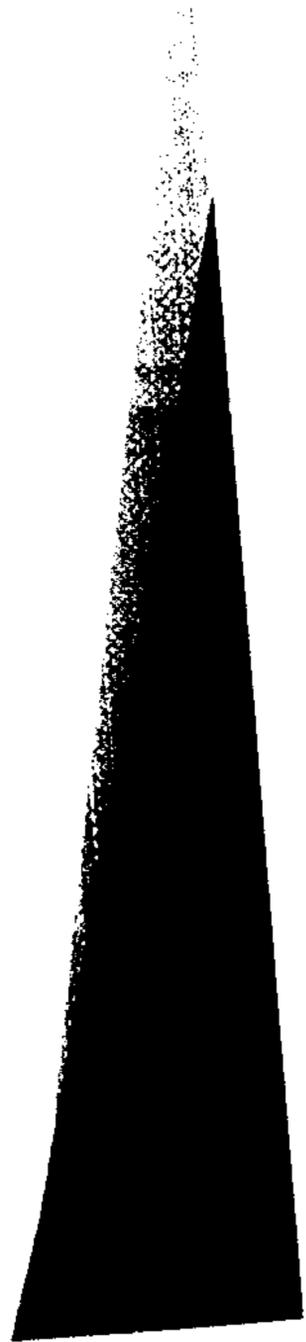
## More Statutes - Continued

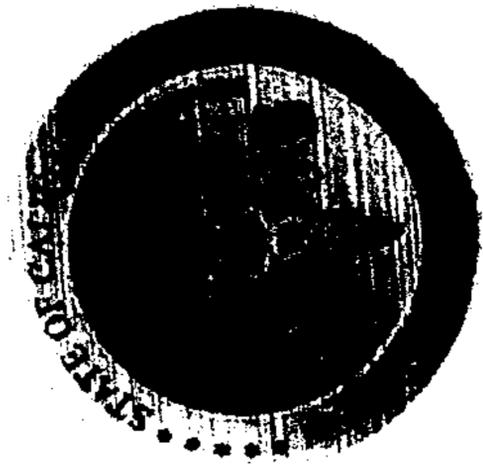
Gross negligence.

Repeated negligent acts.

Incompetence.

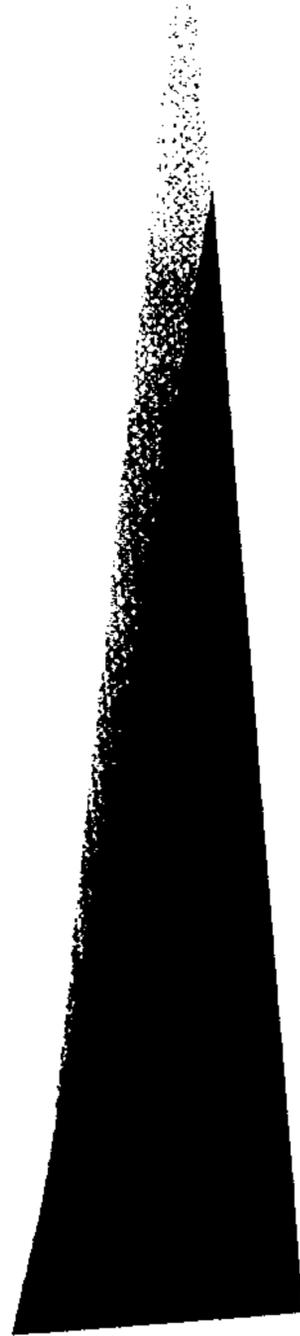
The commission of any act involving dishonesty or corruption which is substantially related to the functions of a licensee."





# Statutes Yet Again

- ▶ Why are statutes so important?  
Because administrative agencies only have limited powers:
  - Those conferred upon the agency by the law creating it.
  - Implied powers necessary to carry out and administer the conferred powers.

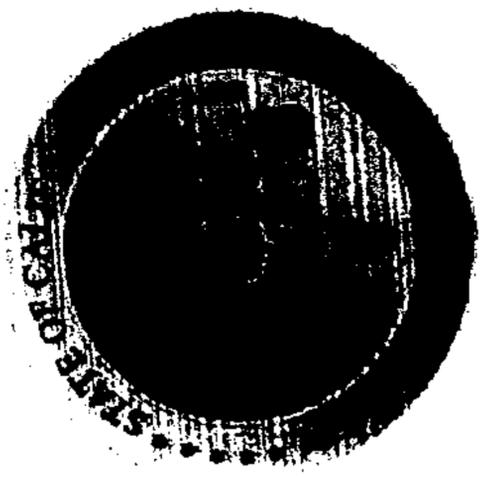


# Regulations

- ▶ Adopted by the Board
  - ▶ Fill the gaps in statute
  - ▶ Nuts and Bolts, Forms, and Procedures are found in regulation
  - ▶ Key concept – a standard of general application
- Officially, regulations interpret, implement, make specific or otherwise carry out the provisions of statute. (See Gov. Code, § 11342.2)



# Why Are Regulations Important?



State law provides that a board may deny a license on the grounds that the applicant has been convicted of a crime substantially related to the qualifications, functions or duties for business or profession for which application is made.

OK, but what are those crimes?

# More Regulations

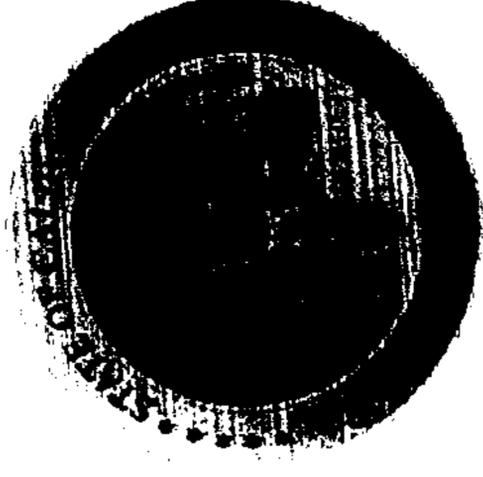
▶ Regulations adopted by the agency answer that question, as follows:

“Such crimes or acts ... shall include, but not be limited to, the following:

- (1) Fiscal dishonesty
- (2) Fraud
- (3) Theft
- (4) Violations relating to the misuse of pesticides.”

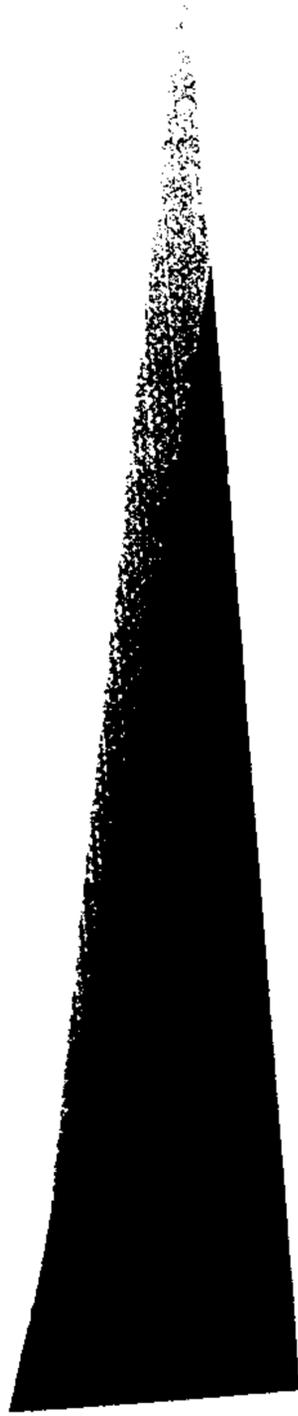
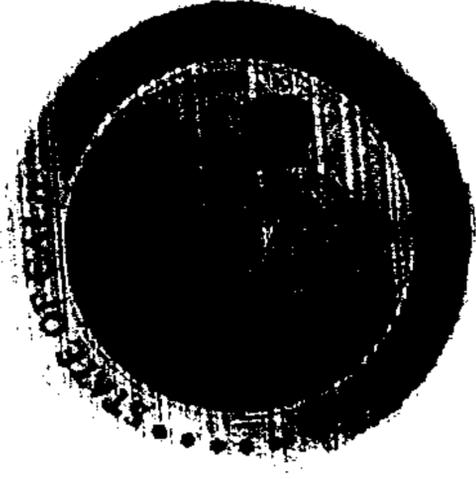
# Disciplinary Guidelines

- ▶ Model Orders
- ▶ Maximum and Minimums
- ▶ Standard and Optional Terms of Probation
- ▶ Incorporated by Reference into Regulation

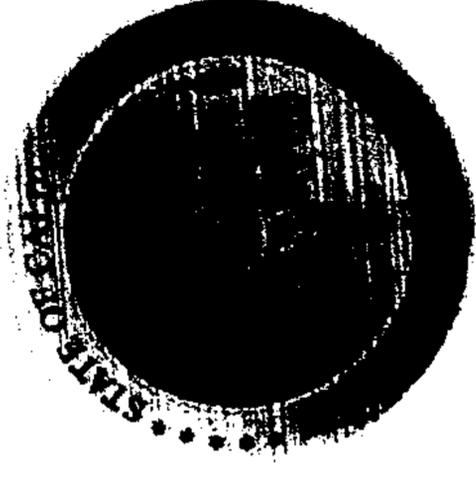


# MBC/DCA Attorney's Role

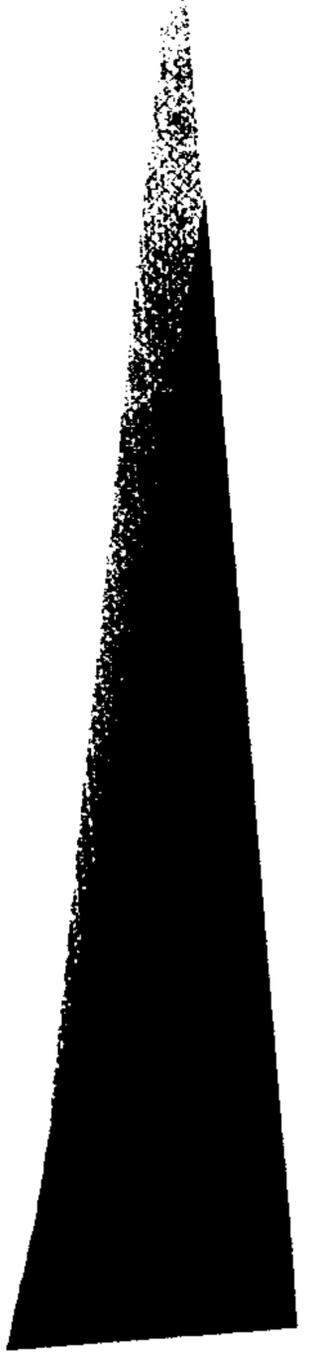
- ▶ Conflicts
- ▶ Communication
- ▶ Consumer Protection



# Critical to Remember



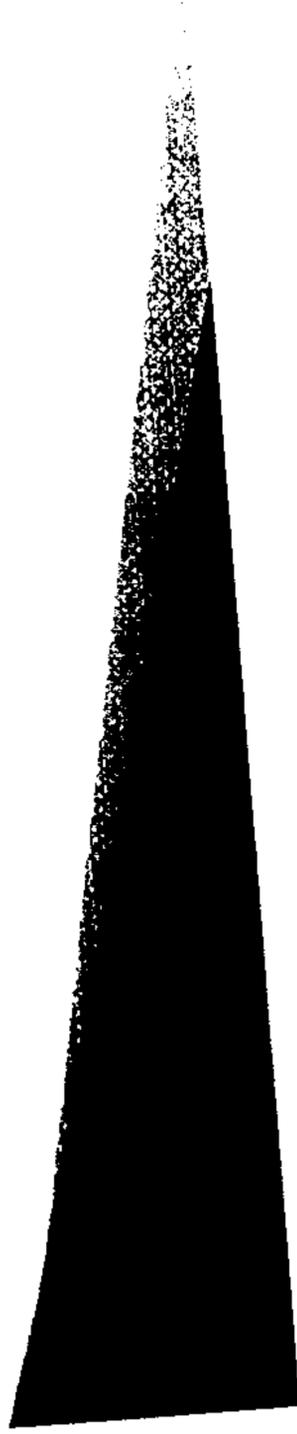
- ▶ Board Counsel Not Attorney General Counsel
  - We Don't Do Investigations or Prosecutions



# Back to Due Process

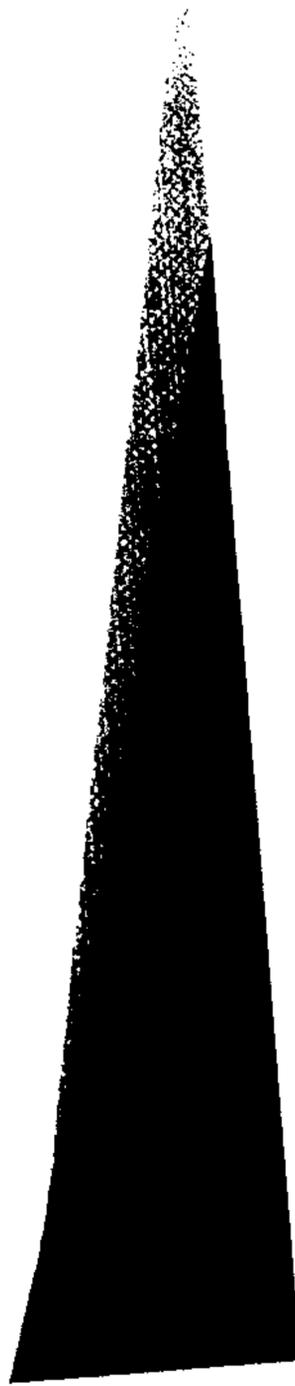
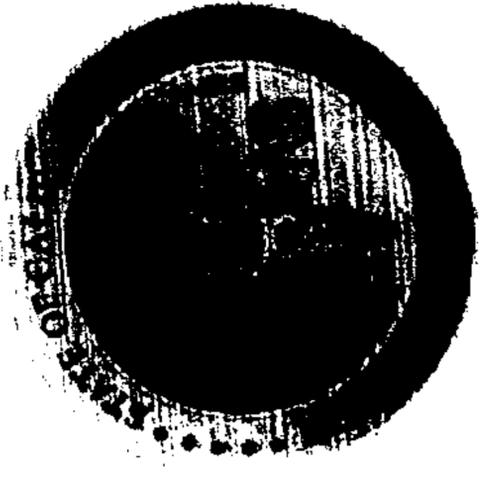
- ▶ Another Concept of Due Process
  - Fair Play

This is especially important in administrative proceedings where certain *fair play* rules apply



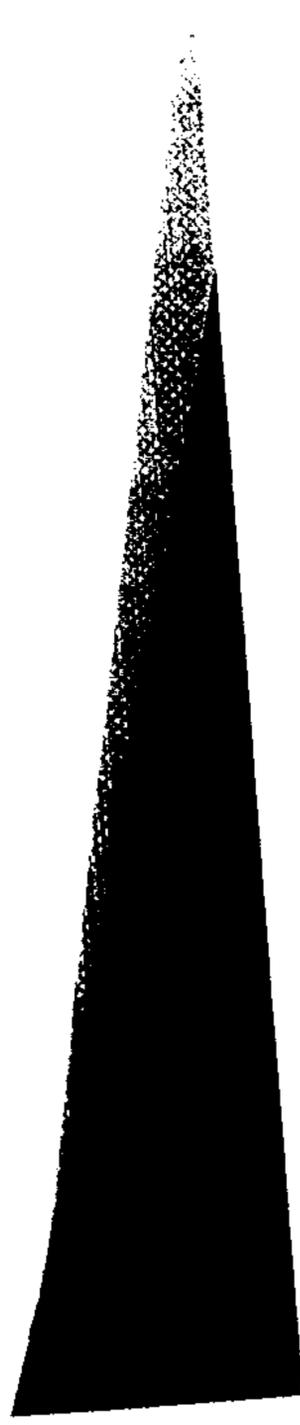
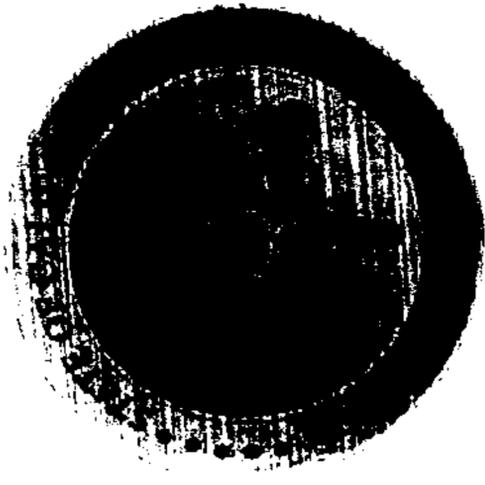
# The Rules of the Game (Administrative Procedure Act)

- ▶ The right to Due Process
- ▶ The right to Counsel
- ▶ The right to offer evidence and call witnesses
- ▶ The right to be heard before an impartial decision maker
- ▶ The right to no Ex Parte Communications



# The Rules of the Game (APA) (cont.)

- ▶ The right to a written decision that bridges the analytical gap between the raw evidence and the decision
- ▶ The right to a judicial review of the Board's decision



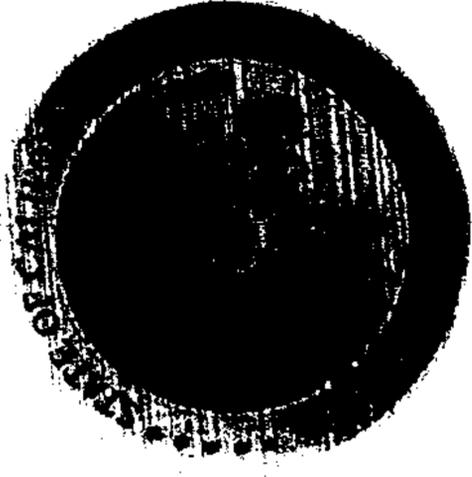
# Possible Outcomes of Formal Discipline

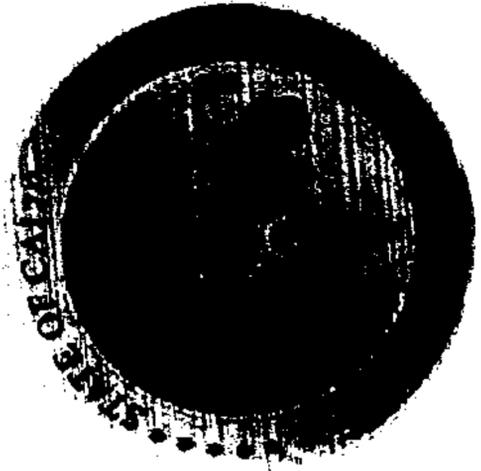
- ▶ Revocation of a license
- ▶ Suspension of a license - not more than a year
- ▶ Probation following an actual or stayed (halted) suspension or stayed revocation
- ▶ Public Reprimand
- ▶ Dismissal of the Accusation

Bus. & Prof. Code, § 2227

# Consumer Protection, Not Punishment

*The purpose of such a [disciplinary] proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent.” (Fahmy v. Medical Bd. of California (1995) 38 Cal. App. 4th 810.)*





# Formal Licensing Actions

## Denial of a license (Business & Professions Code §

- ▶ Denial of a license (Business & Professions Code § 485)
  - When a license is denied, the applicant must receive notification or a Statement of Issues that explains the reason(s) for denial. The applicant has a right to a hearing in order to contest the denial.
- ▶ Issuance of a probationary license
  - The applicant may be issued a license with certain provisions (i.e. biological fluid testing, completion of an ethics class, etc.) Generally, issuing a probationary license is not considered discipline.

# Other Formal Actions

- ▶ Interim Suspension Order
- ▶ A Penal Code 23 Action
- ▶ Acceptance of the surrender of a license

