

TITLE 16. PROFESSIONAL AND VOCATION REGULATIONS
DIVISION 2. CALIFORNIA
ARCHITECTS BOARD
FINAL
STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section(s) Affected: Amend Article 8, Section 154 of California Code of Regulations (CCR)¹, Title 16, Division 2.

Updated Information:

The Board's Disciplinary Guidelines regulatory proposal was originally approved by the Board at its September 8, 2023 meeting. The Notice documents were submitted to the Office of Administrative Law (OAL) on November 14, 2023, and published on November 24, 2023.

The 45-day public comment period closed on January 9, 2024, and the Board received one comment. The comment was asking for clarification regarding the tolling provision, which was answered; however, it was discovered that the Board inadvertently had a reference to "landscape architecture" rather than "architecture." Due to this typo, the Board revised the Disciplinary Guidelines document to remove the word "landscape" in its tolling provision under Section VI, Conditions of Probation, Subsection A, Standard Conditions, Standard Condition 7 (Tolling for Out-of-State Practice, Residence or In-State Non-Practice).

The Modified Text was sent out for public comment from January 10, 2024, to January 25, 2024. During this 15-day public comment period, the Board received one comment requesting removal of ambiguity related to mitigating circumstances, and instead have all mitigating circumstances listed. This comment was unrelated to the language being modified during the 15-day comment period and instead referred to language provided during the 45-day comment period which had already closed. While it was not necessary for the Board to provide a response, the Board did provide one as described below.

During subsequent review of the language and text, a few non-substantive corrections were identified and subsequently made. (1) A typo was discovered in the Table of Contents of the Disciplinary Guidelines. Specifically, the Conditions of Probation was identified as V, but should have been labeled as VI, as it was correctly labeled in the body of the document. This typo has been corrected and Conditions of Probation is now correctly identified as VI, with double underline under the I. (2) Correction to the language to request "OAL to insert year." Upon reviewing the Modified Text, it was determined that the Disciplinary Guidelines and Model Orders incorporated by reference is copyrighted 2024. As such, it is accurate to use the "2024" year reference in the Order of Adoption, as opposed to requesting OAL to insert the year. Note, there is no need for

¹ All CCR references are to Title 16 unless otherwise noted.

a 15-day comment period to reflect these changes because such changes are non-substantive. (3) Amendment to the ISOR and Disciplinary Guidelines to reflect updated Government Code Sections for Public Records Act requests Gov Code section 7920.00-7931.000. There is no need for a 15-day comment period because it is merely an update of provision numbers the law is still the same.

Additional items discovered did necessitate the need of a 15-day notice. These items included language that was missing from the approved 2000 Disciplinary Guidelines and language that was included, but not part of the 2000 approved Disciplinary Guidelines. Substantive changes as identified below:

- Initially, the cover page was noticed with edits; however, this was a brand-new page considered for insertion into the Guidelines document. This cover page is being removed as it is no longer necessary to show changes made during discussion of the document before submittal for review.
- The Table of Contents page initially had “DEPARTMENT OF CONSUMER AFFAIRS”, “GRAY DAVIS, Governor”, “STEPHEN P. SANDS”, “Executive Officer”, “VICTORIA WILK”, Enforcement Officer and the seal of the Board. The seal is being added to a new page, while the Department, Governor, Executive Officer, and Enforcement Officer are being struck as they are not necessary for this document and reduce the number of updates as those positions and titles change.
- The words “of Probation” are being removed from the placement after “Standard Conditions” and “Optional Conditions” in the Table of Contents section under Conditions of Probation. These were inadvertently left out of the initial noticed document, but need to be added as the language is being struck. “of Probation” is being struck because it is repetitive and unnecessary as the Standard Conditions and Optional Conditions are under the heading “Conditions of Probation.”
- Language identified as “hereinafter referred to as the Board” in the first paragraph under I. Introduction was not part of the originally approved language; however, it was noticed as if it were. This language should not have been added and is being struck as provided in the ISR. Additionally, in the last sentence of the first paragraph, the word “Board’s” was in the 2000 approved language, but was missing from the noticed language. It is being added. Also in the last sentence of the first paragraph, the word “shall” was noticed as being struck and changed to “may”; however, the Board has chosen to reverse that decision and is reverting back to “shall.”
- Under II General Considerations, part B “Proposed Decisions - General Considerations” was missing underline to identify “General Provisions” as new language in the body of the document. Additionally, under this same section, subparts “d” and “e” were noticed as new language; however, they are not new language and were part of the original approved text from 2000.

- Under IV Disciplinary Guidelines first paragraph a comma was missing after “stated herein” from the noticed text that was part of the originally approved text in 2000. This was re-added to the existing language.
- Under IV Disciplinary Guidelines, A. Business and Professions Code was changed from all caps to title case. This is changed for readability and conforming to structure for headings.
- Under Section 5577 Minimum, after 5 years’ probation, “on” was incorrectly underlined as new text. This underline is being removed as it was existing text that is being kept. Similarly, under the struck portion a, the “#” before 7 was not part of the original text as incorrectly identified in the notice and is part of a group of removed text which is still being removed.
- Section 5579 through Section 5586 had bullets prior to the word “Section” which were part of the 2000 approved language, but were missing from the initially noticed language. These have been added and identified as struck for consistency with structure of the section and are unnecessary.
- Section 5583, subsections “a” and “b” were inadvertently shown as struck language. The striking has been removed as we are keeping the language and structure of the subsection.
- Section 5584 Negligence in the Practice of Architecture incorrectly identified “Cost reimbursement” as “c” but it should have been “d” as originally approved in the 2000 document to follow subsection structure. This is still being struck.
- Under IV Disciplinary Guidelines, B. General Provisions of Business and Professions Code was changed from all caps to title case. This is changed for readability and conforming to structure for headings.
- Under Section 125.6, the bullet was missing from the originally noticed text. This has been added and identified as struck for consistency with structure of the section and is unnecessary.
- Under 125.6 “60” was part of the original language and “90” was misidentified as original language. Therefore, the change from 90 to 60 is unnecessary. The language is being changed back to the original as that was the Board’s intent.
- Under 125.6 “on the following conditions” was part of the original text that was missing from the initially noticed language and changes. This language is being update to consistent language identifying the standard conditions for consistency and readability.
- Under Section 480(a), originally approved language “Recommended discipline” was missing from the originally noticed language and “/Minimum” was misidentified as existing language being struck since it was not part of the 2000

approved language. Language has been updated to identify “Recommended discipline” as struck since it is inconsistent and unnecessary language. The Board is identifying the maximum penalty for this and is not recommending an action.

- Under Section 496, “Recommended Discipline” was incorrectly shown in title case, rather than the approved all capitals. This language is still being struck but has been changed back to its approved 2000 version.
- Under IV Disciplinary Guidelines, C. California Code of Regulations Article 9. Professional Conduct was changed from all caps to title case and is removing “Title 16” that incorrectly preceded the language as it was not part of the 2000 approved text. This is changed for readability and conforming to structure for headings.
- Under Section 160 the outer parenthesis was missing from the original approved text for subsections a-e. These outer parentheses have been added and identified as struck, consistent with the modified language.
- Under IV Disciplinary Guidelines, D. Violation of Probation was changed from all caps to title case. This is changed for readability and conforming to structure for headings.
- Under D. Violation of Probation Maximum Penalty and Minimum Penalty originally had “-“ after “Penalty” but was inadvertently left out. The “-“ is being removed to restructure the paragraph for readability and consistency with headings.
- Under VI. “Conditions of Probation” was inadvertently not identified as new text. This has been updated to underline showing it as new text for the section.
- Under A. “Standard Conditions of Probation” was changed from all caps to title case and “of probation” was struck. This is changed for readability and conforming to structure for headings. Similarly, the parenthetical “to be included in all cases of probation” was changed from all caps to title case.
- Under VI Conditions of Probation, B. Optional Conditions of Probation was changed from all caps to title case and “of probation” was struck. This is changed for readability and conforming to structure for headings.
- Under the struck “12. Cost Reimbursement”, language “effective” was inadvertently missing from prior to “date” from the original language and the “of this” was incorrectly identified as original text, when it was not. This section is still being struck.
- Under “19. Notification to Clients/Cessation of Practice” a period was missing from the last sentence. This has been added back.

- On the Attachment A, an updated Board logo and information was included as existing text to be struck; however, this was not part of the original language and is being removed since Attachment A is no longer being used.

The Board reviewed the modified language and approved it at the June 6, 2024 meeting. The Second Modified Text showing all of the above modifications was sent out for public comment from June 11, 2024, to June 26, 2024. During this 15-day public comment period, the Board received no comments.

Local Mandate:

A local mandate is not imposed on local agencies or school districts.

Fiscal Impact:

The proposed regulations do not result in a fiscal impact to the state.

Small Business Impact:

The Board has determined that the proposed regulations would not affect small businesses. Although the proposed regulation will directly affect businesses statewide, which may include small businesses, the Board does not anticipate any adverse economic impact as described in the Business Impact Estimates section of the Initial Statement of Reasons. The Board currently regulates approximately 21,000 licensed architects and 10,000 applicants who are in the process of meeting examination and licensure requirements. The proposed regulatory action only affects a negligible number of licensees and applicants, who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board’s jurisdiction. Any “adverse fiscal impact” would only occur as the result of a disciplinary order following a formal and administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board’s jurisdiction. Any potential “adverse fiscal impact” may be avoided by complying with the laws and regulations governing the practice of architecture in California.

Anticipated Benefits:

The proposed amendments make the *Guidelines* consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, provide model orders, and strengthen consumer protection.

The Board anticipates that the updated *Guidelines* will be a more useful tool for the Board, applicants and licensees, Administrative Law Judges (ALJs), legal counsel, Board staff, and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions. The updated *Guidelines* will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. The regulatory proposal will improve the consistency of penalties for violations of the Act and its regulations.

This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline by clarifying the conditions under which licensees and applicants shall be subject to varying levels of discipline and terms of probation.

Consideration of Alternatives:

The Board has determined that no reasonable alternative to the regulatory proposal considered by the Board or otherwise identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons, and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Objections or Concerns Received During 45-Day Public Comment Period and Board Responses:

The following objections or concerns were received regarding the proposed action during the 45-day public comment period. All comments were considered by the Board; and changes to the text were deemed necessary in response. The summarized comments and Board responses are as follows:

Summary of Comment:

Ms. Bookless contacted the Board requesting clarification on the tolling provision of the Disciplinary Guidelines. Board staff provided the clarification and through additional communication, Ms. Bookless indicated a typo that the new Disciplinary Guidelines refers to “landscape architecture” in the area that defines tolling.

Proposed Response: The Board acknowledged this was a typo and not intended to include the word “landscape.” Section VI, Conditions of Probation, Subsection A, Standard Conditions, Standard Condition 7 (Tolling for Out-of-State Practice, Residence or In-State Non-Practice) will be modified to remove that word.

Objections or Concerns Received During 15-Day Public Comment Period and Board Responses:

Summary of Comment:

Mr. Roberts commented that the mitigating circumstances, Section II, General Considerations, Subsection F, Mitigation and Rehabilitation Evidence, held too much ambiguity as it currently reads “...among mitigating circumstances that may be taken into account...” He proposed the Board “eliminate this ambiguity, and list all mitigating circumstances that may be (and probably should be) considered, to establish clear criteria within which those making judgements can work.”

Proposed Response: The comment received was not related to the language presented during the 15-day notice; and a response was not required. The Board still provided a response that the purpose of the mitigating circumstances is to provide the Administrative Law Judge with guidelines to follow and allow them to interpret possible

factors when making a decision, and having a prescriptive list would remove that ability. Consequently, the Board chooses not to create a comprehensive list of all mitigating circumstances.

There were no objections or concerns received during the second 15-day public comment period.