

**THE STATE MEDICAL BOARD OF OHIO
DISCIPLINARY GUIDELINES**

(Revised December 2011)

Disciplinary Guidelines are primarily for the Board's reference and guidance. They are subject to revision at the Board's discretion without notice to the public. Disciplinary Guidelines are intended to promote consistency in Board-imposed sanctions, but are not binding on the Board. The Board recognizes that individual matters present unique sets of circumstances which merit individual consideration by the Board.

CATEGORIES OF VIOLATIONS

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**CATEGORY I: IMPROPER PRESCRIBING, DISPENSING, OR ADMINISTERING
OF DRUGS**

- A. Prescribing, dispensing, or administering of any drug for excessive periods of time and/or in excessive amounts.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Definite suspension, min. 90 days; subsequent probation, min. 2 years, to include prescribing course

- B. (Reserved)

- C. (Reserved)

- D. Failing to keep patient records of substances prescribed, dispensed or administered; and/or failing to perform appropriate prior examination and/or failure to document in the patient record performance of appropriate prior examination.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand; probation, min. 2 years, to include medical-recordkeeping course

- E. (Reserved)

- F. Inappropriate purchasing, controlling, dispensing, and/or administering of any drug.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Definite suspension, min. 60 days; subsequent probation, min. 2 years

- G. Failure to use acceptable methods in selection of drugs or other modalities.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- H. (Reserved)

- I. Selling, prescribing, dispensing, giving away, or administering any drug for other than a legal and legitimate therapeutic purpose and/or selling, prescribing, dispensing, giving away, or administering any drug in exchange for sexual favors.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- J. (Reserved)

- K. (Reserved)

- L. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug related felony, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- M. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug-related misdemeanor, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 2 years.

- N. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug related felony where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- O. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug-related misdemeanor where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 30 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- P. Utilizing a controlled substance in the treatment of a family member or self in violation of Section 4731-11-08, Ohio Administrative Code.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand; probation, min. 2 years, to include appropriate medical-education course

Review/Revision History:

Sections I.M, I.O, and I.P: 12/10

Sections I.A through I.K: 10/10

Sections I.L and I.N: 7/10

CATEGORY II: MINIMAL STANDARDS OF CARE

A. Departure from or failure to conform to minimal standards of care.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation, min. 3 years

B. Sexual misconduct within practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement;
subsequent probation as appropriate

NOTE: WHERE APPROPRIATE, PERMANENT LIMITATIONS AND RESTRICTIONS
MAY ALSO BE IMPOSED.

Review/Revision History:

Sections II.A and II.B: 1/11

CATEGORY III: FRAUD, MISREPRESENTATION, OR DECEPTION

A. Fraud in passing examination.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Revocation of certificate or denial of application (minimum required by statute)

B. (Reserved)

C. (Reserved)

D. Publishing a false, fraudulent, deceptive, or misleading statement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year

E. (Reserved)

F. Obtaining, or attempting to obtain, anything of value by fraudulent misrepresentations in the course of practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation, min. 2 years

G. Deceptive advertising.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year

- H. Representing, with purpose of obtaining compensation or advantage, that incurable disease can be cured.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 3 years, with conditions for reinstatement to include SPEX and personal/professional ethics courses; subsequent probation, min. 5 years, including requirements for a practice plan and monitoring physician prior to resuming practice

NOTE: SEE APPENDIX A IF VIOLATION BY LICENSURE APPLICANT.

Review/Revision History:

Sections III.A through III.H: 2/11

CATEGORY IV: ETHICS VIOLATIONS

- A. Division of fees for referral of patients, or receiving a thing of value for specific referral of patient to utilize particular service or business.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation as appropriate

- B. Code of ethics violation.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand

- C. Willfully betraying a professional confidence.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year, to include condition of successfully completing appropriate ethics course(s)

NOTE: SEE CATEGORY II PENALTIES FOR SEXUAL MISCONDUCT WITHIN PRACTICE, AND CATEGORY III PENALTIES FOR FRAUDULENT ACTS.

Review/Revision History:

Sections IV.A through IV.C: 5/11

CATEGORY V: ACTIONS BY OTHER STATES OR ENTITIES

Limitation, revocation, suspension, acceptance of license surrender, denial of license, refusal to renew or reinstate a license, imposition of probation, or censure or other reprimand, by another jurisdiction; action against clinical privileges by Department of Defense or Veterans Administration; or termination or suspension from Medicare or Medicaid.

Maximum Penalty: Correspond to maximum penalty in Ohio for type of violation committed

Minimum Penalty: Correspond to minimum penalty in Ohio for type of violation committed

Review/Revision History:

Category V: 5/11

CATEGORY VI: UNAUTHORIZED PRACTICE

- A. Practice during suspension imposed by Board order.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: Permanent revocation of certificate or permanent denial of application
- B. Applicant's prior practice without license or registration as physician assistant, anesthesiologist assistant, or radiologist assistant.
- Maximum Penalty: Denial of licensure or P.A./A.A./R.A. registration with conditions for any future application
- Minimum Penalty: Denial of licensure or P.A./A.A./R.A. registration
- C. Aiding and abetting unlicensed practice or practice by unregistered physician assistant, anesthesiologist assistant, or radiologist assistant.
- Maximum Penalty: One-year suspension; subsequent 2-year probation including requirement of annual report of utilization of employee or P.A./A.A./R.A.
- Minimum Penalty: Suspension for 30 days; subsequent 2-year probation including requirement of annual report of utilization of employee or P.A./A.A./R.A.
- D. Practice outside scope of license or registration.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: 30-day suspension
- E. Supervising a physician assistant, anesthesiologist assistant, or radiologist assistant in the absence of an approved supervisory plan and approved supervision agreement.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: Suspension for 90 days

- F. Practice of a physician assistant, anesthesiologist assistant, or radiologist assistant in the absence of an approved supervisory plan and an approved supervision agreement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 90 days

- G. Permitting a physician assistant, anesthesiologist assistant, or radiologist assistant to perform services as a P.A., A.A., or R.A. in a manner that is inconsistent with the supervisory plan or special services plan under which that P.A./A.A./R.A. practices.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation (non-appearing), min. 1 year

- H. Practice of a physician assistant, anesthesiologist assistant, or radiologist assistant in a manner that is inconsistent with the supervisory plan or special services plan under which that P.A./A.A./R.A. practices.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation (non-appearing), min. 1 year

- I. Permitting a physician assistant to perform services as a physician assistant in a manner that is not in accordance with Chapter 4730 or other applicable chapter of the Revised Code and/or the rules adopted thereunder.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- J. Practice of a physician assistant in a manner that is not in accordance with Chapter 4730 or other applicable chapter of the Revised Code and/or the rules adopted thereunder.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- K. Failure to timely report termination of a physician assistant supervision agreement to the Board.

Maximum Penalty: Suspension for 2 years

Minimum Penalty: Reprimand

- L. Limited Practitioner Holding Self Out as Doctor or Physician in Violation of Rule 4731-1-03(D) and/or 4731-1-03(E), Ohio Admin. Code.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days; conditions for reinstatement to include eliminating the offending references from any advertising, internet sites, signs, business cards, stationery, and similar locations; subsequent probation, min. 2 years

**NOTE: SEE CATEGORY VII PENALTIES FOR PRACTICE IN VIOLATION OF
CONDITIONS OF LIMITATION PLACED BY THE BOARD**

Review/Revision History:

Sections VI.A through VI.K: 5/11

Section VI.L: 12/11

CATEGORY VII: VIOLATION OF CONDITIONS OF LIMITATION

- A. Violation of practice or prescribing limitations placed by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. one year, with conditions for reinstatement; subsequent probation, min. 3 years

- B. Violation of conditions of limitation, other than practice prohibitions, placed by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. as appropriate, with conditions for reinstatement; subsequent probation, min. 3 years

Review/Revision History:

Sections VII.A and VII.B: 8/11

CATEGORY VIII: CRIMINAL ACTS OR CONVICTIONS

- A. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony committed in course of practice, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- B. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony not committed in course of practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 30 days, with conditions for reinstatement; subsequent 3 year probation

- C. Commission of act constituting a felony in this state, regardless of where committed, if related to practice, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- D. Commission of act constituting a felony in this state, regardless of where committed, if unrelated to practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 30 days, with conditions for reinstatement; subsequent 3 year probation

- E. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in course of practice or involving moral turpitude.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 2 years

- F. Commission of act constituting a misdemeanor committed in course of practice or involving moral turpitude.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 2 years

- G. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony committed in course of practice, where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- H. Commission of act constituting a felony in this state, regardless of where committed, if related to practice, where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

NOTE: SEE CATEGORY I PENALTIES FOR DRUG RELATED CONVICTIONS

Review/Revision History:

Sections VIII.B and VIII.D: 8/11

Sections VIII.E and VIII.F: 9/10

Sections VIII.A, VIII.C, VIII.G, and VIII.H: 7/10

CATEGORY IX: IMPAIRMENT OF ABILITY TO PRACTICE

- A. Initial Impairment and/or Less than One Year of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to:

- (1) All licensees holding an active certificate,
- (2) All licensees holding a previously active certificate that is currently expired/inactive/lapsed for any reason,
- (3) All applicants for licensure/reinstatement/restoration who have not demonstrated continuous current sobriety for at least one year since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, no minimum, with conditions for reinstatement; subsequent probation, minimum 5 years

- B. "Slip Rule": Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision), where all conditions set forth in Rule 4731-16-02(D), Ohio Administrative Code, have been met.

The Respondent will not be subjected to suspension or other formal discipline

- C. First Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); first relapse during or following treatment, and/or where all conditions set forth in Rule 4731-16-02(D), Ohio Administrative Code, have not been met.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 90 days following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- D. Second Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); second relapse during or following treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- E. Third Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); third relapse during or following treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 3 years following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- F. Impairment, 1 - 5 Years of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to all applicants for licensure/reinstatement/restoration who have demonstrated continuous current sobriety for more than one year, but less than five years, since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent denial of application

Minimum Penalty: Application granted; subject to probation for a minimum term that, when added to the applicant's demonstrated period of continuous current sobriety, shall not be less than 5 years

- G. Impairment, 5+ Years of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to all applicants for licensure/reinstatement/restoration who have demonstrated continuous current sobriety for more than five years since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent denial of application

Minimum Penalty: License may be granted/reinstated/restored without probation or other disciplinary action

- H. Mental/Physical Illness, Currently Unable To Practice: Inability to practice according to acceptable and prevailing standards of care by reason of mental or physical illness (including any mental disorder, mental illness, physical illness, or physical deterioration that adversely affects cognitive, motor, or perceptive skills).

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: If applicant: Granting of license subject to indefinite suspension, min. as appropriate; conditions for reinstatement; subsequent probation, min. 2 years
If licensee: Indefinite suspension, min. as appropriate; conditions for reinstatement; subsequent probation, min. 2 years

- I. Mental/Physical Illness, Currently Able To Practice Subject To Appropriate Treatment, Monitoring, Or Supervision: Inability to practice according to acceptable and prevailing standards of care by reason of mental or physical illness (including any mental disorder, mental illness, physical illness, or physical deterioration, that adversely affects cognitive, motor, or perceptive skills) without appropriate treatment, monitoring, or supervision.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: If applicant: Granting of license subject to probationary terms and conditions, min. 2 years
If licensee: Probation, min. 2 years

Review/Revision History:

Sections IX.A through IX.I: 9/11

CATEGORY X: C.M.E. REQUIREMENTS

- A. Failure to respond timely to C.M.E. audit, but requisite C.M.E. completed.

Maximum Penalty: Reprimand; subject to mandatory audits of compliance with CME requirements for the current CME acquisition period and for two full CME acquisition periods thereafter.

Minimum Penalty: Reprimand.

- B. Failure to complete C.M.E. as certified on renewal application.

Maximum Penalty: Reprimand; \$5,000.00 fine; indefinite suspension until any outstanding shortage of CME credits has been rectified; subject to mandatory audits of compliance with CME requirements during suspension (if any), for the current CME acquisition period at the time of reinstatement (or for current CME acquisition period if no suspension), and for two full CME acquisition periods thereafter.

Minimum Penalty: Reprimand; \$1,000.00 fine; indefinite suspension until any outstanding shortage of CME credits has been rectified; subject to mandatory audits of compliance with CME requirements during suspension (if any), for the current CME acquisition period at the time of reinstatement (or for current CME acquisition period if no suspension), and for two full CME acquisition periods thereafter.

- C. Failure to complete C.M.E. as certified on renewal application; repeat offense.

Maximum Penalty: \$5,000.00 fine; indefinite suspension, min. 90 days, with conditions for reinstatement; subject to mandatory audits of compliance with CME requirements during suspension, for the current CME acquisition period at the time of reinstatement, and for two full CME acquisition periods thereafter.

Minimum Penalty: \$3,000.00 fine; indefinite suspension, min. 60 days, with conditions for reinstatement; subject to mandatory audits of compliance with CME requirements during suspension, for the current CME acquisition period at the time of reinstatement, and for two full CME acquisition periods thereafter.

NOTE: IF FRAUDULENT MISREPRESENTATIONS (OTHER THAN FALSE CERTIFICATION OF COMPLETION) ARE MADE WITH RESPECT TO C.M.E., CATEGORY III PENALTY MAY BE APPROPRIATE IN ADDITION TO THE STANDARD C.M.E. PENALTY. A BIFURCATED ORDER MAY BE USED.

Review/Revision History:

Sections X.A through X.C: 10/11

CATEGORY XI: MISCELLANEOUS VIOLATIONS

- A. Violating or attempting to violate, directly or indirectly, or assisting in or abetting violation of, or conspiring to violate, the Medical Practices Act or any rule promulgated by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Correspond to minimum penalty for actual offense

- B. Violation of any abortion law or rule.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand

- C. Permitting name or certificate to be used when not actually directing treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension, 1 year; subsequent probation, min. 1 year

- D. Failure to cooperate in an investigation conducted by the Board.

Maximum Penalty: Indefinite suspension of license with conditions for reinstatement to include, at a minimum, full cooperation in the underlying investigation.

Minimum Penalty: Reprimand, as long as respondent has fully cooperated in the underlying investigation.

Review/Revision History:

Sections XI.A through XI.D: 10/11

APPENDIX A: APPLICABILITY OF GUIDELINES TO LICENSURE AND TRAINING CERTIFICATE APPLICANTS

The penalties specified in Categories I through XI are generally tailored to apply to violations of the Medical Practices Act by licensees. When applicants for licensure or training certificates are found to have committed like violations, the appropriate penalties will be formulated in terms of either grant, denial, or permanent denial of the application. A grant of a license or training certificate may be accompanied by limitation, suspension, requirements for reinstatement, probation, and/or reprimand, as appropriate, and should be proportionate to penalties imposed for licensees.

Review/Revision History:

11/11

APPENDIX B: AGGRAVATING AND MITIGATING FACTORS

After a violation has been established, the Board may consider aggravating and mitigating circumstances in deciding what penalty to impose. If the Board deems such circumstances sufficient to justify a departure from disciplinary guidelines, they should be specified during the Board's deliberations.

AGGRAVATION

Aggravation or aggravating circumstances are any considerations or factors which might justify an increase in the degree of discipline to be imposed. Aggravating factors may include, but are not limited to:

- (a) Prior disciplinary actions
- (b) Dishonest or selfish motive
- (c) A pattern of misconduct
- (d) Multiple violations
- (e) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process
- (f) Refusal to acknowledge wrongful nature of conduct
- (g) Adverse impact of misconduct on others
- (h) Vulnerability of victim
- (i) Willful or reckless misconduct
- (j) Use/abuse of position of trust, or of licensee status, to accomplish the deception, theft, boundaries violation, or other misconduct
- (k) Where an individual has a duty to disclose information to the Board, the extent of delay in disclosing all or part of the information, including the failure to self-report relapse immediately to the Board as required
- (l) Failure to correct misconduct after recognizing the existence of the problem/violation

MITIGATION

Mitigation or mitigating circumstances are any considerations or factors which might justify a reduction in the degree of discipline to be imposed. Mitigating factors may include, but are not limited to:

- (a) Absence of a prior disciplinary record
- (b) Absence of a dishonest or selfish motive
- (c) Isolated incident, unlikely to recur
- (d) Full and free disclosure to Board, when done in a timely manner (such as before discovery is imminent)

- (e) Physical or mental disability or impairment
(NOTE: IT IS THE BOARD'S STATED POLICY THAT IMPAIRMENT SHALL NOT EXCUSE ACTS WHICH RESULT IN CONVICTION OR WHICH POTENTIALLY HAVE AN ADVERSE IMPACT ON OTHER INDIVIDUALS.)
- (f) Interim rehabilitation or remedial measures
- (g) Remorse
- (h) Absence of adverse impact of misconduct on others
- (i) Remoteness of misconduct, to the extent that the passage of time between the misconduct and the Board's determination of the sanction is not attributable to the respondent's delay, evasion, or other acts/omissions
- (j) Absence of willful or reckless misconduct
- (k) Prompt correction of misconduct/problem after recognizing its existence.

Review/Revision History:

11/11