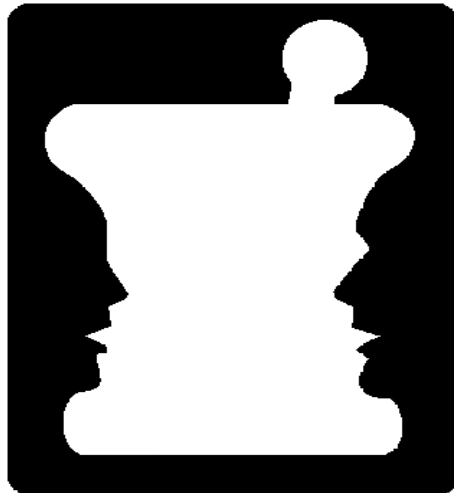


# DISCIPLINARY GUIDELINES

A Manual of Disciplinary Guidelines  
and Model Disciplinary Orders



***BE AWARE & TAKE CARE:  
Talk to your pharmacist!***

**California State Board of Pharmacy  
Department of Consumer Affairs  
(Rev. 10/2007)**

**STATE BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**

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Additional copies of these disciplinary guidelines  
may be downloaded from the board's website

**BOARD OF PHARMACY**  
**DISCIPLINARY GUIDELINES**  
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**DEPARTMENT OF CONSUMER AFFAIRS  
STATE BOARD OF PHARMACY**

**DISCIPLINARY GUIDELINES  
(Rev. 10/2007)**

**INTRODUCTION**

The Board of Pharmacy (board) is responsible for the enforcement of statutes and regulations related to the practice of pharmacy (the Pharmacy Law) and to the regulation of controlled substances (the Uniform Controlled Substances Act). The board serves the public by:

- ❑ protecting the health, safety, and welfare of the people of California with integrity and honesty;
- ❑ advocating the highest quality of affordable pharmaceutical care;
- ❑ providing the best available information on pharmaceutical care; and
- ❑ promoting education, wellness and quality of life.

Pharmacists are patient advocates who provide pharmaceutical care and exercise clinical judgment for the citizens of California, enlightening them about their drug therapy through effective communicating and listening, assessing, collaborating, understanding and intervening. Enforcement officials act quickly, consistently and efficiently in the public's interest to ensure the safe, effective delivery of these services.

The board recognizes the importance of ensuring the safe and effective delivery of dangerous drugs and controlled substances for therapeutic purposes. At the same time, and given the historical and current abuse and diversion of drugs, particularly controlled substances, the board believes there should be no tolerance for licensees who traffic in drugs or who, in the absence of appropriate evidence of rehabilitation, personally abuse drugs or alcohol.

In accordance with Section 1760 of the California Code of Regulations, the board has produced this booklet for those involved in and affected by the disciplinary process: the general public, attorneys from the Office of the Attorney General, administrative law judges from the Office of Administrative Hearings, defense attorneys, board licensees, the courts, board staff and board members who review and vote on proposed decisions and stipulations.

These guidelines are to be followed in Board of Pharmacy disciplinary actions. Subject to judicial review, the board has the final authority over the disposition of its cases, and, to complete its work, it uses the services of the Office of the Attorney General and the Office of Administrative Hearings. The board recognizes that individual cases may necessitate a departure from these guidelines. In such cases, the mitigating or aggravating circumstances shall be detailed in any proposed decision or any transmittal memorandum accompanying a proposed stipulation, especially where Category III violations are involved.

In general, the position of the board is that revocation should always be an option whenever grounds for discipline are found to exist. Board policy is that revocation is generally an

appropriate order where a respondent is in default, such as when he or she fails to file a notice of defense or fails to appear at a disciplinary hearing.

Board policy is that a suspension, where imposed, should be at least 30 days for an individual and at least 14 days for a licensed premises.

The board seeks recovery of all investigative and prosecution costs up to the hearing in all disciplinary cases. This includes all charges of the Office of the Attorney General, including, but not limited to, those for legal services, and includes charges by expert consultants. The board believes that the burden of paying for disciplinary cases should fall on those whose conduct requires investigation and prosecution, not upon the profession as a whole.

The board recognizes there may be situations where an individual licensee deserves a stronger penalty than the pharmacy for which he or she works, but the board also believes in holding a pharmacy owner, manager, and/or pharmacist-in-charge responsible for the acts of pharmacy personnel. Similarly, the board recognizes that in some cases a licensed premises may well be more culpable than any individual licensed by or registered with the board.

For purposes of these guidelines "board" includes the board and/or its designees.

## **FACTORS TO BE CONSIDERED IN DETERMINING PENALTIES**

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

## MITIGATING EVIDENCE

A respondent is permitted to present mitigating circumstances at a hearing or in the settlement process and has the burden of demonstrating any rehabilitative or corrective measures he or she has taken. The board does not intend, by the following references to written statements, letters, and reports, to waive any evidentiary objections to the form or admissibility of such evidence. The respondent must produce admissible evidence in the form required by law in the absence of a stipulation to admissibility by the complainant.

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

- a. Recent, dated written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice of pharmacy including the period of time and capacity in which the person worked with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by board staff.
- b. Recent, dated letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation. Such letters and reports will be subject to verification by board staff.
- c. Recent, dated letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.). Such letters and reports will be subject to verification by board staff.
- d. Recent, dated laboratory analyses or drug screen reports, confirming abstention from drugs and alcohol. Such analyses and reports will be subject to verification by board staff.
- e. Recent, dated physical examination or assessment report by a licensed physician, confirming the absence of any physical impairment that would prohibit the respondent from practicing safely. Such assessments and reports will be subject to verification by board staff.
- f. Recent, dated letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. Such letters and reports will be subject to verification by board staff.

## **TERMS OF PROBATION – PHARMACIST/INTERN PHARMACIST**

A minimum three-year probation period has been established by the board as appropriate in most cases where probation is imposed. A minimum five-year probation period has been established by the board as appropriate where self-administration or diversion of controlled substances is involved. Terms and conditions are imposed to provide consumer protection and to allow the probationer to demonstrate rehabilitation. A suspension period may also be required as part of the probation order. The board prefers that any stayed order be for revocation rather than for some period of suspension.

Probation conditions are divided into two categories: (1) standard conditions that shall appear in all probation cases, and (2) optional conditions that depend on the nature and circumstances of a particular case. These conditions may vary depending on the nature of the offense(s).

The board may also impose any other condition appropriate to the case where the condition is not contrary to public policy.

## **CATEGORIES OF VIOLATIONS AND RECOMMENDED PENALTIES**

The California Pharmacy Law identifies offenses for which the board may take disciplinary action against the license. Included among grounds for discipline are violations of the Pharmacy Law itself, violations of regulations promulgated by the board, and violations of other state or federal statutes or regulations.

The following are categories of possible violations used by the board to determine appropriate disciplinary penalties. These categories represent the judgment of the board as to the perceived seriousness of particular offenses.

Under each category, the board has grouped statutes and regulations where violations would typically merit the recommended range of minimum to maximum penalties for that category. These lists are representative, and are not intended to be comprehensive or exclusive. Where a violation not included in these lists is a basis for disciplinary action, the appropriate penalty for that violation may be best derived by comparison to any analogous violation(s) that are included. Where no such analogous violation is listed, the category descriptions may be consulted.

These categories assume a single violation of each listed statute or regulation. For multiple violations, the appropriate penalty shall increase accordingly. Moreover, if an individual has committed violations in more than one category, the minimum and maximum penalties shall be those recommended in the highest category.

The board also has the authority, pursuant to Business and Professions Code section 4301(n), to impose discipline based on disciplinary action taken by another jurisdiction. The discipline imposed by the board will depend on the discipline imposed by the other jurisdiction, the extent of the respondent's compliance with the terms of that discipline, the nature of the conduct for which the discipline was imposed, and other factors set forth in these guidelines.

## **CATEGORY I**

Minimum: Revocation; Revocation stayed; one year probation. All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

Category I discipline is recommended for:

- violations which are relatively minor but are potentially harmful
- repeated violations of a relatively minor nature:

Violations of the following codes are representative of this category:

## **BUSINESS AND PROFESSIONS CODE**

### **Article 3. Scope of Practice and Exemptions**

- 4052.1 Skin Puncture by Pharmacist; Conditions Permitting
- 4052.5 Pharmacist May Select Different Form of Medication with Same Active Chemical Ingredients; Exceptions
- 4052.7 Repackage Previously Dispensed Drugs; Requirements
- 4053 Exemptee Supervisor of Manufacturer, etc.: Requirements
- 4054 Supply by Manufacturer, etc. of Certain Dialysis Drugs and Devices
- 4055 Sale of Devices to Licensed Clinics, etc.
- 4056 Purchase of Drugs at Wholesale – Hospital Containing 100 Beds or Less
- 4057 Exceptions to Application of this Chapter
- 4058 Display of Original License
- 4062 Furnishing Dangerous Drugs During Emergency
- 4064 Emergency Refill of Prescription Without Prescription Authorization
- 4065 Injection Card System; Requirements of Administration
- 4066 Furnishing Dangerous Drugs to Master or First Officer of Vessel
- 4068 Dispense Dangerous Drug or Controlled Substance to Emergency Room Patient; Requirements

### **Article 4. Requirements for Prescription**

- 4070 Reduction of Oral or Electronic Prescription to Writing
- 4071 Prescriber May Authorize Agent to Transmit Prescription; Schedule II Excluded
- 4072 Oral or Electronic Transmission of Prescription – Health Care Facility
- 4073 Substitution of Generic Drug – Requirements and Exceptions
- 4074 Drug Risk: Informing Patient; Providing Consultation for Discharge Medications
- 4076 Prescription Container – Requirements for Labeling
- 4077 Dispensing Dangerous Drug in Incorrectly Labeled Container

### **Article 5. Authority of Inspectors**

- 4082 Names of Owners, Managers and Employees Open for Inspection

## **Article 6. General Requirements**

- 4100 Change of Address or Name – Notification to Board
- 4103 Blood Pressure – Taking by Pharmacist

## **Article 7. Pharmacies**

- 4114 Intern Pharmacist: Activities Permitted
- 4119 Furnish Prescription Drug to Licensed Health Care Facility – Secured
- 4119.1 Pharmacy May Provide Services to Health Facility
- 4119.5 Transfer or Repackaging Dangerous Drugs by Pharmacy
- 4121 Advertisement for Prescription Drug: Requirements; Restrictions
- 4122 Required Notice at Availability of Prescription Price Information, General Product Availability, Pharmacy Services; Providing Drug Price Information; Limitations on Price Information Requests
- 4123 Compounding Drug for Other Pharmacy for Parenteral Therapy; Notice to Board
- 4124 Dispensing Replacement Contact Lenses: Requirements; Patient Warnings; Registration with Medical Board; Application of Section to Nonresident Pharmacies

## **Article 9. Hypodermic Needles and Syringes**

- 4141 Furnishing Without License
- 4142 Prescription Required
- 4143 Exemption: Sale to Other Entity, Physician, etc.
- 4144 Industrial Use Exception
- 4145 Exception: Furnishing for Administration of Insulin, Adrenaline, or Specified Animal Uses; Conditions
- 4148 Confiscation if Found Outside Licensed Premises
- 4149 Sale by Distributor

## **Article 10. Pharmacy Corporations**

- 4151 Licensure Requirements
- 4152 Corporate Name Requirements
- 4153 Shareholder Income While Disqualified
- 4156 Unprofessional Conduct by Corporation

## **Article 11. Wholesalers and Manufacturers**

- 4161 Nonresident Wholesaler: When License Required; Application
- 4162 Issuance or Renewal of Wholesaler License; Surety Bond
- 4163 Unauthorized Furnishing by Manufacturer or Wholesaler
- 4165 Sale or Transfer of Dangerous Drug or Device Into State: Furnishing Records to Authorized Officer on Demand; Citation for Non-compliance
- 4166 Shipping of Dangerous Drugs or Devices – Wholesaler or Distributor
- 4167 Wholesaler: Bar on Obtaining Dangerous Drugs or Devices It Cannot Maintain on Licensed Premises













































































## **Public Reprimand**

It is hereby ordered that a public reprimand be issued against pharmacy technician license, \_\_\_\_\_ . Respondent is required to report this reprimand as a disciplinary action.

## **Adoption of Stipulation**

It is understood by respondent that, in deciding whether to adopt this stipulation, the board may receive oral and written communication from its staff and the Office of the Attorney General. Communications pursuant to this paragraph shall not disqualify the board or other persons from future participation in this or any other matter affecting respondent. In the event this settlement is not adopted by the board, the stipulation will not become effective and may not be used for any purpose, except this paragraph, which shall remain in effect.

**STANDARD CONDITIONS** – To be included in all probation decisions/orders.

1. Certification Prior to Resuming Work
2. Obey All Laws
3. Report to the Board
4. Interview with the Board
5. Cooperate with Board Staff
6. Notice to Employers
7. Reimbursement of Board Costs
8. Probation Monitoring Costs
9. Status of License
10. License Surrender While on Probation/Suspension
11. Notification of a Change in Name, Residence Address, Mailing Address or Employment
12. Tolling of Probation
13. Violation of Probation
14. Completion of Probation

**OPTIONAL CONDITIONS**

15. No Ownership of Licensed Premises
16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups
17. Random Drug Screening
18. Work Site Monitor
19. Notification of Departure
20. Abstain from Drugs and Alcohol Use
21. Tolling of Suspension
22. Restitution

## **STANDARD CONDITIONS: TO BE INCLUDED IN ALL PROBATIONS**

### **1. Certification Prior to Resuming Work**

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

### **2. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's \_\_\_\_\_ license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

### **3. Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports

in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

#### **4. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

#### **5. Cooperate with Board Staff**

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

#### **6. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number \_\_\_\_\_ and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number \_\_\_\_\_ and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number \_\_\_\_\_ in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number \_\_\_\_\_ and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

## **7. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$\_\_\_\_\_. Respondent shall make said payments as follows: \_\_\_\_\_. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution.

## **8. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

## **9. Status of License**

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

## **10. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his or her pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all

requirements applicable to the license sought as of the date the application for that license is submitted to the board.

### **11. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

### **12. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of \_\_\_\_\_ hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of \_\_\_\_\_ hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least \_\_\_\_\_ hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least \_\_\_\_\_ hours as a pharmacy technician as defined by Business and Professions Code section 4115.

### **13. Violation of Probation**

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a

violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

#### **14. Completion of Probation**

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

### **OPTIONAL CONDITIONS OF PROBATION**

#### **15. No Ownership of Licensed Premises**

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

**Option:** Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective of this decision. Violation of this restriction shall be considered a violation of probation.

#### **16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups** (Appropriate for those cases with chemical dependency (alcohol, drugs))

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

#### **17. Random Drug Screening** (Appropriate for those cases with chemical dependency (alcohol, drugs))

Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be

determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

**18. Work Site Monitor** (Appropriate for those cases with chemical dependency (alcohol, drugs))

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

**19. Notification of Departure** (Appropriate for those cases with chemical dependency (alcohol, drugs))

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

**20. Abstain from Drugs and Alcohol Use** (Appropriate for those cases with chemical dependency (alcohol, drugs))

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

**21. Tolling of Suspension**

During the period of suspension, respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of ten (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days respondent is absent from California. During any such period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, respondent shall not return to work until notified by the board that the period of suspension has been satisfactorily completed.

**22. Restitution** (Appropriate in cases of drug diversion, theft, fraudulent billing, or patient harm resulting from negligence or incompetence.)

Within \_\_\_\_\_ days of the effective date of this decision, respondent shall pay restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_. Failure to make restitution by this deadline shall be considered a violation of probation.

## **DESIGNATED REPRESENTATIVE**

The board files cases against designated representatives where the violation(s) involve significant misconduct on the part of the licensee. The board believes that revocation is typically the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include, but are not limited to, the following violation(s) of law(s) involving:

- Possession of dangerous drugs and/or controlled substances
- Use of dangerous drugs and/or controlled substances
- Possession for sale of dangerous drugs and/or controlled substances
- Personal misuse of drugs or alcohol

If revocation is not imposed, the board recommends a minimum Category III level of discipline be imposed on the designated representative. This would include suspension and probation.

## **TERMS OF PROBATION – DESIGNATED REPRESENTATIVE**

A minimum three-year probation period has been established by the board as appropriate in most cases where probation is imposed. A minimum five-year probation period has been established by the board as appropriate where self-administration or diversion of controlled substances is involved. Terms and conditions are imposed to provide consumer protection and to allow the probationer to demonstrate rehabilitation. A suspension period may also be required as part of the probation order. The board prefers that any stayed order be for revocation rather than for some period of suspension.

Probation conditions are divided into two categories: (1) standard conditions that shall appear in all probation cases, and (2) optional conditions that depend on the nature and circumstances of a particular case. These conditions may vary depending on the nature of the offense(s).

The board may also impose any other condition appropriate to the case where the condition is not contrary to public policy.

## **CATEGORY OF VIOLATIONS AND RECOMMENDED PENALTIES**

### **CATEGORY III - Penalty**

Minimum: Revocation; Revocation stayed, 90 days actual suspension, three years probation. All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

Applies to all applicable statutes and regulations

## MODEL DISCIPLINARY LANGUAGE – DESIGNATED REPRESENTATIVE

The following standardized language shall be used in every decision where the order of condition is imposed.

### Revocation

Designated Representative license number \_\_\_\_\_, issued to respondent \_\_\_\_\_ is revoked. Respondent shall relinquish his or her designated representative license to the board within ten (10) days of the effective date of this decision. Respondent may not petition the board for reinstatement of his or her revoked designated representative license for three (3) years from the effective date of this decision.

Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$\_\_\_\_\_ within fifteen (15) days of the effective date of this decision.

**Option:** As a condition precedent to reinstatement of his or her revoked designated representative license respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$\_\_\_\_\_. Said amount shall be paid in full prior to the reinstatement of his or her revoked designated representative license, unless otherwise ordered by the board.

### Suspension

As part of probation, respondent is suspended from working as a designated representative for \_\_\_\_\_ beginning the effective date of this decision.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs licensed by the board, or any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not perform any of the duties of a designated representative, nor do any act involving drug selection, selection of stock, manufacturing, dispensing; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices and controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect involving the distribution of dangerous drugs and devices and controlled substances. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed entity in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

### Standard Stay/Probation Order

Designated representative license number \_\_\_\_\_ is revoked; however, the revocation is stayed and respondent is placed on probation for \_\_\_\_\_ years upon the following terms and conditions:

**Issuance of Probationary License** (In cases where a Statement of Issues has been filed.)

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to respondent and immediately revoked; the order of revocation is stayed and respondent is placed on probation for \_\_\_\_\_ years upon the following terms and conditions:

**Surrender**

Respondent surrenders designated representative license number \_\_\_\_\_ as of the effective date of this decision. Respondent shall relinquish his or her designated representative license to the board within ten (10) days of the effective date of this decision.

The surrender of respondent's license and the acceptance of the surrendered license by the board shall constitute the imposition of discipline against respondent. This decision constitutes a record of discipline and shall become a part of respondent's license history with the board.

Respondent understands and agrees that if he or she ever files an application for licensure or a petition for reinstatement in the State of California, the board shall treat it as a new application for licensure.

Respondent may not apply for any license, permit or registration from the board for three (3) years from the effective date of this decision. Respondent stipulates that should he or she apply for any license from the board on or after the effective date of this decision, all allegations set forth in the [accusation or petition to revoke probation] shall be deemed to be true, correct and admitted by respondent when the board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the board prior to issuance of a new license. Respondent is required to report this surrender as disciplinary action.

Respondent further stipulates that he or she shall reimburse the board for its costs of investigation and prosecution in the amount of \$ \_\_\_\_\_ within \_\_\_\_\_ days of the effective date of this decision.

**Option:** Respondent stipulates that should he or she apply for any license from the board on or after the effective date of this decision, investigation and prosecution costs in the amount of \$ \_\_\_\_\_ shall be paid to the board prior to issuance of the new license.

**Public Reprimand**

It is hereby ordered that a public reprimand be issued against designated representative license, \_\_\_\_\_. Respondent is required to report this reprimand as a disciplinary action.

## **Adoption of Stipulation**

It is understood by respondent that, in deciding whether to adopt this stipulation, the board may receive oral and written communication from its staff and the Office of the Attorney General. Communications pursuant to this paragraph shall not disqualify the board or other persons from future participation in this or any other matter affecting respondent. In the event this settlement is not adopted by the board, the stipulation will not become effective and may not be used for any purpose, except this paragraph, which shall remain in effect.

**STANDARD CONDITIONS** – To be included in all probation decisions/orders.

1. Obey All Laws
2. Report to the Board
3. Interview with the Board
4. Cooperate with Board Staff
5. Notice to Employers
6. No Being Designated Representative-in-Charge
7. Reimbursement of Board Costs
8. Probation Monitoring Costs
9. Status of License
10. License Surrender While on Probation/Suspension
11. Notification of a Change in Name, Residence Address, Mailing Address or Employment
12. Tolling of Probation
13. Violation of Probation
14. Completion of Probation

**OPTIONAL CONDITIONS**

15. No Ownership of Licensed Premises
16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups
17. Random Drug Screening
18. Work Site Monitor
19. Notification of Departure
20. Abstain from Drugs and Alcohol Use
21. Tolling of Suspension
22. Restitution

## **STANDARD CONDITIONS - TO BE INCLUDED IN ALL PROBATIONS**

### **1. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- an arrest or issuance of a criminal complaint for violation of any state or federal law
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's \_\_\_\_\_ license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

### **2. Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

### **3. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, upon request at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

### **4. Cooperate with Board Staff**

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

## **5. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number \_\_\_\_\_ and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, designated representative-in-charge (including each new designated representative-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number \_\_\_\_\_ and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, designated representative-in-charge and owner at each entity licensed by the board of the terms and conditions of the decision in case number \_\_\_\_\_ in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number \_\_\_\_\_ and the terms and conditions imposed thereby. It shall be the respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a designated representative or in any position for which a designated representative license is a requirement or criterion for employment, whether the respondent is considered an employee or independent contractor or volunteer.

## **6. No Being Designated Representative-in-Charge**

During the period of probation, respondent shall not be the designated representative-in-charge of any entity licensed by the board unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

## **7. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$\_\_\_\_\_. Respondent shall make said payments as follows: \_\_\_\_\_. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution.

## **8. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

## **9. Status of License**

Respondent shall, at all times while on probation, maintain an active, current designated representative license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's designated representative license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

## **10. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her designated representative license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his or her designated representative license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

## **11. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving and the address of the new employer, supervisor and owner and work schedule, if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

## **12. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a designated representative in California for a minimum of \_\_\_\_\_ hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a designated representative for a minimum of \_\_\_\_\_ hours in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means any calendar month during which respondent is not working as a designated representative for at least \_\_\_\_\_ hours as a designated representative as defined by Business and Professions Code section 4053.

"Resumption of work" means any calendar month during which respondent is working as a designated representative for at least \_\_\_\_\_ hours as a designated representative as defined by Business and Professions Code section 4053.

## **13. Violation of Probation**

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended, until the petition to revoke probation or accusation is heard and decided.

## **14. Completion of Probation**

Upon written notice by the board indicating successful completion of probation, respondent's designated representative license will be fully restored.

## OPTIONAL CONDITIONS OF PROBATION

### 15. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

**Option:** Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

### 16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups (Appropriate for those cases with chemical dependency (alcohol, drugs))

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

### 17. Random Drug Screening (Appropriate for those cases with chemical dependency (alcohol, drugs))

Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result

in the automatic suspension of work by respondent. Respondent may not resume work as a designated representative until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs licensed by the board, or any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not perform any of the duties of a designated representative, nor do any act involving drug selection, selection of stock, manufacturing, dispensing; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices and controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect involving the distribution of dangerous drugs and devices and controlled substances. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed entity in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

**18. Work Site Monitor** (Appropriate for those cases with chemical dependency (alcohol, drugs))

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

**19. Notification of Departure** (Appropriate for those cases with chemical dependency (alcohol, drugs))

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

**20. Abstain from Drugs and Alcohol Use** (Appropriate for those cases with chemical dependency (alcohol, drugs))

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be

considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

## **21. Tolling of Suspension**

During the period of suspension, respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of ten (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days respondent is absent from California. During any such period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, respondent shall not resume work until notified by the board that the period of suspension has been satisfactorily completed.

## **22. Restitution** (Appropriate in cases of drug diversion, theft, fraudulent billing, or patient harm resulting from negligence or incompetence.)

Within \_\_\_\_\_ days of the effective date of this decision, respondent shall pay restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_. Failure to make restitution by this deadline shall be considered a violation of probation.

## **TERMS OF PROBATION – PREMISES**

A minimum three-year probation period has been established by the board as appropriate in most cases where probation is imposed. A minimum five-year probation period has been established by the board as appropriate where self-administration or diversion of controlled substances has occurred at a licensed premises. Terms and conditions are imposed to provide consumer protection. A suspension period may also be required as part of the probation order. The board prefers that any stayed order be for revocation rather than for some period of suspension.

Probation conditions are divided into two categories: (1) standard conditions that shall appear in all probation cases, and (2) optional conditions that depend on the nature and circumstances of a particular case. These conditions may vary depending on the nature of the offense(s).

The board may also impose any other condition appropriate to the case where the condition is not contrary to public policy.

## **CATEGORIES OF VIOLATIONS AND RECOMMENDED PENALTIES**

The California Pharmacy Law identifies offenses for which the board may take disciplinary action against a license. Included among grounds for discipline are violations of the Pharmacy Law itself, violations of regulations promulgated by the board, and violations of other state or federal statutes or regulations.

The following are categories of possible violations used by the board to determine appropriate disciplinary penalties. These categories represent the judgment of the board as to the perceived seriousness of particular offenses.

Under each category, the board has grouped statutes and regulations where violations would typically merit the recommended range of minimum to maximum penalties for that category. These lists are representative, and are not intended to be comprehensive or exclusive. Where a violation not included in these lists is a basis for disciplinary action, the appropriate penalty for that violation may be best derived by comparison to any analogous violation(s) that are included. Where no such analogous violation is listed, the category descriptions may be consulted.

These categories assume a single violation of each listed statute or regulation. For multiple violations, the appropriate penalty shall increase accordingly. Moreover, if an individual has committed violations in more than one category, the minimum and maximum penalties shall be those recommended in the highest category.

The board also has the authority, pursuant to Business and Professions Code section 4301(n), to impose discipline based on disciplinary action taken by another jurisdiction. The discipline imposed by the board will depend on the discipline imposed by the other jurisdiction, the extent of the respondent's compliance with the terms of that discipline, the nature of the conduct for which the discipline was imposed, and other factors set forth in these guidelines.

## **CATEGORY I**

Minimum: Revocation; Revocation stayed; one-year probation. All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

Category I discipline is recommended for:

- violations which are relatively minor but are potentially harmful
- repeated violations of a relatively minor nature:

Violations of the following codes are representative of this category:

## **BUSINESS AND PROFESSIONS CODE**

### **Article 3. Scope of Practice and Exemptions**

4053	Exemptee Supervisor of Manufacturer, etc.: Requirements
4054	Supply by Manufacturer, etc. of Certain Dialysis Drugs and Devices
4056	Purchase of Drugs at Wholesale – Hospital Containing 100 Beds or Less
4057	Exceptions to Application of this Chapter
4058	Display of Original License
4062	Furnishing Dangerous Drugs During Emergency
4064	Emergency Refill of Prescription Without Prescriber Authorization
4065	Injection Card System; Requirements for Administration
4066	Furnishing Dangerous Drugs to Master or First Officer of Vessel

### **Article 4. Requirements for Prescription**

4070	Reduction of Oral or Electronic Prescription to Writing
4071	Prescriber May Authorize Agent to Transmit Prescription; Schedule II Excluded
4072	Oral or Electronic Transmission of Prescription - Health Care Facility
4073	Substitution of Generic Drug - Requirements and Exceptions
4074	Drug Risk: Informing Patient; Providing Consultation for Discharge Medications
4076	Prescription Container - Requirements for Labeling
4077	Dispensing Dangerous Drug in Incorrectly Labeled Container

### **Article 5. Authority of Inspectors**

4082	Names of Owners, Managers and Employees Open for Inspection
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### **Article 6. General Requirements**

4100	Change of Address or Name – Notification to Board
4103	Blood Pressure - Taking by Pharmacist

## **Article 7. Pharmacies**

- 4114 Intern Pharmacist: Activities Permitted
- 4119.5 Transfer or Repackaging Dangerous Drugs by Pharmacy
- 4120 Nonresident Pharmacy: Registration Required
- 4121 Advertisement for Prescription Drug: Requirements; Restrictions
- 4122 Required Notice at Availability of Prescription Price Information, General Product Availability, Pharmacy Services; Providing Drug Price Information; Limitations on Price Information Requests
- 4123 Compounding Drug for Other Pharmacy for Parenteral Therapy; Notice to Board
- 4124 Dispensing Replacement Contact Lenses: Requirements; Patient Warnings; Registration with Medical Board; Application of Section to Nonresident Pharmacies

## **Article 9. Hypodermic Needles and Syringes**

- 4141 Furnishing Without License
- 4142 Prescription Required
- 4143 Exemption: Sale to Other Entity, Physician, etc.
- 4144 Industrial Use Exception
- 4145 Exception: Furnishing for Administration of Insulin, Adrenaline, or Specified Animal Uses; Conditions
- 4148 Confiscation if Found Outside Licensed Premises
- 4149 Sale by Distributor

## **Article 10. Pharmacy Corporations**

- 4151 Licensure Requirements
- 4152 Corporate Name Requirements
- 4153 Shareholder Income While Disqualified
- 4156 Unprofessional Conduct by Corporation

## **Article 11. Wholesalers and Manufacturers**

- 4161 Nonresident Wholesaler: When License Required; Application
- 4162 Issuance or Renewal of Wholesaler License; Surety Bond
- 4164 Reports Required
- 4165 Sale or Transfer of Dangerous Drug or Device Into State: Furnishing Records to Authorized Officer on Demand; Citation for Non-compliance
- 4166 Shipping of Dangerous Drugs or Devices – Wholesaler or Distributor
- 4167 Wholesaler: Bar on Obtaining Dangerous Drugs or Devices It Cannot Maintain on Licensed Premises

## **Article 13. Non-Profit or Free Clinics**

- 4180 Purchase of Drugs at Wholesale Only with License: Eligible Clinics
- 4181 License Requirements; Policies and Procedures; Who May Dispense
- 4182 Duties of Professional Director; Consulting Pharmacist Required
- 4183 No Professional Dispensing Fee
- 4184 Dispensing Schedule II Substance Prohibited
- 4186 Automated Drug Delivery Systems

## **Article 14. Surgical Clinics**

- 4190 Purchase of Drugs at Wholesale: Permitted Uses of Drugs; Required Records and Policies; License Required
- 4191 Compliance with Department of Health Services Requirements; Who May Dispense Drugs
- 4192 Duties of Professional Director; Providing Information to Board
- 4193 Clinic Not Eligible for Professional Dispensing Fee; Ban on Offering Drugs for Sale
- 4194 Dispensing of Schedule II Substance by Clinic Prohibited; Physician May Dispense; Administration Authorized in Clinic

## **Article 15. Veterinary Food-Animal Drug Retailers**

- 4196 License Required: Temporary License on Transfer of Ownership; Persons Authorized in Storage Area
- 4197 Minimum Standards: Security; Sanitation; Board Regulations; Waivers
- 4198 Written Policies and Procedures Required: Contents; Training of Personnel; Quality Assurance; Consulting Pharmacist

## **Article 17. Continuing Education**

- 4231 Requirements for Renewal of Pharmacist License: Clock Hours; Exemption for New Licensee
- 4232 Content of Courses

## **Article 18. Poisons**

- 4240 Application of Act

## **Article 20. Prohibitions and Offenses**

- 4341 Advertisement of Prescription Drugs or Devices
- 4343 Buildings: Prohibition Against Use of Certain Signs Unless Licensed Pharmacy Within

## **CALIFORNIA CODE OF REGULATIONS, TITLE 16**

- 1704 Change of Address
- 1705 Notification of Bankruptcy, Receivership or Liquidation
- 1708.2 Discontinuance of Business
- 1708.4 Pharmacist Handling Radioactive Drugs
- 1708.5 Pharmacy Furnishing Radioactive Drugs
- 1709 Names of Owners and Pharmacist in Charge
- 1714 Operational Standards and Security
- 1715.6 Reporting Drug Loss
- 1716 Variation from Prescriptions
- 1717 Pharmaceutical Practice
- 1717.1 Common Electronic Files
- 1717.4 Electronic Transmission of Prescriptions
- 1718.1 Manufacturer's Expiration Date

1726	Supervision of Intern Pharmacists
1728	Requirements for Examination
1732.1	Requirements for Accredited Providers
1732.3	Requirements for Continuing Education Courses
1732.4	Provider Audit Requirements
1732.5	Renewal Requirements for Pharmacist
1744	Drug Warnings
1751	Sterile Injectable Compounding Area
1751.01	Facility and Equipment Standards for Sterile Injectable Compounding from Non-Sterile Ingredients
1751.02	Policies and Procedures
1751.11	Furnishing to Home Health Agencies and Licensed Hospices
1751.12	Obligations of a Pharmacy Furnishing Portable Containers
1771	Posting of Notice of Suspension
1772	Disciplinary Condition of Suspension
1780	Minimum Standards for Wholesalers
1780.1	Minimum Standards for Veterinary Food-Animal Drug Retailers
1781	Exemption Certificate
1786	Exemptions
1787	Authorization to Distribute Hemodialysis Drugs and Devices
1790	Assembling and Packaging
1791	Labeling
1792	Receipt for Shipment

## HEALTH AND SAFETY CODE

11100	Report of Certain Chemical: Chemicals Included; Exclusions; Penalties
11100.1	Report of Chemicals Received from Outside State; Penalties
11151	Limitation on Filling Prescriptions From Medical Students
11158	Prescription Required for Schedule II, III, IV, or V Controlled Substance; Exception for Limited Dispensing, Administration
11159	Chart Order Exemption for Patient in County or Licensed Hospital; Maintaining Record for Seven Years
11159.1	Chart Order Exemption for Clinic Patient; Maintaining Record for Seven Years
11159.2	Exception to Triplicate Prescription Requirement
11167	Emergency Dispensing of Schedule II Substance: Circumstances and Requirements
11167.5	Oral or Electronic Prescriptions for Schedule II Controlled Substance for Specified Inpatients, Residents, and Home Hospice Patients; Requirements
11171	Prescribing, etc. Controlled Substance Only as Authorized
11172	Antedating or Postdating Prescription Prohibited
11175	Prohibition on Obtaining or Possessing Nonconforming Prescription; Prohibition on Obtaining Controlled Substance by Nonconforming Prescription
11180	Prohibition on Controlled Substance Obtained or Possessed by Nonconforming Prescription
11200	Restrictions on Dispensing or Refilling; Refill of Schedule II Prescription Barred
11201	Emergency Refill of Schedule III, IV, or V Prescription; Circumstances; Requirements
11205	Maintenance and Retention of Records in Separate File
11206	Required Information on Prescription

- 11209 Delivery and Receiving Requirements for Schedule II, III, and IV Substances; Violation
- 11210 Issuing Prescription: By Whom; For What Purpose; Quantity to Be Prescribed
- 11250 Authorized Retail Sale by Pharmacists to Physicians, etc.; Required Order Form
- 11251 Authorized Wholesale Sale by Pharmacists
- 11252 Preservation of Federally Required Forms
- 11253 Duration of Retention
- 11255 Actions Constituting Sale
- 11256 Required Report of Order By or Sale to Out-of-State Wholesaler or Manufacturer
- 111225 to
- 111655 Adulterated or Misbranded Drugs or Devices

## **CODE OF FEDERAL REGULATIONS, TITLE 21**

- 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.
- 1301.14 Filing of application; acceptance for filing; defective applications.
- 1301.71 Security requirements generally.
- 1301.72 Physical security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs; storage areas.
- 1301.73 Physical security controls for non-practitioners; compounders for narcotic treatment programs; manufacturing and compounding areas.
- 1301.74 Other security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs.
- 1301.77 Security controls for freight forwarding facilities.
- 1301.90 Employee screening procedures.
- 1301.91 Employee responsibility to report drug diversion.
- 1301.92 Illicit activities by employees.
- 1302.03 Symbol required; exceptions.
- 1302.04 Location and size of symbol on label and labeling.
- 1302.05 Effective dates of labeling requirements.
- 1302.06 Sealing of controlled substances.
- 1302.07 Labeling and packaging requirements for imported and exported substances.
- 1304.11 Inventory requirements.
- 1304.31 Reports from manufacturers importing narcotic raw material.
- 1304.32 Reports of manufacturers importing coca leaves.
- 1304.33 Reports to ARCOS.
- 1305.03 Distributions requiring a Form 222 or a digitally signed electronic order.
- 1305.04 Persons entitled to order Schedule I and II controlled substances.
- 1305.05 Power of attorney.
- 1305.06 Persons entitled to fill orders for Schedule I and II controlled substances.
- 1305.11 Procedure for obtaining DEA Forms 222.
- 1305.12 Procedure for executing DEA Forms 222.
- 1305.14 Procedure for endorsing DEA Forms 222.
- 1305.15 Unaccepted and defective DEA Forms 222.
- 1305.16 Lost and stolen DEA Forms 222.
- 1306.03 Persons entitled to issue prescriptions.
- 1306.05 Manner of issuance of prescriptions.
- 1306.14 Labeling of substances and filling of prescriptions.

- 1306.24 Labeling of substances and filing of prescriptions.
- 1306.25 Transfer between pharmacies of prescription information for Schedules III, IV, and V controlled substances for refill purposes.
- 1306.26 Dispensing without a prescription.
- 1307.11 Distribution by dispenser to another practitioner or reverse distributor.
- 1307.12 Distribution to supplier or manufacturer.
- 1307.13 Incidental manufacture of controlled substances.
- 1307.21 Procedure for disposing of controlled substances.
- 1700.1 to 1707.15 Child-resistant containers.

## **CATEGORY II**

Minimum: Revocation; Revocation stayed, three years probation (five years probation where self-administration or diversion of controlled substances occurred at the licensed premises). All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

Category II discipline is recommended for:

- violations with a serious potential for harm
- violations which involve greater disregard for pharmacy law and public safety
- violations which reflect on ethics, care exercised or competence or a criminal conviction not involving dangerous drugs or controlled substances or involving possession or use of dangerous drugs or controlled substances.

Violations of the following codes are representative of this category:

## **BUSINESS AND PROFESSIONS CODE**

- 650 Rebates or Discounts for Referral Prohibited
- 650.1 Lease Prohibition – Hospitals or Prescribers
- 651 Professional Advertising Requirements

### **Article 3. Scope of Practice and Exemptions**

- 4051(b) Conduct Authorized by Pharmacist
- 4052 Furnishing to Prescriber; Permissible Procedures by Pharmacist in Health Care Facility or Clinic or for Other Health Care Provider
- 4060 Controlled Substance – Prescription Required; Exceptions
- 4061 Distribution of Drug as Sample; Written Request Required
- 4064 Emergency Refill of Prescription Without Prescriber Authorization
- 4067 Internet; Dispensing Dangerous Drugs or Devices without Prescription
- 4075 Proof of Identity Required – Oral or Electronic Prescription
- 4078 False or Misleading Label on Prescription

## **Article 6. General Requirements**

- 4101 Pharmacist in Charge, Exemptee: Termination of Employment; Notification to Board
- 4104 Licensed Employee, Theft or Impairment: Pharmacy Procedures
- 4105 Retaining Records of Dangerous Drugs and Devices on Licensed Premises; Temporary Removal; Waivers; Access to Electronically Maintained Records

## **Article 7. Pharmacies**

- 4112 Nonresident Pharmacy: Registration; Provision of Information to Board; Maintaining Records; Patient Consultation
- 4113 Pharmacist in Charge: Notification to Board; Responsibilities
- 4115 Pharmacy Technician: Activities Permitted; Required Supervision; Activities Limited to Pharmacist; Registration; Requirements for Registration; Ratios
- 4115.5 Pharmacy Technician Trainee; Placement; Supervision; Requirements
- 4116 Security of Dangerous Drugs and Devices in Pharmacy: Pharmacist Responsibility for Individuals on Premises; Regulations
- 4117 Admission to Area Where Narcotics are Stored, etc. – Who May Enter
- 4120 Nonresident Pharmacy: Registration Required
- 4125 Pharmacy Quality Assurance Program Required; Records Considered Peer Review Documents

## **Article 9. Hypodermic Needle and Syringes**

- 4140 Unlawful Possession
- 4147 Disposal of Needle or Syringe

## **Article 11. Wholesalers and Manufacturers**

- 4161 Nonresident Wholesaler: When License Required; Application
- 4163 Unauthorized Furnishing by Manufacturer or Wholesale
- 4164 Reports Required
- 4169(a)(1) Prohibited Acts

## **Article 13. Non-Profit of Free Clinics**

- 4185 Inspection Permitted

## **Article 14. Surgical Clinics**

- 4195 Inspection Permitted

## **Article 19. Disciplinary Proceedings**

- 4301 Unprofessional Conduct - subsections (a)-(h), (j), and (l) - (q)
- 4302 Discipline of Corporate Licensee for Conduct of Officer, Director, Shareholder
- 4303 Nonresident Pharmacy: Grounds for Discipline
- 4304 Out-of-state Distributor: Authority to Discipline
- 4305 Disciplinary Grounds: Failure of Pharmacy, Pharmacist to Notify Board of Termination of Pharmacist in Charge; Continuing to Operate Without Pharmacist

- 4305.5 Disciplinary Grounds: Failure of Other Entity Licensed by Board, of Pharmacist or Exemptee to Notify Board of Termination of Pharmacist in Charge or Exemptee; Continuing to Operate Without Pharmacist or Exemptee
- 4306 Violation of Professional Corporation Act as Unprofessional Conduct
- 4306.5 Misuse of Education, etc. by Pharmacist Outside Course of Practice of Pharmacy as Unprofessional Conduct

## **Article 20. Prohibitions and Offenses**

- 4326 Misdemeanor: Obtaining Needle or Syringe by Fraud, etc.; Unlawful Use of Needle or Syringe Obtained from Another
- 4328 Misdemeanor: Permitting Compounding, Dispensing, or Furnishing by Non-pharmacist
- 4330 Misdemeanor: Non-pharmacist Owner Failing to Place Pharmacist in Charge, Dispensing or Compounding Except by Pharmacist, Interfering with Pharmacist in Charge
- 4331 Misdemeanor: Medical Device Retailer, Wholesaler, Veterinary Food-Animal Drug Retailer Failing to Place Pharmacist or Exemptee in Charge, Permitting Dispensing or Compounding Except by Pharmacist or Exemptee
- 4333 Maintaining Prescriptions, Other Drug Records on Premises, Open to Inspection; Waiver; Willful Failure to Keep or Permit Inspection of Records of Prescriptions, Other Records as Misdemeanor
- 4340 Unlawful Advertising by Nonresident Pharmacy Not Registered with Board

## **Article 22. Unfair Trade Practices**

- 4380 Resale of Preferentially Priced Drugs; Prohibition; Exceptions
- 4382 Board May Audit Sales to Walk-in Customers

## **CALIFORNIA CODE OF REGULATIONS, TITLE 16**

- 1707.1 Duty to Maintain Medication Profiles (Patient Medication Records)
- 1707.2 Notice to Consumers and Duty to Consult
- 1707.3 Duty to Review Drug Therapy and Patient Medication Record Prior to Deliver
- 1709.1 Designation of Pharmacist in Charge
- 1714.1 Pharmacy Operation During Temporary Absence of a Pharmacist
- 1715 Self-Assessment of a Pharmacy by the Pharmacist-in-Charge
- 1715.5 Implementation of Electronic Monitoring of Schedule II Prescriptions
- 1716.1 Compounding Unapproved Drugs for Prescriber Office Use
- 1716.2 Record Requirements-Compounding for Future Furnishing
- 1717.2 Notice of Electronic Prescription Files
- 1717.3 Preprinted, Multiple Checkoff Prescription Blanks
- 1723.1 Confidentiality of Examination Questions
- 1745 Partial Filling of Schedule II Prescriptions
- 1751.10 Furnishing to Parenteral Patient at Home
- 1761(a) Erroneous or Uncertain Prescriptions
- 1764 Unauthorized Disclosure of Prescriptions
- 1765 Commissions, Gratuities, and Rebates
- 1766 False or Misleading Advertising
- 1775.3 Compliance with Orders of Abatement

- 1782 Reporting Sales of Drugs Subject to Abuse
- 1783 Manufacturer or Wholesaler Furnishing Drugs or Devices
- 1793.1 Duties of a Pharmacist
- 1793.2 Duties of a Pharmacy Technician
- 1793.3 Other Non-Licensed Pharmacy Personnel
- 1793.4 Qualifications for Registration as a Pharmacy Technician
- 1793.7 Requirements for Pharmacies Employing Pharmacy Technicians
- 1793.8 Technicians in Hospitals with Clinical Pharmacy Programs

## **HEALTH AND SAFETY CODE**

- 11103 Report of Theft, Loss, or Shipping Discrepancy
- 11150 Persons Authorized to Write or Issue a Prescription
- 11152 Nonconforming Prescriptions Prohibited
- 11154 Prescription, etc. Must Be for Treatment; Knowing Soliciting of Unlawful Prescription, etc.
- 11156 Prescribing, etc. Controlled Substances to Addict Only as Authorized
- 11164 Prescriptions for Schedule II, III, IV and V Controlled Substance: Form and Content; Record of Practitioner Dispensing Schedule II Controlled Substance
- 11165(d) CURES Transmission
- 11166 Time Limit for Filling Schedule II Prescription; Knowingly Filling Mutilated, Forged, or Altered Prescription Prohibited
- 11170 Prohibition on Prescribing, etc. Controlled Substance for Self
- 11179 Retention of Controlled Substance Prescription
- 11207 Only Pharmacist or Intern Authorized to Fill Prescription
- 11209 Delivery and Receiving Requirements for Schedule II, III, and IV Substances; Violation
- 11350 Possession of Specified Controlled Substance
- 11377 Unlawful Possession of Specified Substance

## **CODE OF FEDERAL REGULATIONS, TITLE 21**

- 1304.03 Persons required to keep records and file reports.
- 1304.04 Maintenance of records and inventories.
- 1304.11 Inventory requirements.
- 1304.21 General requirements for continuing records.
- 1304.22 Records for manufacturers, distributors, dispensers, researchers, importers and exporters.
- 1305.07 Special procedures for filling certain orders.
- 1305.13 Procedure for filling DEA Forms 222.
- 1306.04 Purpose of issue of prescription.
- 1306.06 Persons entitled to fill prescriptions.
- 1306.11 Requirement prescription.
- 1306.12 Refilling prescriptions.
- 1306.13 Partial filling of prescriptions.
- 1306.21 Requirement of prescription.
- 1306.22 Refilling of prescriptions.
- 1306.23 Partial filling of prescriptions.

## **CATEGORY III**

Minimum: Revocation; Revocation stayed, 90 days actual suspension, three to five years probation (five years probation where self-administration or diversion of controlled substances occurred at the licensed premises). All standard terms and conditions and optional terms and conditions as appropriate.  
For a licensed premises, a minimum 14-28 days actual suspension.

Maximum: Revocation

Category III discipline is recommended for:

- most criminal convictions involving dangerous drugs or controlled substances
- knowing or willfully violating laws or regulations pertaining to dispensing or distributing dangerous drugs or controlled substances
- fraudulent acts committed in connection with the licensee's practice
- drug shortages
- violation of a licensee's corresponding responsibility.

Violations of the following codes are representative of this category:

## **BUSINESS AND PROFESSIONS CODE**

### **Article 3. Scope of Practice and Exemptions**

- 4051(a) Conduct Limited to Pharmacist
- 4059 Furnishing Dangerous Drugs or Devices Prohibited Without Prescription: Exceptions
- 4059.5 Who May Order Dangerous Drugs or Devices: Exceptions

### **Article 5. Authority of Inspectors**

- 4080 Stock of Dangerous Drugs and Devices Kept Open for Inspection
- 4081 Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records, Current Inventory
- 4085(a) Unlawful to Remove, Sell, Dispose of Embargoed Dangerous Drug or Dangerous Device

### **Article 7. Pharmacies**

- 4110 License Required; Temporary Permit Upon Transfer of Ownership
- 4111 Restrictions on Prescriber Ownership

### **Article 11. Wholesalers and Manufacturers**

- 4169(a)(2) to
- 4169(a)(5) Prohibited Acts

### **Article 15. Veterinary Food-Animal Retailers**

- 4199 Labeling Requirements; Maintaining Prescription Records

## **Article 19. Disciplinary Proceedings**

- 4301 Unprofessional Conduct - subsections (i) - (k) and (o)
- 4307 Prohibition of Association of Individual with Entity License by Board: Length of Prohibition; Individuals Covered; Imposition of Prohibition Through Administrative Act Proceeding
- 4308 Prohibited Association: Notification of Affected Licensees Known to Board

## **Article 20. Prohibitions and Offenses**

- 4322 Misdemeanor or Infraction: False Representations to Secure License for Self or Others; False Representation of Licensure; Penalties
- 4323 Misdemeanor: False Representation of Self as Physician, Agent of Physician, etc. to Obtain Drug
- 4324 Felony or Misdemeanor: Forgery of Prescription; Possession of Drugs Obtained Through Forged Prescription
- 4325 Misdemeanor: Manufacture, Possession, etc. of False Prescription Blank
- 4327 Misdemeanor: Sale, Dispensing, or Compounding While Under the Influence of Drugs or Alcoholic Beverages
- 4329 Misdemeanor: Non-pharmacist Acting as Manager, Compounding, Dispensing or Furnishing Drugs
- 4332 Misdemeanor: Failure or Refusal to Maintain or Produce Required Drug or Device Records; Willful Production of False Records
- 4335 Voided License: Knowing Failure to Arrange for Disposition of Stock as Misdemeanor
- 4336 Felony: Knowing or Willful Use of Minor to Violate Specified Sections of Pharmacy Law: Exception for Pharmacist Furnishing Pursuant to a Prescription

## **Article 22. Unfair Trade Practices**

- 4380 Resale of Preferentially Priced Drugs: Prohibition; Exceptions

## **CALIFORNIA CODE OF REGULATIONS, TITLE 16**

- 1718 Current Inventory Defined
- 1761(b) Erroneous or Uncertain Prescriptions
- 1771 Posting of Notice of Suspension
- 1772 Disciplinary Condition of Suspension
- 1773 Disciplinary Conditions of Probation of Pharmacist
- 1774 Disciplinary Conditions of Probation of Permit

## **HEALTH AND SAFETY CODE**

- 11104 Providing Chemical for Illicit Manufacturing; Evasion of Reporting Requirements; Penalties
- 11105 False Statement in Report
- 11150 Persons Authorized to Write or Issue a Prescription
- 11153 Responsibility for Legitimacy of Prescription; Corresponding Responsibility of Pharmacist

- 11153.5 Wholesaler or Manufacturer Furnishing Controlled Substance Other Than for Legitimate Medical Purpose; Knowing Violation; Factors in Assessing Legitimacy
- 11157 No False or Fictitious Prescriptions
- 11162.5 Counterfeiting or Possession of Counterfeit Triplicate Prescription Blank; Penalty
- 11167.5 Pharmacy Generated Prescription for Schedule II Controlled Substance in a Skilled Nursing Facility
- 11173 Fraud, Deceit, Misrepresentation or False Statement; False Representation; False Label
- 11174 Prohibition on Providing False Name or Address in Connection with Prescription, etc.
- 11351 Possession or Purchase for Sale of Specified Controlled Substance
- 11368 Forged or Altered Prescriptions
- 11375 Possession for Sale or Selling Specified Substance
- 11378 Possession for Sale
- 11550 Using or Being Under Influence of Controlled Substance
- 111295 Manufacturing, Selling or Offering for Sale an Adulterated Drug or Device
- 111300 Unlawful to Adulterate a Drug
- 111305 Unlawful to Receive in Commerce an Adulterated Drug
- 111440 Unlawful Manufacturer, selling a misbranded Drug
- 111445 Unlawful for a Person to Misbrand
- 111450 Unlawful to Receive into Commerce a Drug that is Misbranded

## **CATEGORY IV**

Penalty: Revocation

Revocation is recommended for violations of the Uniform Controlled Substance Act (Heath and Safety Code 11000 et seq.) involving:

- possession for sale
- transportation
- importation
- sale
- use of a minor for the unlawful sale of controlled substances

Revocation is also recommended when:

- a respondent fails to file a notice of defense or to appear at a disciplinary hearing where the board has requested revocation in the accusation
- a respondent violates the terms and conditions of probation from a previous disciplinary order
- prior discipline has been imposed, as progressive discipline unless the respondent can demonstrate satisfactory evidence of rehabilitation.

Violations of the following codes are representative of this category:

## **HEALTH AND SAFETY CODE**

- 11352 Importing, Selling, Furnishing Controlled Substance
- 11353 Adult Inducing Minor to Violate Provisions
- 11379 Transporting, Importing, Selling Controlled Substance
- 11380 Adult Using, Soliciting or Intimidating Minor for Violation

## **MODEL DISCIPLINARY LANGUAGE - PREMISES**

The following standardized language shall be used in every decision where the order or condition is imposed.

### **Revocation**

License number \_\_\_\_\_, issued to respondent \_\_\_\_\_, is revoked.

Respondent owner shall, by the effective date of this decision, arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the board of all controlled substances and dangerous drugs and devices. Respondent owner shall provide written proof of such disposition, submit a completed Discontinuance of Business form and return the wall and renewal license to the board within five days of disposition.

Respondent owner shall also, by the effective date of this decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy of the written notice to the board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

### **Suspension**

License number \_\_\_\_\_, issued to respondent \_\_\_\_\_ is suspended for a period of \_\_\_\_\_ days beginning the effective of this decision.

Respondent shall cease all pharmacy operations during the period of suspension. Failure to comply with this suspension shall be considered a violation of probation.

### **Standard Stay/Probation Order**

License number \_\_\_\_\_, issued to respondent is revoked; however, the revocation is stayed and respondent is placed on probation for \_\_\_\_\_ years upon the following terms and conditions:

### **Issuance of Probationary License** (In cases where a Statement of Issues has been filed.)

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to respondent and immediately revoked; the order of revocation is stayed and respondent is placed on probation for \_\_\_\_\_ years upon the following terms and conditions:

## Surrender

Respondent owner surrenders license number \_\_\_\_\_ as of the effective date of this decision. Respondent owner shall relinquish the premises wall license and renewal license to the board within ten (10) days of the effective date of this decision.

The surrender of respondent's license and the acceptance of the surrendered license by the board shall constitute the imposition of discipline against respondent. This decision constitutes a record of discipline and shall become a part of respondent's license history with the board.

Respondent owner shall, within ten (10) days of the effective date, arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the board of all controlled substances and dangerous drugs and devices. Respondent owner shall further provide written proof of such disposition and submit a completed Discontinuance of Business form according to board guidelines.

Respondent owner shall also, by the effective date of this decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy of the written notice to the board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

Respondent owner understands and agrees that if he or she ever files an application for a licensed premises or a petition for reinstatement in the State of California, the board shall treat it as a new application for licensure.

Respondent owner may not reapply for any license from the board for three (3) years from the effective date of this decision. Respondent owner stipulates that should he or she apply for any license from the board on or after the effective date of this decision, all allegations set forth in the [accusation or petition to revoke probation] shall be deemed to be true, correct and admitted by respondent when the board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the board. Respondent is required to report this surrender as disciplinary action.

Respondent owner further stipulates that he or she shall reimburse the board for its costs of investigation and prosecution in the amount of \$ \_\_\_\_\_ within \_\_\_\_\_ days of the effective date of this decision.

**Option:** Respondent owner stipulates that should he or she apply for any license from the board on or after the effective date of this decision the investigation and prosecution costs in the amount of \$ \_\_\_\_\_ shall be paid to the board prior to issuance of the new license.

## Public Reprimand

It is hereby ordered that a public reprimand be issued against licensee, \_\_\_\_\_. Respondent owner is required to report this reprimand as a disciplinary action.

## **Adoption of Stipulation**

It is understood by respondent owner that, in deciding whether to adopt this stipulation, the board may receive oral and written communication from its staff and the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the board or other persons from future participation in this or any other matter affecting respondent. In the event this settlement is not adopted by the board, the stipulation will not become effective and may not be used for any purpose, except this paragraph, which shall remain in effect.

**STANDARD CONDITIONS** - To be included in all probation decisions/orders.

1. Obey All laws
2. Report to the Board
3. Interview with the Board
4. Cooperate with Board Staff
5. Reimbursement of Board Costs
6. Probation Monitoring Costs
7. Status of License
8. License Surrender While on Probation/Suspension
9. Notice to Employees
10. Owners and Officers: Knowledge of the Law
11. Posted Notice of Probation
12. Violation of Probation
13. Completion of Probation

**OPTIONAL CONDITIONS**

14. Community Services Program
15. Restitution
16. Separate File of Records
17. Report of Controlled Substances
18. Surrender of DEA Permit
19. Posted Notice of Suspension

## **STANDARD CONDITIONS: TO BE INCLUDED IN ALL PROBATIONS**

### **1. Obey All Laws**

Respondent owner shall obey all state and federal laws and regulations.

Respondent owner shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's \_\_\_\_\_ license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

### **2. Report to the Board**

Respondent owner shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent owner shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

### **3. Interview with the Board**

Upon receipt of reasonable prior notice, respondent owner shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

### **4. Cooperate with Board Staff**

Respondent owner shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

### **5. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent owner shall pay to the board its costs of investigation and prosecution in the amount of \$\_\_\_\_\_. Respondent owner shall make said payments as follows: \_\_\_\_\_. There shall be no

deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent owner shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution.

## **6. Probation Monitoring Costs**

Respondent owner shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

## **7. Status of License**

Respondent owner shall, at all times while on probation, maintain current licensure with the board. If respondent owner submits an application to the board, and the application is approved, for a change of location, change of permit or change of ownership, the board shall retain continuing jurisdiction over the license, and the respondent shall remain on probation as determined by the board. Failure to maintain current licensure shall be considered a violation of probation.

If respondent license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

## **8. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent owner discontinue business, respondent owner may tender the premises license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and renewal license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent owner shall further submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. Respondent owner shall also, by the effective date of this decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy of the written notice to the board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

Respondent owner may not apply for any new licensure from the board for three (3) years from the effective date of the surrender. Respondent owner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

Respondent owner further stipulates that he or she shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

## **9. Notice to Employees**

Respondent owner shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent owner shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, respondent owner shall submit written notification to the board, within fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to submit such notification to the board shall be considered a violation of probation.

"Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and relief employees and independent contractors employed or hired at any time during probation.

## **10. Owners and Officers: Knowledge of the Law**

Respondent shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in respondent or respondent's stock, and any officer, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

## **11. Posted Notice of Probation**

Respondent owner shall prominently post a probation notice provided by the board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation.

Respondent owner shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity.

Failure to post such notice shall be considered a violation of probation.

## **12. Violation of Probation**

If a respondent owner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent license, and probation shall be automatically extended until all terms and conditions have been satisfied or the board has taken other action

as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent owner violates probation in any respect, the board, after giving respondent owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

### **13. Completion of Probation**

Upon written notice by the board or its designee indicating successful completion of probation, respondent license will be fully restored.

## **OPTIONAL CONDITIONS OF PROBATION**

### **14. Community Services Program**

Within sixty (60) days of the effective date of this decision, respondent owner shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services to a community or charitable facility or agency for at least \_\_\_\_\_ hours per \_\_\_\_\_ for the first \_\_\_\_\_ of probation.

Within thirty (30) days of board approval thereof, respondent owner shall submit documentation to the board demonstrating commencement of the community service program. Respondent owner shall report on progress with the community service program in the quarterly reports.

Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

### **15. Restitution** (Appropriate in cases of drug diversion, theft, fraudulent billing, or patient harm resulting from negligence or incompetence.)

Within \_\_\_\_\_ days of the effective date of this decision, respondent owner shall pay restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_. Failure to make restitution by this deadline shall be considered a violation of probation.

### **16. Separate File of Records**

Respondent owner shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

## **17. Report of Controlled Substances**

Respondent owner shall submit quarterly reports to the board detailing the total acquisition and disposition of such controlled substances as the board may direct. Respondent owner shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent owner shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than ten (10) days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

## **18. Surrender of DEA Permit**

Within thirty (30) days of the effective date of this decision, respondent pharmacy shall surrender its federal Drug Enforcement Administration (DEA) permit to the DEA, for cancellation. Respondent pharmacy shall provide documentary proof of such cancellation to the board or its designee. Thereafter, respondent pharmacy shall not apply/reapply for a DEA registration number without the prior written consent of the board or its designee.

**Option:** Respondent pharmacy may obtain a DEA permit restricted to Schedule(s) \_\_\_\_\_ controlled substance(s).

**Option:** Respondent pharmacy shall not order, receive, or retain any federal order forms, including 222 forms, for controlled substances.

## **19. Posted Notice of Suspension**

Respondent owner shall prominently post a suspension notice provided by the board in a place conspicuous and readable to the public. The suspension notice shall remain posted during the entire period of suspension ordered by this decision.

Respondent owner shall not, directly or indirectly, engage in any conduct or make any statement, orally, electronically or in writing, which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the closure of the licensed entity.

6/2007