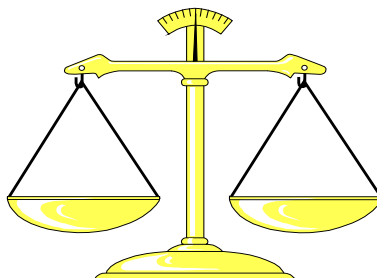


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*Disciplinary Guidelines  
and  
Model Disciplinary Orders*



***Sixth Edition  
June 1997***



***Additional copies of the Disciplinary Guidelines  
and Model Disciplinary Orders  
may be ordered from the following address:***

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Purpose:

This *Disciplinary Guidelines and Model Disciplinary Orders* booklet is intended as a guide to persons involved in setting administrative disciplinary terms and conditions for violations of the Laws Relating to the Practice of Hearing Aid Dispensing, and other laws and regulations. Use of these guidelines will help ensure that the selected terms and conditions are appropriate and consistent with decisions reached in comparable disciplinary actions.

This booklet is designed for use by persons involved in the administrative disciplinary process of California licensed hearing aid dispensers. Appropriate users of these guidelines and model orders include administrative law judges, defense attorneys, hearing aid dispensers, attorneys from the Office of the Attorney General, committee members (who review proposed decisions, stipulated agreements, and make final decisions), the executive officer, and others. This sixth edition was approved at a public meeting in June 1997.

Policy:

The Hearing Aid Dispensers Examining Committee (HADEC) recognizes that these penalties and conditions of probation are guidelines and that mitigating or aggravating circumstances may necessitate deviations. If there are deviations or omissions from the guidelines, the Committee requests that the Administrative Law Judge hearing the case include some explanation of this in the proposed decision so that the circumstances can be better understood by the Committee during its review of the case for ultimate action.

Probation Conditions:

Probation conditions are divided into two categories:

- 1) Standard Conditions that generally appear in all probation cases; and
- 2) Optional Conditions that depend on the nature and circumstances of the particular case.

## Standard Probation Conditions

The eleven standard conditions generally appearing in every probation case are as follows:

1. Obey all laws<sup>1</sup> [19]
2. File quarterly reports [20]
3. Cooperate with probation surveillance [21]
4. Interview with Committee [22]
5. Cost recovery to Committee [23]
6. Restitution for consumers, if applicable [24]
7. Tolling of probation if respondent moves out-of-state [25]
8. Tolling of probation if respondent ceases practice and remains in-state [26]
9. Completion of probation [27]
10. Violation of probation [28]
11. Voluntary License Surrender [29]

## Optional Conditions

Optional conditions may include, but are not limited to, imposing a period of actual license suspension, requiring biological fluid testing, requirement to take a licensing examination, and establishing restrictions on practice. The optional conditions selected will be relevant to the sustained violations and any significant mitigating circumstances. (See detailed listing of optional conditions on pages 12-15.)

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<sup>1</sup> The numbers in brackets, refer to the numbers of the model conditions expounded in the Model Disciplinary Orders and Optional and Standard Terms and Conditions.

## Disciplinary Guidelines

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<u>B&amp;P Section</u>	<u>Cause for Discipline</u>
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<b>726:</b>	<b>Sexual Misconduct</b>
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Minimum penalty: Revocation, stayed, with 5 years probation

Maximum penalty: Revocation

1. If warranted, psychological evaluation/treatment [16]
2. If warranted, medical evaluation/treatment [17]
3. If warranted, suspension of 60 days to 90 days [8]
4. If warranted, monitoring [15]
5. If warranted, ethics course [14]

<b>820:</b>	<b>Mental or Physical Illness</b>
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Minimum penalty: Revocation, stayed, with 5 years probation

Maximum penalty: Revocation

1. Psychological evaluation/treatment [16]
2. Medical evaluation/treatment [17]
3. If warranted, suspension of 60 days to 90 days [8]
4. If warranted, monitoring [15]

<b>3350:</b>	<b>Unlicensed practice</b>
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Minimum penalty: Revocation, stayed, at least 2 years probation

Maximum penalty: Revocation

1. If warranted, suspension of 30 days to 60 days [8]

<b>3359:</b>	<b>Temporary licensee as sole proprietor, manager, or operator or claiming to hold license as a hearing aid dispenser</b>
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Minimum penalty: License issued, 2 years probation

Maximum penalty: License denied

<b>3362:</b>	<b>Practicing without notifying committee of business address</b>
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Minimum penalty: Suspension, stayed with 1 year probation

Maximum penalty: Suspension, stayed with 2 years probation



1. If warranted, 10 days or more suspension [8]
2. Written examination including questions on License Law [13]

**3363: Practicing without properly posting license**

Minimum penalty: Public Reproval  
Maximum penalty: Suspension, stayed with 2 years probation

1. If warranted, 10 days or more suspension [8]
2. Written examination including questions on License Law [13]

**3364: Practicing from a branch office which is not licensed**

Minimum penalty: Suspension, stayed with 1 year probation  
Maximum penalty: Suspension, stayed with 2 years probation

1. If warranted, 10 days or more suspension [8]
2. Written examination including questions on License Law [13]

**3365: Failure to deliver proper receipt**

Minimum penalty: Public Reproval  
Maximum penalty: 1 year suspension, stayed with 3 years probation

1. If warranted, 15 days or more suspension [8]
2. Written examination including questions on License Law [13]
3. If warranted, ethics course [14]

**3365.5: Failure to make physician referral**

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. If warranted, 10 days or more suspension [8]
2. Written examination on including questions on License Law [13]
3. If warranted, monitoring [15]

**3365.6: Unauthorized selling of a hearing aid to a person under sixteen (16) years of age**

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. If warranted, 10 days or more suspension [8]
2. Written examination including questions on License Law [13]
3. If warranted, monitoring [15]

**3366: Failure to maintain required records**

Minimum penalty: Public Reproval  
Maximum penalty: 1 year suspension, stayed with 3 years probation

1. If warranted, 15 days or more suspension [8]
2. Written examination on including questions on License Law [13]
3. If warranted, monitoring [15]

**3401(a): The improper or unnecessary fitting of a hearing aid**

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. If warranted, 15 days or more suspension for each violation [8]
2. If warranted, monitoring [15]
3. Written examination including questions on License Law and practical examination [13]
4. If warranted, ethics course [14]

**3401(b): Gross Negligence**

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. If warranted, 60 days or more suspension for each violation [8]
2. If warranted, monitoring [15]
3. Written examination including questions on License Law and practical examination [13]

**3401(c): Repeated negligent acts**

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. If warranted, 15 days or more suspension for each violation [8]
2. If warranted, monitoring [15]
3. Written examination including questions on License Law and practical examination [13]

**3401(d): Criminal Conviction**

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. If warranted, no less than 90 days suspension [8]
2. If warranted, monitoring [15]

3. If warranted, ethics course [14]

**3401(e): Obtaining a license by fraud**

Minimum penalty: Revocation

Maximum penalty: Revocation

**3401(f): Using the term "doctor", "physician" or "audiologist" unless authorized**

Minimum penalty: Revocation, stayed with 5 years probation

Maximum penalty: Revocation

1. If warranted, 15 days or more suspension for each violation [8]
2. Written examination including questions on License Law [13]
3. If warranted, monitoring [15]
4. If warranted, ethics course [14]

**3401(g): Fraud or misrepresentation in practice**

Minimum penalty: Revocation, stayed with 5 years probation

Maximum penalty: Revocation

1. If warranted, 15 days or more suspension for each violation [8]
2. If warranted, monitoring [15]
3. Written examination including questions on License Law and practical examination [13]
4. If warranted, ethics course [14]

**3401(h): Employing an unlicensed person**

Minimum penalty: Revocation, stayed with 5 years probation

Maximum penalty: Revocation

1. If warranted, 90 days or more suspension [8]
2. Written examination including questions on License Law [13]
3. If warranted, monitoring [15]

**3401(i): Illegal advertising**

Minimum penalty: Public Reproval

Maximum penalty: Revocation

1. If warranted, 15 days or more suspension for each violation [8]
2. If warranted, monitoring [15]
3. Written examination including questions on License Law [13]
4. Ethics course [14]

**3401(j): Habitual intemperance with drugs or alcohol**

Minimum penalty: Revocation, stayed with 5 years probation

Maximum penalty: Revocation

1. If warranted, at least 90 days suspension [8]
2. Abstain from use of drugs [9]
3. Abstain from alcohol [10]
4. If warranted, drug testing [12]
5. If warranted, drug/alcohol rehabilitation program [11]
6. If warranted, psychological evaluation/treatment [16]
7. If warranted, medical evaluation/treatment [17]

**3401(k): Letting another use his or her license**

Minimum Penalty: Revocation  
Maximum Penalty: Revocation

**3401(m): Doing any act which would be grounds for license denial**

Revocation, if facts show false statements were made on the application

**3421: Sale or barter of a license or offer to sell or barter a license**

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. 60 days actual suspension [8]
2. Written examination including questions on License Law [13]
3. If warranted, monitoring [15]

**3422: Purchase or procure by barter a license with the intent to practice**

Denial of right to seek licensure as a hearing aid dispenser pursuant to B & P 480 (2) (3).

**3423: Alter with fraudulent intent any material issued by the committee**  
If done by a temporary licensee:

Revocation of temporary license and denial of permanent licensure

If done by a permanent licensee:

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. If warranted, 60 days suspension [8]
2. Written examination including questions on License Law and practical examination [13]
3. If warranted, monitoring [15]

**3426: Lying on the license application**

License denial pursuant to B & P 480 (c)

**3427: Practicing without a valid license**

Minimum penalty: Revocation, stayed with at least 2 years probation  
Maximum penalty: Revocation

1. Written examination including questions on License Law and practical examination [13]

**3427.5: Unlawful practice**

Minimum penalty: Revocation, stayed with 5 years probation  
Maximum penalty: Revocation

1. If warranted, 10 days or more suspension [8]
2. Written examination including questions on License Law [13]
3. If warranted, monitoring [15]
4. If warranted, ethics course [14]

**3428: Advertising without a valid license**

Minimum penalty: Suspension, stayed with 3 years probation  
Maximum penalty: Revocation

1. If warranted, 15 days or more suspension for each violation [8]
2. If warranted, monitoring [15]
3. Written examination including questions on License Law and practical examination [13]
4. If warranted, ethics course [14]

**3429: Practicing without a business address**

Minimum penalty: 1 year suspension, stayed with 2 years probation  
Maximum penalty: 1 year suspension, stayed with 3 years probation

1. If warranted, 15 days or more suspension [8]
2. Written examination including questions on License Law [13]

Model Number

**1. Revocation - Single Cause**

License No. (Ex:HA 004444) issued to respondent (Ex: John Smith, HAD) is revoked.

**2. Revocation - Multiple Causes**

License No. \_\_\_\_\_ issued to respondent \_\_\_\_\_ is revoked pursuant to Determination of Issues (Ex: I, II, and III) separately and for all of them.

**3. Suspension - Single Cause**

License No. \_\_\_\_\_ issued to respondent \_\_\_\_\_ is suspended (Ex: 30 days/one year).

**4. Suspension - Multiple Causes (run concurrently)**

License No. \_\_\_\_\_ issued to respondent \_\_\_\_\_ is suspended \_\_\_\_\_ pursuant to Determination of Issues \_\_\_\_\_, separately and for all of them. All suspensions shall run concurrently.

**5. Suspension - Multiple Causes (run consecutively)**

License No. \_\_\_\_\_ issued to respondent \_\_\_\_\_ is suspended (Ex: 30 days) pursuant to Determination of Issues \_\_\_\_\_ and (Ex: 60 days) pursuant to Determination of Issues \_\_\_\_\_. These suspensions shall run consecutively, for a total of (Ex: 90 days).

**6. Public Reproval**

Respondent (Ex: John Smith, HAD) shall be, and hereby is, publicly reproved.

**7. Standard Stay Order**

However, (revocation/suspension) is stayed and respondent is placed on probation (Ex: five) years upon the following terms and conditions:

**Model Number****8. Actual Suspension**

As part of probation, respondent is suspended from the practice of hearing aid dispensing for     (Ex: 90 days)     beginning the effective date of this decision and a suspension notice provided by the Committee shall be prominently posted at the entrance to the respondent's place of business or places of business.

**9. Drugs - Abstain From Use**

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and Professions Code unless the use or possession of these drugs is for documented personal illness.

**10. Alcohol - Abstain From Use**

Respondent shall abstain completely from the use of alcoholic beverages.

**11. Drug/Alcohol Rehabilitation Program**

Respondent shall satisfactorily complete a drug or alcohol rehabilitation program approved by the Committee.

**12. Biological Fluid Testing**

Respondent shall submit to biological fluid testing, at the respondent's cost, upon the request and at the direction of the Committee.

**13. Written or Practical Examination**

Respondent shall take and pass the first administration after the effective date of this decision of the written and/or practical examination as designated by the Committee.<sup>2</sup> If

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<sup>2</sup> Generally speaking, the respondent will be required to take the written and practical examinations administered for the purpose of licensure.

respondent fails this examination, respondent must take and pass a re-examination consisting of the written and the practical examination which is administered for the purpose of licensure. If respondent is required to take and pass both the written and practical examinations, the written examination must be taken and passed prior to taking the practical examination. The waiting period between repeat written examinations shall be at least two weeks, until the examinations are passed. The respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee in place at that time. Failure to pass the required examinations no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

**Option #1:** Particularly recommended in cases where the respondent has been found to be incompetent or repeatedly negligent.

If respondent fails the first examination, respondent shall cease the practice of hearing aid dispensing until the examination has been passed, as evidenced by the written notice to respondent from the Committee.

**Option #2:** Particularly recommended in cases where respondent has been found to be incompetent or grossly negligent and patient/client injury has resulted.

Respondent shall not practice hearing aid dispensing until respondent has passed the required examination and has been so notified by the committee in writing.

#### **14. Ethics Course**

Respondent shall complete a course in ethics approved in advance by the Committee or its designee during the first year of probation and shall pay the costs of the course.

#### **15. Monitoring**

Within 30 days following the effective date of this decision, respondent shall submit to the Committee for its prior approval a plan of practice in which respondent's practice shall be monitored by another hearing aid dispenser, who shall provide periodic reports to the Committee.

If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the Committee.

**Option #1:** Particularly recommended in cases where respondent has been found to be incompetent or negligent and patient/client injury has resulted.

Respondent is prohibited from engaging in solo practice.

#### **16. Psychological Evaluation/Treatment**

Within 60 days of the effective date of this decision, and on a periodic basis thereafter if



deemed necessary by the Committee or its designee, respondent shall undergo a psychological evaluation and psychological testing, if necessary, by a Committee-appointed psychiatrist. The Committee shall receive a current written report from the psychiatrist regarding respondent's judgement and/or ability to function safely and independently as a hearing aid dispenser, and any other information the Committee deems necessary to the case. Respondent shall execute a release authorizing the evaluator to release all information to the Committee. The completed evaluation is the sole property of the Committee.

(optional) If respondent is determined to be unable to practice independently and safely, he/she shall immediately cease practice as a hearing aid dispenser and shall not resume practice until notified by the Committee or its designee. Respondent shall not engage in any practice for which a hearing aid dispensers license is required until the Committee or its designee has notified the respondent of its determination that respondent may resume practice.

If the Committee concludes from the results of the evaluation that respondent would benefit from ongoing psychotherapy, respondent shall within 30 days of the requirement notice submit to the Committee for its prior approval the name and qualifications of a psychological evaluator of respondent's choice. Upon approval of the psychological evaluator, respondent shall undergo and continue psychological treatment until further notice from the Committee. Respondent shall have treating psychological evaluator submit quarterly status reports to the Committee indicating whether the respondent is capable of practice safely.

Respondent shall pay all psychological evaluation and counseling costs. Failure to pay any of such costs will be a considered a violation of probation.

(optional) Respondent shall not engage in the practice of hearing aid dispensing until notified by the Committee or its designee of its determination that respondent is mentally fit to practice safely.

(Note: This condition is for those cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations.)

## **17. Medical Evaluation/Treatment**

Within 60 days of the effective date of this decision, and on a periodic basis thereafter if deemed necessary by the Committee or its designee, respondent shall undergo a medical evaluation and/or treatment, if necessary, by a Committee-appointed physician who shall furnish a medical report to the Committee or its designee. The Committee shall receive a current written report from the physician regarding respondent's judgement and/or ability to function safely and independently as a hearing aid dispenser, and any other information the Committee deems necessary to the case. Respondent shall execute a release authorizing the evaluator to release all information to the

Committee. The completed evaluation is the sole property of the Committee.

(optional) If respondent is determined to be unable to practice independently and safely, he/she shall immediately cease practice as a hearing aid dispenser and shall not resume practice until notified by the Committee or its designee. Respondent shall not engage in any practice for which a hearing aid dispensers license is required until the Committee or its designee has notified the respondent of its determination that respondent may resume practice.

If the Committee concludes from the results of the evaluation that respondent would benefit from ongoing medical treatment, respondent shall within 30 days of the requirement notice submit to the Committee for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval of the treating physician, respondent shall undergo and continue medical treatment until further notice from the Committee. Respondent shall have the treating physician submit quarterly status reports to the Committee indicating whether the respondent is capable of practice safely. Respondent shall pay all medical treatment costs. Failure to pay any of such costs will be a considered a violation of probation.

(optional) Respondent shall not engage in the practice of hearing aid dispensing until notified by the Committee or its designee of its determination that respondent is mentally fit to practice safely.

(Note: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.)

### **18. Third Party Presence - Sexual Transgressors**

During probation, respondent shall have a third party present while examining \_\_\_\_\_ (female/male/minor) patients.

NOTE: Sexual transgressors should be placed in a monitoring environment.

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## Standard Terms and Conditions

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### Model Number

#### **19. Obey All Laws**

Respondent shall obey all federal, state and local laws, and all rules governing the practice of hearing aid dispensing in California.

#### **20. Quarterly Reports**

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Committee, stating whether there has been compliance with all conditions of probation. The first probation \*\*\*\*\*report should be held within 90 days of the final decision between respondent and the Committee or its designee. ("Designee" shall mean an enforcement officer of the Medical Board of California, the Department of Consumer Affairs, or the Department of Health Services.)

#### **21. Surveillance Program**

Respondent shall comply with the Committee's probation compliance surveillance program.

#### **22. Interview with Committee**

Respondent shall appear in person for interviews with the Committee's Enforcement Subcommittee or the full Committee upon request at various intervals and with reasonable notice.

#### **23. Committee Cost Recovery**

Respondent shall reimburse the Committee the amount of \$\_\_\_\_\_ for the cost of the investigation and prosecution resulting in discipline within 90 days following the effective date of the decision. Failure to comply with the cost recovery order shall constitute a violation of the probation order. The filing of bankruptcy shall not relieve the respondent of his/her responsibility to reimburse the Committee for its investigative costs.

*(Note: Most hearing aid dispenser cost recovery orders are paid on an installment plan.)*

#### **24. Consumer Restitution**

Respondent shall make restitution to consumer(s) named in the decision to the amount of damage specified in the action within one (1) year of the effective date of decision.

## **25. Tolling for Out-of-State Practice or Residence**

The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required to immediately notify the Committee in writing of the date of departure, and the date of return, if any.

## **26. Tolling for Cessation of Practice While Maintaining In-State Residence**

The period of probation shall not run during the time the respondent has ceased to practice while continuing to reside in California. If, during probation, the respondent ceases practice, respondent is required to immediately notify the Committee in writing of the date practice ceased and the date practice will be resumed.

## **27. Completion of Probation**

Upon successful completion of probation, respondent's license will be fully restored.

## **28. Violation of Probation**

If respondent violates probation in any respect, the Committee, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Committee shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

## **29. Voluntary License Surrender**

Following the effective date of this probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily surrender his/her license to the Committee. The Committee reserves the right to 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. Upon formal acceptance of the surrendered license, respondent will no longer be subject to the terms and conditions of probation.