

MEDICAL BOARD OF CALIFORNIA



Kerrie Webb
Staff Counsel

DISCIPLINARY GUIDELINES

Board's Priority



- ▶ Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions.
- ▶ Whenever protection of the public is inconsistent with other interests sought to be promoted, the protection of the public SHALL BE PARAMOUNT.

B&P Code § 2001.1

Board's Priority



- ▶ Protection of the public SHALL be the highest priority for administrative law judges (ALJ) and the Board in exercising their disciplinary authority.
- ▶ In exercising disciplinary authority ALJ/Board shall whenever possible take action calculated to aid in the rehabilitation of the licensee as indicated by the evidence.
- ▶ HOWEVER, where rehabilitation and protection of the public are inconsistent, PROTECTION SHALL BE PARAMOUNT!

B&P Code § 2229

Goal of Discipline



#1: Consumer protection.

#2: Rehabilitation of the licensee (so long as this effort is not inconsistent with #1).

NOTE: The Board does not have the authority to impose punishment.

Disciplinary Guidelines



- ▶ Purpose of Disciplinary Guidelines:
 - Assist the Board in evaluating cases.
 - Help foster uniformity, consistency, and fairness.
 - Act as a deterrence.

Disciplinary Guidelines



- ▶ Contain model orders.
- ▶ Organized by code section violated.
- ▶ Show guidelines for levels of discipline.
- ▶ Contain standard and optional conditions of probation.
- ▶ Adopted and modified through regulation.
(Currently on 12th edition)

Disciplinary Guidelines



- ▶ Applicable to both Proposed Decisions and Proposed Stipulations
 - ▶ Proposed Decision (PD) – Written by an ALJ after a full administrative evidentiary hearing.
 - ▶ Proposed Stipulation (Stip) – Agreement reached between the parties (Respondent and Board executive staff) prior to a hearing, and often involves input from an ALJ.

PDs vs. Stips



- ▶ How are PDs and Stips Different?
 - Both must consider the disciplinary guidelines in determining discipline.
 - A PD must state the reasons for deviation from the guidelines in the public document, while a stip does not.
 - **WHY???**

PDs vs. Stips



- ▶ The settlement discussions under the law are confidential & designed to promote a speedy resolution without the need for hearing.
- ▶ Confidential reasons for stipulation and deviation from guidelines are provided to the Board in a deputy attorney general (DAG) memo.
- ▶ If no settlement is reached, or if the Board rejects the proposed stipulation, settlement discussions cannot be used against either party at a hearing.

Reviewing Cases – PDs



- ▶ **Step 1:** Review the Accusation, noting the allegations.
- ▶ **Step 2:** Read the PD and determine:
 - What if any allegations have been sustained in the legal conclusions by clear and convincing evidence?
 - What evidence is cited in support of each conclusion based on information noted in the factual findings.

Reviewing Cases – PDs



- ▶ **Step 3:** Review the Disciplinary Guidelines to determine the suggested discipline for each allegation sustained.
- ▶ **Step 4:** Determine whether the discipline ordered follows the guidelines for each violation.
 - If not, does the PD provide adequate justification for the deviation?

Reviewing Cases – PDs



- ▶ **Step 5:** Determine whether the proposed discipline provides sufficient consumer protection and, where possible, rehabilitation.
 - Note: When considering a PD, the Board shall give great weight to the findings of fact of the ALJ.

B&P § 2335(c)(1)
- ▶ **Step 6:** After review and consideration, vote to adopt or hold the PD for discussion and final action during a Board panel meeting.

Reviewing Cases – Stips



- ▶ **Step 1:** Review the Accusation, noting the allegations.
- ▶ **Step 2:** Review the Disciplinary Guidelines to determine the suggested discipline for each allegation.
- ▶ **Step 3:** Read the proposed stipulation.
- ▶ **Step 4:** Read the DAG memo, which describes post-filing developments, such as defense discovery exchange, strength/credibility of prosecution/defense witnesses, qualifications/arts, etc.

Reviewing Cases – Stips



- ▶ **Step 5:** Determine whether the proposed stipulated discipline is within the guidelines for each alleged violation.

If not, does the DAG memo provide adequate justification for deviation?

- ▶ **Step 6:** Determine whether the proposed stipulation provides sufficient consumer protection and, where possible, rehabilitation.
- ▶ **Step 7:** After review and consideration, vote to adopt or hold the proposed stipulation for discussion and a Board panel meeting.

Deviation from Guidelines



- ▶ Factors that may warrant deviation:
 - Corrective actions taken (rehabilitation)
 - Witness unavailability
 - Witness credibility
 - Dueling experts
 - Expert credibility
 - Age of violation
 - Value of more immediate discipline
 - Level of certainty that discipline will be obtained at hearing

The Burning Question



- ▶ Question: How can deviation from the Disciplinary Guidelines ever be consistent with the Board's mission to protect the public?
- ▶ Answer: When, under the facts of the case, the stipulation provides sufficient patient protection, and imposes appropriate rehabilitation measures, in a timely manner.

Role of Stipulations



- ▶ Provide certainty
 - Licensee agrees to probation terms and waives their right to seek reconsideration or appeal.
- ▶ Avoid risk
 - The Board is assured that discipline deemed appropriate will be imposed and avoids the risk of a less desirable outcome after hearing where the high burden of clear and convincing evidence is applied.
 - Impose discipline sooner.
 - Rejecting a proposed stipulation will delay imposition of discipline by months or more than a year.
- ▶ Save resources
 - Cases that can be resolved appropriately through settlement should be in order to preserve time and resources that must go to hearing.

Any Questions?

