



State of Nevada
Board of Occupational Therapy

DISCIPLINARY GUIDELINES

INTRODUCTION

In keeping with its obligation to protect the public health, safety and welfare of recipients of occupational therapy services from unsafe, incompetent, negligent or impaired occupational therapists and occupational therapy assistants, the Nevada Board of Occupational Therapy ("Board") has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Occupational Therapy Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount and to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of the licensee.

Use of Guidelines - These guidelines are for use by Board members and staff, attorneys, administrative law judges, hearing officers and any licensee involved in settlement agreements, consent decrees, or formal hearings of disciplinary actions and proceedings. It is emphasized that these are guidelines and the Board acknowledges that there may be departures in individual cases depending upon mitigating or aggravating circumstances.

Probationary Conditions - Probation conditions are divided into two categories: (1) Standard conditions, to be used in all cases of probation; and (2) Optional conditions, to be imposed dependent upon the circumstances and nature of an individual case. Optional conditions should also be used if a probationary license is issued depending upon the nature and circumstances of the matter.

Revocation: Unsafe Practice - If, at the time of hearing, it is found that the Respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the Respondent has demonstrated a capacity to practice occupational therapy safely, a stayed revocation order with probation is recommended.

Suspension / Summary Suspension - Suspension of a license may also be appropriate where the public may be better protected if the practice of the occupational therapist or occupational therapy assistant is suspended in order to correct deficiencies in skills, education or rehabilitation. An immediate Summary Suspension may be warranted, pending Board hearing, due to the nature of the offense that would be harmful or detrimental to the safety and well being of the public if the practitioner is allowed to continue providing occupational therapy services.

FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation should be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Number and variety of violations;
6. Mitigation evidence;
7. Aggravating evidence;
8. Rehabilitation evidence;

9. In case of a criminal conviction, compliance with conditions of sentence and court-ordered probation;
10. Criminal record;
11. Time passed since the act(s) or offense(s) occurred.

Evidence of Rehabilitation:

The following documents are examples of evidence the Respondent may submit to demonstrate his or her rehabilitative efforts and occupational therapy competency:

- Successful completion of drug or alcohol treatment program;
- Individual or group counseling;
- Random, documented biological fluid screening;
- Participation in occupational therapy support groups;
- Education courses taken related to addictive disease;
- Adherence to a 12-step recovery program philosophy, or equivalent;
- Written documentation of participation in 12-step recovery groups, or equivalent;
- Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, where appropriate;
- For licensees, statement from employers documenting that the employer is aware of the previous drug or alcohol abuse problems. Statement must also substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed occupational therapy functions in a safe and competent manner;
- Recent, dated laboratory analyses or drug screen reports, where appropriate;
- Recent, dated performance evaluations from Respondent's employer;
- Recent, dated physical examination reports by a licensed physician, nurse practitioner, or physician assistant;
- Certificates or transcripts of courses related to occupational therapy that Respondent completed since the date of the violation. An occupational therapist or occupational therapy assistant whose license has been revoked can use his or her former license number to obtain continuing education credit or hours or for any other purpose.

Mitigation Evidence:

- Length of time in practice;
- No prior disciplinary action;
- Illness or death of a family member or other personal circumstances affecting licensee's performance at the time of the incident.

SITUATIONS IN WHICH REVOCATION IS THE RECOMMENDED PENALTY

- Unsafe Practice;
- Failure to file a response, notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation;
- Violation of a condition(s) of Probation;
- Substantiated evidence or convictions of physical abuse or sexual offenses.

PROBATION TERMS AND CONDITIONS

The Board's primary responsibility is the protection of the public. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for the public's protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for public protection and establish a mechanism to monitor the rehabilitation progress of a probationer. Generally, the Board recommends a ***minimum of three (3) years of probation*** unless a longer or shorter term is warranted.

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Nevada Board of Occupational Therapy or its designee.

Additional Terms and Conditions not listed below may be imposed as deemed appropriate by the Board.

LIST OF STANDARD PROBATIONARY TERMS AND CONDITIONS

1. Severability
2. Cost Recovery - Attorney's Fees and Costs
3. Obey all Laws
4. Address Change, Name Change, License Status
5. Quarterly Reports
6. Comply with the Board's Probation Program
7. Status of Residency, Practice or Licensure Outside of State
8. Submit Documentation
9. Probation Monitoring Costs
10. License Surrender
11. Function as a Licensee
12. Continuance of Probationary Term/Completion of Probation
13. Notification

LIST OF ADDITIONAL PROBATIONARY TERMS AND CONDITIONS

14. Suspension of License
15. Remedial and/or Continuing Education
16. Supervised Practice
17. Restricted Practice
18. Restitution
19. Community Service
20. Psychological Evaluation
21. Psychotherapy
22. Physical Evaluation
23. Biological Testing
24. Abstain from Use of Alcohol, Controlled Substances, and Dangerous Drugs
25. Ethics Course
26. Solo or Independent Practice
27. Meetings and Interviews

STANDARD PROBATION TERMS FOR SETTLEMENTS, CONSENT DECREES, DECISIONS AND ORDERS OF THE BOARD

(1) SEVERABILITY CLAUSE – Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

RATIONALE: The severability clause is required for all decisions and orders and stipulated agreements where there are conditions of probation, to avoid the possibility of all probation conditions being invalidated upon a successful appeal.

(2) COST RECOVERY – Respondent is hereby ordered to reimburse the Board the amount of \$___ within forty-five (45) calendar days from the effective date of this decision for its attorney's fees and costs up to the date of the hearing. Failure to reimburse the Board's cost of its attorney's fees and costs shall constitute a violation of the probationary order, unless the Board or its designee agrees in writing to payment by an installment plan because of financial hardship. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. However, full payment of any and all costs required by this condition must be received by the Board no later than one (1) year prior to the scheduled termination of probation. Periods of non-practice by Respondent shall not relieve Respondent of his or her obligation to reimburse the Board for its costs.

RATIONALE: The Board has statutory authority to collect investigative and legal costs and all orders should contain this provision.

(3) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws and all rules and regulations governing the practice of occupational therapy in Nevada, and remain in full compliance with any court ordered criminal probation, payments and other requirements. A full and detailed account of all misdemeanor and felony arrests and convictions shall be reported by Respondent to the Board in writing within seven (7) days of occurrence.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in Nevada or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

RATIONALE: All licensees are responsible for abiding by federal, state, and local laws. Licensees are also responsible for complying with criminal court orders. If a licensee is subject to other health-care related board or regulatory agency orders, violations of those orders may impact the status of his or her discipline by the Board. This condition emphasizes the Respondent's responsibility and specifies the Board's authority to take more immediate and severe action if other violations occur. If a licensee whose license is on probation violates other probationary conditions or order they may be unsafe to practice in this state.

(4) ADDRESS CHANGE, NAME CHANGE, LICENSE STATUS - Respondent shall inform the Board in writing within 30 calendar days of any change in his or her address of record, physical employment address, physical residence address, and any legal name change. Respondent shall maintain an active, current license with the Board, including while suspended from practice of occupational therapy unless otherwise specified by the disciplinary orders. Any misrepresentation by Respondent of his or her restricted license status to the public shall be a violation of the probation conditions.

RATIONALE: Informing the Board of address and name changes are necessary to ensure ongoing Board monitoring and contact with the Respondent.

(5) QUARTERLY REPORTS - Respondent shall submit quarterly reports signed under penalty of perjury stating whether there has been compliance with all the conditions of probation. Respondent shall submit a quarterly report no later than seven (7) calendar days from the beginning of the assigned quarter.

RATIONALE: This provides the Board with a mechanism for maintaining communication with the Respondents between meetings; gathering pertinent information from Respondent's; obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis.

(6) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of probation established by the Board and all requirements necessary to implement the conditions of probation. Respondent shall cooperate with the Board in its monitoring and investigation of the Respondent's compliance with the conditions of probation. Respondent shall respond to all requests and inquiries from the Board within the time period specified by the Board. Upon successful compliance with the conditions of probation, and completion of the probation term, Respondent's license shall be fully restored.

RATIONALE: Full compliance with conditions of probation demonstrates a Respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.

(7) STATUS OF RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - In the event Respondent should leave Nevada to reside or practice outside the state, Respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in Nevada. Period of practice outside of Nevada will not apply to the reduction of the probationary period. Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as an occupational therapist or occupational therapy assistant or held any health-care related professional license or certificate. Respondent shall further provide information regarding the status of each license and certificate and any changes in the license or certificate status during the term of probation. Respondent shall inform the Board if he or she applies for or obtains an occupational therapist or occupational therapy license or certificate outside of Nevada during the term of probation. For purposes of this condition, non-practice due to Board ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

RATIONALE: Ensures that Respondents may not complete probation without being fully monitored for their period of probation in Nevada. This further ensures that the Board is aware of all licensure outside of Nevada as an occupational therapist or occupational therapy assistant or in any health care related capacity.

(8) SUBMIT DOCUMENTATION - Upon request, Respondent shall submit documentation to the Board including, but not limited to the following: quarterly reports, supervisory documents and authorization for release of confidential information. On a case-by-case basis, documents shall be required to contain statements

relative to Respondent's compliance with all the conditions of probation, and compliance with Board instructions.

RATIONALE: This provides the Board with a mechanism for maintaining communication with the Respondent between meetings; gathering pertinent information from the Respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis.

(9) PROBATION MONITORING COSTS: Respondent will be financially responsible for all costs incurred for carrying out the provisions of Probation, including the cost of reasonable assessments by the Board for the cost of monitoring compliance with the provision of this agreement.

RATIONALE: The Board has statutory authority to collect probation monitoring costs and all orders should contain this provision.

(10) LICENSE SURRENDER - If Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his or her license to the Board. The Board shall evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Such surrender shall be accomplished through a written stipulated agreement, without the filing of an accusation or petition to revoke probation, and without further hearing. Upon formal acceptance of the surrender, Respondent shall deliver his or her license to the Board or its designee and Respondent shall no longer practice occupational therapy or be subject to the conditions of probation. Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. If Respondent re-applies for an occupational therapy license, the application shall be treated as a petition for reinstatement of a revoked license.

(11) FUNCTION AS A LICENSEE – Respondent, during the period of probation, shall engage in the practice of occupational therapy in Nevada for a minimum of sixteen (16) hours per week or sixty-four (64) hours per calendar month. In the event Respondent should leave Nevada to practice outside the state, Respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in Nevada. Periods of practice outside of Nevada will not apply to the reduction of the probationary period. In the event Respondent ceases to practice a minimum of sixteen (16) hours per calendar week or sixty-four hours per calendar month in Nevada, Respondent must provide written notification of that fact to the Board. The period when the Respondent is not practicing, the minimum number of hours, will not apply to the reduction of the probationary period. Absence from practice shall not relieve the Respondent from maintaining a current license or from fulfilling all of the terms and conditions of probation. For purposes of this condition, non-practice due to Board ordered suspension shall not be considered a period of non-practice. If Respondent stops practicing in Nevada for a total of five (5) years, Respondent's license shall be automatically revoked. If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if Respondent is in compliance with all other probation conditions, the Board, in its sole discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply unless they have been modified by the Board via a petition for modification of probation.

RATIONALE: This provides the Board with an opportunity to monitor Respondents and determine if they can perform the functions and duties of his or her licensing category in a competent manner. It also prevents Respondents from merely "sitting out" the probation and avoiding the necessity of demonstrating competence and compliance with probation conditions.

(12) CONTINUANCE OF PROBATIONARY TERM/COMPLETION OF PROBATION - If, during the period of probation, an accusation and/or a petition to revoke probation or both has been filed against Respondent's license the probationary period shall automatically be extended and shall not expire until the accusation and/or the petition to revoke probation has been acted upon by the Board. Upon successful completion of probation, Respondent's license will be fully restored.

RATIONALE: The provision ensures that the Board will be able to continue monitoring the practice of licensees who are either out of compliance with his or her probation conditions or have allegedly committed further acts that constitute a violation of the Occupational Therapy Practice Act. This is necessary to protect the public from licensees who have already demonstrated a lack of compliance.

(13) NOTIFICATION - Prior to engaging in the practice of occupational therapy, the Respondent shall provide a true copy of the Disciplinary Order or Consent Decree to his or her employer. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in place of employment.

RATIONALE: The condition provides the Board with a mechanism for ensuring that the employer providing occupational therapy services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure the public's safety.

ADDITIONAL PROBATIONAL TERMS AND CONDITIONS

(14) SUSPENSION - Commencing from the effective date of this decision, Respondent shall be suspended from the practice of occupational therapy for a minimum period of (minimum of 14 days). Respondent shall not mislead patients regarding the reasons for suspension from practicing occupational therapy. During the suspension Respondent shall not practice occupational therapy directly or indirectly, including the supervision of occupational therapy assistants, aides or technicians. During the suspension period, all probation conditions are in full force and effect except those relating to the actual practice of occupational therapy.

RATIONALE: This provision is necessary for the protection of the public because in some cases the licensee needs to stop practicing and participate in either rehabilitation or remedial education before resuming practice. And, it is appropriate in cases where the serious nature of the misconduct warrants a period of suspension from practice.

(15) REMEDIAL / CONTINUING EDUCATION – Within (90 days) of the effective date of this decision, Respondent shall submit to the Board for its prior approval, an appropriate program of remedial education related to (*the cause of disciplinary action*) in an educational facility or program which must also to be approved by the Board. The exact number of hours and specific content of the program shall be determined by the Board or its designee. Respondent shall successfully complete the remedial education program and may be required to pass an examination administered by the Board or its designee related to the program's content. (*If appropriate, Respondent shall be restricted from the practice of {areas where a deficiency has been identified} until the remedial education program has been successfully completed.*) Respondent shall pay all costs of the remedial education program.

RATIONALE: In those instances where a licensee has demonstrated negligence or incompetence, or has been found to have performed work or attempting treatment beyond the scope of training or experience, the Board will impose a program of remedial education. This program shall specify the areas and hours of education remediation required, and may also dictate the institution(s) where the

education will be received. A remedial education program is usually required prior to allowing the licensee to return to the identified deficient area of practice, and requires prior approval by the Board. Continuing education courses used for renewal of licensure will not fulfill the remedial education requirement. This program is for occupational therapists and occupational therapy assistants who have demonstrated deficiencies in skill but do not constitute a present danger to patients in other areas of practice.

(16) SUPERVISED PRACTICE - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which Respondent's practice would be supervised. Respondent shall not practice until receiving notification of Board approval of Respondent's choice of a supervisor and plan of supervision.

The plan of supervision shall be *(direct and require the physical presence of the supervising occupational therapist.) (general and not require the physical presence of the supervising occupational therapist during the time services are performed but does require an occasional random check of the work performed as well as quarterly monitoring visits at the office or place of practice)*. Additionally, the supervisor shall have full and random access to all patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies. Each proposed supervisor shall be a Nevada licensed occupational therapist who shall submit written reports to the Board on a quarterly basis verifying that supervision has taken place as required and include an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely manner. Each supervisor shall have been licensed in Nevada for at least five (5) years and not have ever been subject to any disciplinary action by the Board. The supervisor shall be independent, with no prior business or professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner or associate of Respondent. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by the Respondent.

RATIONALE: This condition allows the Board to monitor the competency of Respondent by use of a fellow practitioner. It is most appropriate in those cases involving incompetence, negligence, and sexual misconduct. The type of supervision needs to be clearly defined relative to the necessity for the presence of the supervisor. Direct supervision would require the physical presence of the supervisor during the time occupational therapy services are performed. General supervision does not require the physical presence of the supervising occupational therapist. The type of required supervision depends on the severity of the violation(s).

(17) RESTRICTED PRACTICE - Respondent shall not practice which includes consulting, evaluating and treating in *(area of noted deficiency) (shall not treat {male} {female} {minors} patients {without the presence of another party})*. Within 30 days from the effective date of this decision, Respondent shall submit to the Board, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board of compliance with this term of probation.

RATIONALE: The condition prevents the Respondent from engaging in the practice of occupational therapy in situations where there is no close supervision and/or where the respondent could have undue authority over others or access to controlled substances.

(18) RESTITUTION - Within *(30 to 90)* days of the effective date of this decision, Respondent shall make arrangements for restitution to *(patient or entity)* in the amount of *(dollar amount)*. (Insert who payment is to be made and when it is due. If a payment plan is imposed, insert specifics regarding payment plan.)

RATIONALE: Where there has been patient harm resulting from negligent or incompetent treatment or a determination has been made concerning fraudulent billing, restitution may be warranted. Careful scrutiny should be made to ensure that proper restitution is made to either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.

(19) COMMUNITY SERVICE - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program for the *(first year of probation or a specified period of probation)* in which Respondent shall provide volunteer services on a regular basis to a non-profit community or charitable facility or agency for at least *(number of hours per month/year for the first year or specified period of probation)*. Such community service shall be *(practice or non-practice)* related. Community service required by this condition shall be performed in the State of Nevada. Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

Prior to engaging in any community service Respondent shall provide a true copy of the (Decision or Decree) to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where Respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service. All community services must be completed no later than one hundred and twenty (120) calendar days prior to the scheduled termination of probation.

RATIONALE: Community service is appropriate in those cases where the Respondent has violated the public's trust. If the violation relates to quality of care, the community service shall not be practice related.

(20) PSYCHOLOGICAL EVALUATION - Within 60 days of the effective date of this decision, and on a periodic basis thereafter as required by the Board or its designee, Respondent shall undergo a (forensic) psychological evaluation by a licensed psychiatrist or psychologist approved by the Board. The psychiatrist or psychologist shall have been licensed for a minimum of five years and shall not have been subject to discipline by a regulatory agency. The evaluator shall furnish a detailed written report to the Board regarding Respondent's judgment and ability to practice occupational therapy independently and safely and other information as the Board may require. The cost of the evaluation shall be paid by Respondent. Respondent shall execute a Release of Information form authorizing the evaluator to release all information to the Board. Respondent shall comply with all of the recommendations of the evaluator unless excused by the Board in its sole discretion. This evaluation shall be confidential by the Board and is not subject to discovery. Psychological evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. **OPTION:** Respondent shall not engage in the practice of occupational therapy until notified by the Board in writing of its determination that Respondent is safe to practice occupational therapy independently and safely. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation. Respondent's failure to undergo and complete the psychological evaluation, recommended therapy or comply with any other recommendations by the evaluator is a violation of probation.

RATIONALE: This condition shall be applied, but not limited to, any licensee who may be affected by a psychological problem, who has committed an act of sexual misconduct or who has suffered a substantially related conviction. This evaluation may be ordered and the results evaluated prior to allowing practice by the Respondent.

(21) PSYCHOTHERAPY - Within (45 days) of the effective date of this decision, or within (45 days) of a determination that psychotherapy is required, Respondent shall submit a proposed therapist and plan of therapy to be approved by the Board. The cost of therapy shall be borne by Respondent. The plan of therapy shall include the nature of the treatment and its proposed duration. The psychotherapist shall agree to submit quarterly reports to the Board regarding the progress and participation of Respondent. The treatment program shall not be terminated except upon Board approval after submission of the results of the program by the psychotherapist. If there is a need for ongoing psychiatric psychological treatment, Respondent shall, within 30 days of the requirement notice, submit to the Board for its prior approval the name and qualifications of a psychotherapist psychiatrist licensed mental health professional of Respondent's choice. If the psychological evaluation recommends that Respondent seek treatment from a specific type of mental health professional (e.g. psychiatrist, psychologist, licensed clinical social worker or marriage and family therapist), Respondent shall only submit for consideration those who meet that recommendation. Respondent shall undergo and continue psychotherapy until further notice from the Board or its designee. Respondent shall have the treating psychotherapist mental health care professional submit quarterly status reports to the Board or its designee indicating whether the Respondent is capable of practicing occupational therapy safely.

RATIONALE: This condition should be imposed whenever there is evidence that the Respondent may have a psychological problem that may impact his or her being able to practice safely. If the Respondent is already in therapy this condition should be imposed to ensure that he or she continues to receive help.

(22) PHYSICAL EVALUATION - Within 45 days of the effective date of this decision, Respondent, at his or her expense, shall have a licensed physician and surgeon, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of an occupational therapist or occupational therapy assistant. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board.

If Respondent is determined to be unable to practice occupational therapy safely with or without restrictions, the licensed physician and surgeon making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall have prepared an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board in writing. During this period of cessation of practice, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of cessation of practice shall not apply to the reduction of this probationary time period. If the Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent's license is immediately suspended and he or she shall immediately cease practice and shall not resume practice until notified by the Board in writing. This period of suspension of practice shall not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted. Physical evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. **OPTION:** Respondent shall not engage in the practice of occupational therapy until notified by the Board in writing of its determination that Respondent is safe to practice occupational therapy independently and safely. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation.

RATIONALE: This condition shall be applied, but not limited to, any licensee whose ability to practice safely may be affected by a physical condition. This evaluation may be ordered and the results evaluated prior to allowing practice by the Respondent.

(23) BIOLOGICAL TESTING - Respondent shall submit to and pay for any random biological fluid or hair sample, breath alcohol or any other mode of testing required by the Board. Respondent shall have the test performed by an approved laboratory within twelve (12) hours upon request by the Board, or sooner if so requested by the Board and the Respondent shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a positive drug screen and constitutes a violation of probation. If a test results in a determination that the urine admission was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If an “out of range result” is obtained, the Board may require Respondent to immediately undergo a physical examination and to complete laboratory or diagnostic test to determine if any underlying physical condition has contributed to the diluted result and to cease practice. Any such examination or laboratory and testing costs shall be paid by respondent. An “out of range result” is one in which, based on scientific principles, indicates the Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the board.

RATIONALE: This probation condition will allow the Board to monitor the Respondent in order to ascertain if he/she is substance and/or chemical free. It is to be required when the Respondent has violated any alcohol and/or substance abuse prohibitions.

(24) ABSTAIN FROM USE OF ALCOHOL, CONTROLLED SUBSTANCES AND DANGEROUS DRUGS - Respondent shall abstain completely from the possession, injection, or consumption of any route, including inhalation, of all psychotropic (mood altering) drugs, including alcohol, and including controlled substances, dangerous drug and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed by a physician and surgeon, dentist, or nurse practitioner for a bona fide illness or condition. Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the Board in writing of the following: prescriber’s name, address, and telephone number; medication name and strength, issuing pharmacy name, address, and telephone number, and specific medical purpose for medication. If Respondent has a positive drug screen for any substance not legally authorized, and the Board files a petition to revoke probation or an accusation, Respondent shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

RATIONALE: Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board’s Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.

(25) ETHICS COURSE - Within 30 days of the effective date of this decision, Respondent shall submit for prior Board approval a course in ethics that will be completed within the first year of probation. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. An ethics course taken after the acts that gave rise to the charges in the accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board, be accepted towards the fulfillment of this condition.

RATIONALE: In those cases involving fraud, false advertising, excessive billing, or negligence this condition of probation will be imposed and may also be imposed in other cases if applicable.

(26) SOLO OR INDEPENDENT PRACTICE - Respondent is prohibited from engaging in the solo or independent practice of occupational therapy.

RATIONALE: Like similar conditions, this condition prevents the respondent from engaging as a sole practitioner in the practice of occupational therapy in situations where there is no close supervision and/or where the respondent could have undue authority over others and/or access to controlled substances.

(27) MEETINGS AND INTERVIEWS – Respondent, upon request of the BOARD, shall appear in person for meetings and shall be available by telephone for interviews as directed by the Board.

RATIONALE: This provides a means for the Board representatives to make periodic assessments of the Respondent, to determine compliance with probation conditions and to give guidance and directions to licensees on probation.