

**CALIFORNIA ARCHITECTS BOARD
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: The California Architects Board (Board) has not scheduled a hearing on the proposed changes. However, a hearing will be scheduled upon request by any interested party if the request is received no later than 15 days prior to the close of the written comment period.

Subject Matter of Proposed Regulations: Disciplinary Guidelines (*Guidelines*)

Section Affected: Section 154 of Article 8 of Division 2 of Title 16 of the California Code of Regulations (CCR)¹

Introduction and Problem Statement

The Board was created in 1901 by the California State Legislature. The Board is responsible for discipline of architects and enforcement of the Architects Practice Act (Act) (Business and Professions Code (BPC) § 5510.1). BPC section 5510.1 mandates that the protection of the public shall be the highest priority of the Board in its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with the other interests sought to be promoted, the protection of the public shall be paramount.

BPC section 5526 authorizes the Board, in accordance with the Administrative Procedure Act (APA) (Government Code (Gov. Code) section 11400 et seq.), to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry out the provisions under the Act. Gov. Code section 11425.50, subdivision (e), provides that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule unless it has been adopted as a regulation in accordance with the APA.

The Board's *Guidelines* were initially adopted into regulation under CCR, title 16, section 154 on February 4, 1997. CCR section 154 requires the Board, in reaching a decision on a disciplinary action under the APA, to consider the *Guidelines*. The *Guidelines* are incorporated by reference because of the length of the document. CCR section 154 and the *Guidelines* were subsequently amended in 2000.

The current *Guidelines* contain many outdated terms and conditions of probation and, in many instances, do not reflect recent updates to statutory law and other changes that have occurred in the probationary environment since the last update in 2000. If the *Guidelines* are amended, the corresponding regulation, CCR section 154, must also be amended to incorporate by reference the revised *Guidelines* as revised and adopted by

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

the Board in 2019, and September 8, 2023.

The specific changes to the *Guidelines* and the reasons therefor are provided in detail below.

Specific Purpose, Anticipated Benefits, and Rationale

Amend Section 154 of Article 8 of Division 2 of Title 16 of the CCR

Purpose: The specific purpose of this regulatory proposal is to update the *Guidelines* to reflect recent updates to statutory law and changes that have occurred in the probationary environment since the last update in 2000. To do so, CCR section 154, which incorporates the *Guidelines* by reference, must be revised to change the current revision date of 2000 to the latest revision date of “2023,” to add the words “and Model Orders” to the title, as well as update the authority and reference citations to include relevant new statutes.

Anticipated Benefits: This proposal is anticipated to protect consumers by providing standards for the consistent application and enforcement of the laws and regulations under the Board’s jurisdiction. This proposal is also anticipated to benefit Administrative Law Judges (ALJs), Deputy Attorneys General (DAGs), and others involved in the disciplinary process by providing updated guidelines to reference when imposing disciplinary action against licensees and applicants.

Rationale: CCR section 154 was last amended and incorporates by reference the Board’s *Guidelines* [2000], which are out of date, inconsistent with recent changes to statutory law and the probationary environment and require clarification. In the last 23 years, there have been statutory and probationary changes that must be reflected in the *Guidelines*. This regulatory proposal would update the *Guidelines*, which are incorporated by reference in CCR section 154, and must also update CCR section 154 to change the revision date of the *Guidelines* from 2000 to “2023” and add the words “and Model Orders” to the title.

The proposal is also necessary to update the authority and reference citations of CCR section 154. Amendments to the regulation include adding to the regulation authority cited Gov. Code section 11400.20, which authorizes the Board to adopt permanent regulations to govern adjudicative proceedings under the APA. The proposal also revises the reference sections of the regulation to add BPC sections 140, 141, 143.5, 481, 482, 490, and 499, which provide general statutory authority to impose discipline by the Board, and 5536, 5536.1, 5536.22, 5536.4, 5536.5, 5558, 5586, 5588, and 5600.05, which are specific discipline statutes applicable to licensees. These amendments clarify the Board’s authority to promulgate the *Guidelines* and the statutes that the regulation and *Guidelines*, incorporated by reference, implement, interpret, and make specific. Although the proposed regulatory amendments adopted by the Board at its February 27, 2019 meeting did not include reference citations to BPC sections 5586, 5588, and 5600.05, the *Guidelines* include proposed terms and conditions for violations

of those sections. Accordingly, the Executive Officer is adding these sections to the reference citations pursuant to the authority to make minor, technical changes to the proposal delegated by the Board in its February 27, 2019 motion to adopt this proposal.

Amend Disciplinary Guidelines

Add Cover Page

Purpose: The purpose of this proposal is to amend the *Guidelines* to include a cover page that identifies the title of the document and contains the Board's physical address and contact information.

Anticipated Benefits: The Board anticipates that the public and licensees will be better able to find the *Guidelines* with the new cover page and be better informed as to the Board's location and contact information.

Rationale: The proposal is necessary to provide clear and transparent identification of the document. The proposal would add a Cover Page to the *Guidelines* to identify for the public and licensees that the document contains the Board's disciplinary guidelines and model orders. The proposal also would include the Board's physical and mailing address, telephone number, and website address for ease of reference, so the public, licensees, and other users of the *Guidelines* have immediate access to the Board's contact information.

Amend Table of Contents

Purpose: The purpose of this proposal is to amend the *Guidelines* to update the table of contents to provide better organization of the *Guidelines*.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees and applicants will benefit from the updated table of contents that will identify the subjects covered and specify their page location in the *Guidelines*.

Rationale: The proposal is necessary to make the *Guidelines* more user friendly and provide transparency and clarity of the disciplinary authority of the Board and potential disciplinary outcomes for license applicants and licensees.

Amend Section I, Introduction

Purpose: The purpose of this proposal is to amend existing introduction in the *Guidelines* to:

- provide consistency by changing references to the California Architects Board from the abbreviated term "CAB" to the abbreviated term "Board,"
- replace the term "shall" with the term "may" and authorize the Board to periodically revise the *Guidelines* rather than unnecessarily require such revisions, which the statutes do not require.
- to relocate the statement "are referenced to the statutory and regulatory provisions" and revise slightly to state "reference the statutory and regulatory provisions" for better syntax and greater reader comprehension.

- to remove the statement “as a standard term and condition” and make other technical, non-substantive changes to the wording of the Introduction to eliminate unnecessary words and for better reader comprehension.
- include the statement “All disciplinary actions will be published on the Internet to facilitate access under the California Public Records Act” to provide notice to users of the *Guidelines*, including affected licensees, of the requirements of the California Public Records Act (CPRA) (Gov. Code §§ 6250 et seq.). The CPRA requires the Board to make all non-exempt public records (enforcement actions are not exempt -- see Gov. Code § 6254) promptly available upon request by any person (see Gov. Code § 6253).
- include a statement informing the readers that a copy of the *Guidelines* can be accessed on-line at Board’s website to facilitate public access to this document.
- revise the statement “There may be a charge assessed sufficient to cover the cost of production and distribution of copies.” and replace it with “There may be a charge assessed for providing paper copies sufficient to cover the direct cost of duplication.” for better reader comprehension.

Anticipated Benefits: The Board anticipates that the public, licensees and applicants will better understand what the term “Board” refers to throughout the *Guidelines*. The proposed amendments also clarify that the Board is not obligated to revise the *Guidelines*. Licensees, applicants, and the public will benefit from relocating a phrase and removing a redundant and unnecessary phrase, along with making non-substantive changes for clarity. The public, licensees, and applicants will benefit from clear notice that disciplinary actions will be published on the internet to facilitate access under the CPRA. They will also benefit from notice of where they can access the *Guidelines* and that the Board may charge to provide a paper copy of the *Guidelines*.

Rationale: The proposal is necessary as it removes the acronym, “CAB,” for the “California Architects Board” and replaces it with “Board” where it appears in the Introduction because the term “Board” is used consistently throughout the rest of the *Guidelines* to represent the California Architects Board. The proposal is necessary as it replaces the term “shall” with the term “may” to demonstrate the Board has the option to revise the *Guidelines*, but it is not a requirement. The proposal is necessary to relocate the statement “are referenced to the statutory and regulatory provisions” and remove the redundant and unnecessary statement “as a standard term and condition” for clarity. The proposal is also necessary to remove and add non-substantive terms and punctuation for clarity, to provide notice to the users of the *Guidelines* that disciplinary actions are a matter of public record, to clarify where a digital copy of the *Guidelines* can be found and which agency to contact to obtain a paper copy of the *Guidelines*, and that the Board may charge for providing a paper copy of the *Guidelines*.

The CPRA at Section 6253(b) authorizes the Board to provide copies of public records “to any person upon payment of fees covering direct costs of duplication.” Accordingly, the Board would charge the requestor for costs incurred by the Board to provide a hard copy of the *Guidelines* in accordance with the CPRA.

The proposal to add the statement “There may be a charge assessed for providing paper copies sufficient to cover the direct costs of duplication” is necessary to provide clarity and transparency to the fact any person requesting paper copies of the *Guidelines* may incur a cost for such copies. This proposal would provide appropriate notice to the public that there may be a charge assessed to the requestor to cover the cost of providing a paper copy of the *Guidelines* to the requestor. The proposal uses the term “may be a charge” to provide for circumstances when no charge for copies of the *Guidelines* is assessed, such as when the requestor is directed to an online version of the *Guidelines* that can be accessed by the public for no charge or if the Board determines it may waive the fee in accordance with Department of Consumer Affairs (DCA) guidelines (see Gov. Code § 6253.4; “Guidelines for Access to Public Records,” LGL-21-02, dated August 15, 2021).

Add Section II, General Considerations, Subsection A. Citations

Purpose: The purpose of this proposal is to amend the *Guidelines* to explain that the document covers considerations of disciplinary restrictions or penalties following the filing of an Accusation and where information on citations that may be issued by the Board can be found.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, and licensees will be better informed about the purpose of the *Guidelines* and where information on the Board’s citations can be found.

Rationale: The Board is authorized to issue citations, which may include orders of abatement and/or administrative fines, as an alternative to formal discipline to address violations of the Act, including unlicensed activity. (BPC §§ 125.9 and 148.) The Board’s regulations, at CCR sections 152 and 152.4, specify the due process requirements to issue a citation, criteria to be applied when assessing an administrative fine, classes of violations with administrative fine ranges, and the citation appeal processes. However, the current *Guidelines* do not contain any such information on citations as citations are not considered discipline since they do not restrict the license (see *Owen v. Sands* (2009) 176 Cal. App. 4th 985).

To provide clarity and transparency to the citation and formal discipline process for the users of the *Guidelines*, the proposal is necessary to add information clarifying that the *Guidelines* are for disciplinary restrictions or penalties following the filing of an Accusation and indicating where to find information on the Board’s citations in the CCR.

Add Section II, General Considerations. Subsection B. Proposed Decisions – General Considerations

Purpose: The purpose of this proposal is to amend the *Guidelines* to:

- update the subsection title “B. Proposed Decisions – General Considerations.”
- to replace the term “definitions” with the term “descriptions” and make other technical revisions to the language to add the word “along.”
- add the statement “underlying facts demonstrating the [violation] committed.”
- remove the gendered reference to “he/she” is and replace with “they are.”

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, and licensees will benefit from the *Guidelines* being amended to include: a title for the “Proposed Decisions” section, generally clarified language and clarification of the information of evidence of a violation to be provided in the proposed decisions, as well as transparent language describing the information reviewed by the Board when considering stipulated settlements and concerning the Board’s cost reimbursement recovery.

Rationale: Although the *Guidelines* already contain a section on Proposed Decisions, the *Guidelines* need to be revised to add the title of this section for clarity and ease of reference. The proposal is necessary to better clarify that code sections do not have definitions but rather provide descriptions of the violation. The proposal also makes two technical corrections for ease of reading and makes changes to the use of the gendered pronouns “he/she.” The proposal also makes changes to the use of gendered pronouns “he/she” as discussed in greater detail on page [72], “Modification of Pronouns” herein.

Add Section II, General Considerations, Subsection C. Stipulated Settlements

Purpose: The proposed new language provides information on the availability of stipulated settlements, the Board’s policy on when cases might be considered for settlement or set for a hearing, the Board’s recommendation that inquiries regarding settlement should begin promptly after receipt of a notice of defense, as well as the Board’s policy to include seeking cost recovery in stipulated settlements.

Anticipated Benefits: The Board anticipates that the public and licensees will benefit from providing a statement of the Board’s policy favoring resolution of matters including cost recovery by stipulation and discussing the reasons underlying the Board’s policy favoring stipulated settlements and the process for considering when settlements may be considered or a matter set for hearing.

Rationale: To expedite disciplinary proceedings and promote cost-effective consumer protection, the Board may enter into stipulated settlements of disciplinary actions with respondents if they are willing. Settlements of adjudicative proceedings are authorized by the Administrative Procedure Act at Gov. Code section 11415.60. These stipulated settlements are prepared and negotiated by DAGs with respondents. If a stipulated settlement is unlikely, then the case will proceed to a hearing before an ALJ. Stating in the *Guidelines* that the Board seeks to obtain cost recovery in matters resolved by stipulation does not require the Board to impose cost recovery when doing so isn’t appropriate given the facts of the case but stating the Board’s policy in favor of cost recovery provides those negotiating on behalf of the Board with a good place from which to start. Placing these policies in the *Guidelines* will help provide notice to users of these guidelines of the Board’s policy preferences, help expedite disciplinary proceedings and facilitate cost-effective consumer protection.

Add Section II, General Considerations, Subsection D. Cost Reimbursement

Purpose: The proposal adds a new section and title regarding “Cost Reimbursement” and includes all of the following information:

- (1) Notice that the Board seeks reimbursement of its investigative and prosecution costs in all disciplinary cases in which the licensee is found to have committed a violation;
- (2) Define what the Board's reimbursable costs would include (i.e., charges from the Office of the Attorney General, the Division of Investigation, Board services including but not limited to expert consultant opinions and services); and,
- (3) Include the reasons why the Board seeks reimbursement of investigative and enforcement costs (i.e., because the burden of costs should fall upon those whose proven conduct required investigation and prosecution and not on the profession as a whole).

Anticipated Benefits: The Board anticipates that the public and licensees will benefit from a clear statement of what costs are involved in cost reimbursement, and why the Board seeks reimbursement of such costs.

Rationale: For the purposes of clarity and transparency and notice to affected licensees, the proposed new language is necessary to include cost reimbursement information in the *Guidelines*. In all disciplinary cases, the Board seeks reimbursement of the investigative and enforcement costs associated with the case in accordance with BPC section 125.3. BPC section 125.3 permits the Board to recover "reasonable costs of the investigation and enforcement of the case." Since BPC 125.3's authority is discretionary (cost recovery "may" be ordered by an ALJ "upon request" from the Board) and to address questions from stakeholders regarding the Board's position, the Board has adopted a policy to make it clear that it expects such cost reimbursement to be requested in every case and to explain the Board's rationale for taking such a policy position. In the Board's view, those who have been found to have committed a violation should pay cost reimbursement (recovery) where appropriate, which helps prevent an unfair and disproportionate impact upon the regulated community as a whole.

In the Board's experience, such costs include those listed in the proposal, including charges for enforcement prosecution by the AG's office, investigation by the DCA's Division of Investigation and expert witness fees for expert witnesses that are necessary for the Board to meet its burden of proof in a disciplinary enforcement action. Fair and cost-effective consumer protection is best served by the Board seeking to obtain cost reimbursement in all cases where it is determined to be appropriate.

Amend Section II, General Considerations, Subsection E. Criteria to be Considered

Purpose: The purpose of this proposal is to amend the *Guidelines* to replace the term "Factors" with the term "Criteria" in the heading of this subsection.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, and licensees will benefit from updating the *Guidelines* to reflect the new statutory substantial relationship and rehabilitation criteria requirements.

Rationale: In determining whether an architect license should be denied, suspended, or revoked on the basis of a criminal conviction or act, the Board is required to determine whether the crime or act is substantially related to the qualifications, functions, or duties of an architect. (BPC §§ 480 and 490.) To make that determination, the Board is required to develop criteria. (BPC § 481.) The Board also is required to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of an architect license (BPC § 482). The Board's substantially related and rehabilitation criteria are set forth in CCR sections 110 and 110.1. To maintain consistency with the terminology used in the BPC and supporting regulations, this proposal is necessary to change "factors" to be considered by the Board to "criteria" to be considered by the Board when determining whether a crime or act is substantially related to the qualifications, functions, or duties an architect or whether an applicant or licensee has made a showing of rehabilitation.

Amend Section II, General Considerations, Subsection E. Criteria to be Considered

Purpose: The purpose of this proposal is to update the *Guidelines* to reflect recent statutory changes regarding the substantial relationship and rehabilitation criteria the Board must consider when denying, suspending, or revoking a license. Existing text (Nos. 1-11) listed under the existing title "Factors to be Considered" would be deleted in its entirety and replaced with criteria that reflect the Board's current regulations and criteria for determining substantial relationship of a crime, misconduct, or other acts as specified, and rehabilitation at Title 16, California Code of Regulations sections 110 and 110.1. These revisions are needed in light of amendments to the Board's statutory authority to consider such grounds for denial or violations as a basis for denial or discipline as explained below.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from updating the *Guidelines* to reflect the new statutory substantial relationship and rehabilitation criteria requirements.

Rationale: The current *Guidelines* enumerate specific factors for the Board to use in determining whether revocation, suspension, or probation is to be imposed in a disciplinary case which are also found in CCR section 110. However, in accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), operative on July 1, 2020, BPC sections 481 and 493 require the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction, to determine whether the crime is substantially related to the qualifications, functions, or duties of an architect by using specified criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of an architect. (BPC § 481, subd. (b), as added by AB 2138, § 7; BPC § 493, subd. (b), as added by AB 2138, § 13.) In addition, BPC section 482 will require the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction or discipline for professional misconduct, pursuant to BPC sections 480 or 490, to consider whether the applicant or licensee is rehabilitated based on either: (1) having completed their criminal sentence

without violating parole or probation; or (2) the Board's standard criteria for evaluating rehabilitation. (BPC § 482, as added by AB 2138, § 9.) To address the new criteria required to be evaluated by the Board, the Board is amending CCR sections 110 and 110.1 in a separate rulemaking.

To maintain consistency with the new substantially related and rehabilitation criteria requirements imposed by AB 2138 that will be incorporated in CCR sections 110 and 110.1, the proposal is necessary to revise the *Guidelines* to strike the outdated enumerated factors. Further, to avoid having to make changes to the *Guidelines* any time the substantially related and rehabilitation criteria are revised in statute, the proposal is necessary to advise the Board, ALJs, DAGs, licensees, and the public that the Board must consider specified criteria under CCR section 110 generally, without quoting the entire section within the *Guidelines*, when determining whether a criminal conviction, discipline for professional misconduct, or act is substantially related to the qualifications, functions, or duties of an architect for the Board to deny, suspend, or revoke the license. In addition, the proposal is necessary to advise that when considering the denial, revocation, or suspension of a license on the ground that the applicant has been convicted of a crime or disciplined for professional misconduct, the Board must consider whether the applicant or licensee has made a showing of rehabilitation based on the criteria specified in CCR section 110.1.

Although the language adopted by the Board in CCR section 110.1 provided for rehabilitation criteria for criminal convictions, BPC section 482 also requires the Board to consider rehabilitation criteria for professional misconduct when denying a license pursuant to BPC section 480. BPC section 480(a)(2) authorizes the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board, located in or outside California, for "professional misconduct," under specified conditions. Therefore, the text, in this section, should include "professional misconduct" references as a possible area where rehabilitation should be considered, in addition to the other identified grounds for denial or discipline in BPC sections 141, 5553 and Article 4 of the Act, to provide accurate notice to those affected by these provisions of all of the grounds upon which the Board may deny or discipline a license. Further, in the Board's experience, these same criteria in Section 110.1 will help inform the Board regarding rehabilitative efforts for applicants or licensees who commit these other offenses.

In the Board's experience, Section 110.1's existing criteria would be equally relevant when considering professional misconduct committed by an applicant before another licensing board, or a licensee who commits other violations or acts as specified in BPC sections 141, 5553 or upon any ground in Article 4 of the Act (commencing with BPC section 5550). As a result, these proposed changes are necessary to give proper notice to those affected applicants and licensees of what standards the Board will use in evaluating whether an applicant or licensee is considered to be rehabilitated. Therefore, to conform the *Guidelines* to the above statutory requirements in BPC sections 480 and 482 the Board adds the following to the Rehabilitation Criteria section: in line 2, the phrase, "or disciplined for professional misconduct, or the denial is based on one or

more of the grounds specified in Business and Professions Code section 5553, or a suspension or revocation of a licensee on the grounds of a disciplinary action as described in Business and Professions Code section 141, or one or more of the grounds specified in Business and Professions Code Article 4 of Chapter 3 of Division 3 of the Code” to the language requiring the Board’s consideration of rehabilitation criteria under CCR section 110.1. To conform the *Guidelines* to the statutory requirement in BPC section 482 “or disciplined for professional misconduct” is added to line 2 of the Rehabilitation Criteria section language requiring the Board’s consideration of rehabilitation criteria under CCR section 110.1.

Add Section II, General Considerations, Subsection F. Mitigation and Rehabilitation Evidence

Purpose: The purpose of this proposal is to add to the *Guidelines* to include mitigation evidence and acceptable rehabilitation evidence to be considered when determining penalties in proposed decisions. This proposal would also add examples of the types of evidence which the licensee/applicant (respondent) may submit to the Board to demonstrate their rehabilitative efforts and competency.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from updating the *Guidelines* to assist them in having a better understanding on how the Board seeks to implement the changes in the law made by the passage of AB 2138. It is further anticipated that providing this information will also reduce staff time in answering questions on the topic.

Rationale: Evidence in mitigation is evidence that tends to lessen the degree of culpability (e.g., extenuating circumstances) and therefore may be considered in reducing the possible penalty contemplated by the Board. BPC section 480 permits the Board to request mitigating evidence to be submitted by an applicant for the purpose of demonstrating substantial relation or evidence of rehabilitation under certain circumstances (BPC § 480, subd. (f)(2)). In addition, the courts have recognized that licensees in disciplinary proceedings should be permitted to present evidence of mitigation before consideration of a penalty imposed by an agency. (“The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation.” *Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

The proposed addition of the Mitigation and Rehabilitation Evidence section to the *Guidelines* is intended to identify criteria to assist individuals with examples of types of circumstances or evidence that may be considered by the Board as mitigating (lessening the possible penalty) or the types of evidence that may be submitted to demonstrate rehabilitative efforts and competency. It is also designed to serve as a guide for the Board in assessing mitigation and rehabilitation as it evaluates an individual’s rehabilitation and fitness for the practice of architecture in a manner consistent with public health, safety, and welfare.

The Board often receives inquiries from individuals on the types of documents the Board accepts or receives in assessing mitigating evidence or an individual's rehabilitation. Accordingly, the Board developed a list of examples of the types of documentation it typically receives from applicants or licensees, which the Board has found helpful in making a determination on a person's proposed fitness (in light of the mitigating evidence) or rehabilitation. Including a list of mitigating evidence clarifies for ALJs what factors the Board wants considered when determining possible mitigation of the penalties in proposed decisions.

Examples of the types of mitigating circumstances that may be considered by ALJs are as follows:

- The licensee has cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
- The passage of considerable time since an act of professional misconduct occurred with no evidence of recurrence or evidence of any other professional misconduct.
- Convincing proof of rehabilitation.
- Demonstration of remorse by the licensee.
- Recognition by licensee of their wrongdoing and demonstration of corrective action to prevent recurrence.
- Violation was corrected without monetary losses to consumers and/or restitution was made in full.

Examples of the types of evidence provided in this section that may be submitted to demonstrate rehabilitative efforts and competency are as follows:

- Recent dated written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's work as an architect that include the period of time and capacity in which the person worked with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by Board staff.
- Recent dated letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a therapist or mental health professional's diagnosis of the condition and current state of recovery, and the therapist or mental health professional's basis for determining rehabilitation. Such letters and reports will be subject to verification by Board staff.
- Recent dated letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.). Such letters and reports will be subject to verification by Board staff.
- Recent dated letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions,

and the officer's basis for determining compliance. Such letters and reports will be subject to verification by Board staff.

- Recent dated letters from persons familiar with respondent in either a personal or professional capacity regarding their knowledge of: the respondent's character; the respondent's rehabilitation, if any; the conduct of which the respondent is accused; or any other pertinent facts that would enable the Board to better decide the case. Such letters must be signed under penalty of perjury and will be subject to verification by Board staff.

The inclusion of the foregoing lists, while not exhaustive, is reasonably necessary to provide consistent guidance to individuals asking about mitigation or rehabilitation evidence. These types of examples may be submitted at the discretion of the individual and will be reviewed by the Board and considered on a case-by-case basis. In the Board's experience, these items are reasonably related to the question of whether mitigating or extenuating circumstances exist or should be considered and/or whether the person is rehabilitated (i.e., fit to practice with or without restriction and with safety to the public).

The requirement that the Board obtain "recent" information as specified above, also ensures that the Board is making decisions with current information available to make a more fully informed and reasonable decision. The term "recent" as used in this section is intended to mean generally close in time and not the "most" recent. As is clearly stated in this section, the Board will review all the evidence submitted. The Board retains its discretion to verify or investigate the information provided and require any reports or letters (as specified above) be signed under penalty of perjury by the persons submitting such information to help ensure truthful statements and accurate information are being provided to the Board.

Add Section III, Definition of Penalties

Purpose: The purpose of this proposal is to add definitions of the penalties of revocation, suspension, stayed revocation, stayed suspension, public reproof, and define the term probation into the *Guidelines* so that all of the types of discipline the Board is authorized to impose may be considered when determining penalties in proposed decisions:

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from the Board defining the types of penalties that may be applied in a proposed decision. Stakeholders often do not understand all of the types of discipline the Board has the authority to impose on licensees, how the types of discipline are imposed by the Board, and that the Board's discipline of a licensee will be made available to the public. Therefore, the Board anticipates that the public and licensees will be better informed about the Board's disciplinary authority by including definitions of the types of discipline the Board may impose in the *Guidelines*.

Rationale: Listing the types of discipline in order of severity clarifies the Board's options when faced with need to discipline a licensee. Revocation, the most severe form of

discipline the Board is authorized by law to impose on a licensee, is a permanent loss of license unless the respondent petitions for reinstatement and convinces the Board they are rehabilitated. Suspension, the second most severe form of discipline, invalidates a license for up to a year.

Stayed Revocation revokes the respondent's license, but the revocation is not imposed while the respondent meets the terms and conditions of their probation. Stayed Suspension suspends the respondent's license, but the suspension is not imposed while the respondent meets the terms and conditions of their probation.

Public reproof is the lowest form of discipline the Board is authorized by law to impose and is considered a public record under the CPRA. Clearly establishing that a public reproof of a licensee is a matter of public record is an important clarification as public reproof is often confused with private reproof, which is available to other regulatory bodies in this state. The Board is authorized to publicly reprove a licensee for any act that would constitute grounds to suspend or revoke a license, and public reproof proceedings must be conducted in accordance with the APA. (See BPC § 495.)

Probation is defined as the period during which a respondent's sentence is suspended in return for respondent's agreement to comply with specified conditions relating to improving their conduct and preventing the likelihood of a reoccurrence of the violation. Adding the definitions is necessary to ensure that the users of the *Guidelines* are fully informed regarding all of the possible disciplinary options available to the Board and to ensure ALJs and affected stakeholders can make a more informed decision regarding options for the imposition of discipline in a given case.

Amend Section IV, Disciplinary Guidelines

Purpose: The purpose of this proposal is to amend the *Guidelines* to remove the phrases "listed after each condition of probation" and "listed on pages _____" and add the phrase "specific standard or optional [conditions] of probation," and update the listed statutes and regulations under which the Board can impose discipline on a licensee, and the maximum and minimum penalties associated with the violation of each statute or regulation.

Anticipated Benefits: The Board anticipates that the public and licensees will benefit from these clarifying revisions to the *Guidelines*.

Rationale: The proposal is necessary for ease of reference and easier comprehension accomplished by eliminating unnecessary language from the *Guidelines* and adding the phrase "specific standard or optional [conditions] of probation" to clarify that the numbers provided in brackets in this section refer to the standard or optional condition numbers, which are listed in numerical order beginning on page [*] of the *Guidelines*.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for administrative hearing

and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code

Purpose: The purpose of this proposal is to amend the *Guidelines* to add subsection “A.” and remove the term “Sections” In the title of the section.

Anticipated Benefits: The Board anticipates that the public and licensees will benefit from the clarifying revisions to the *Guidelines*.

Rationale: The proposal is necessary to add subsection “A.” for organizational purposes and remove the term “Sections” because it is unnecessary language.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5536 (Practice Without License or Holding Self Out as Architect)

Purpose: The purpose of this proposal is to assign the heading “Section 5536 Practice Without License or Holding Self Out as Architect” and establish maximum and minimum penalties for practicing without a license or holding one’s self out as an architect as described in BPC section 5536.

Anticipated Benefits: The Board anticipates that it will benefit from assigning the heading, which will provide greater comprehension and ease of use for Board staff. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from having notice of the Board’s currently recommended proposed penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is assigning a heading. The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

BPC section 5536 prohibits practicing without a license or holding one’s self out as an architect when not licensed. In accordance with other violations of the Act, the maximum penalty is license revocation or denial of license application for these violations. Further, the proposal would specify minimum penalties of issuance of the initial license (if applicable), stayed revocation, and five years’ probation on all standard conditions with optional conditions of an Ethics course and restitution to a harmed consumer, if applicable. These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016 meeting.

Addition of optional term ethics course: The Board proposes to include the term ““Ethics course [#15]” to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements by impersonating an architect or using an assumed name may be seen as an ethical lapse (showing a tendency towards deception) in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations. Further, to help ensure that ethical issues are specifically addressed in the rehabilitation efforts of the licensee, the Board proposes to include the ethics course optional condition.

Addition of optional term for restitution: The Board proposes to add “Restitution [#17] (if applicable)” to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Restitution is a financial remedy that restores consumers to a financial position that existed prior to the violation occurring. In many cases involving violation of this BPC section, restitution is an important remedy, serving the two-fold purposes of remediation by restoring consumers’ finances and deterring licensees from engaging in these types of violations in the future. Since the harm that occurs to a consumer from this type of violation can be financial, the Board believes that restitution is an important option to be considered for use in probationary orders for violating this statute.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5536.1 (Signature and Stamp on Plans and Documents; Unauthorized Practice)

Purpose: The purpose of this proposal is to assign the heading “Section 5536.1 Signature and Stamp on Plans and Documents; Unauthorized Practice” and establish maximum and minimum penalties for failure to sign and stamp plans and documents or unlicensed preparation of plans, specifications, or instruments of service as described in BPC section 5536.1.

Anticipated Benefits: The Board anticipates that it will benefit from assigning the heading, which will provide greater comprehension and ease of use for Board staff. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties and providing notice of the Board’s currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is assigning a heading.

This proposal is necessary to add the minimum and maximum recommended terms for violations of BPC section 5536.1, which requires that each licensed architect must sign, date, and seal or stamp all plans, specifications, and other instruments of service

therefor that are prepared for others as evidence of the person's responsibility for those documents. In accordance with other violations of the Act, the maximum penalty is license revocation or denial of license application for these violations. Further, the proposal specifies minimum penalties of issuance of the initial license (if applicable), stayed revocation, and five years' probation on all standard conditions with optional conditions of an Ethics course and restitution to a harmed consumer, if applicable. These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Addition of optional term Ethics course: The Board proposes to include the terms "“Ethics course [#15]” based on the same reasons discussed regarding the violation of BPC section 5536, above.

Addition of optional term for Restitution: The Board proposes to add “Restitution [#17] (if applicable)” based on the same reasons discussed regarding the violation of BPC section 5536, above.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5536.22 (Written Contract)

Purpose: The purpose of this proposal is to amend the *Guidelines* to add the new heading “Section 5536.22 Written Contract” and establish maximum and minimum penalties for failing to comply with the written contract requirements described in BPC section 5536.22.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from assigning the heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from knowing and understanding the Board's recommended maximum (revocation) and minimum penalties (stayed revocations, 3 years; probation) for written contract violations.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is assigning a heading. BPC section 5536.22 provides that practicing in violation of the Act constitutes grounds for disciplinary action.

BPC section 5536.22 requires architects to use a written contract when contracting to provide professional services to a client under the Act and specifies the minimum content requirements of the contract. As BPC section 5536.22 is not currently covered in the *Guidelines*, adding this section and title is necessary to notify stakeholders regarding the Board's authority to discipline for violations of this section.

This proposal is necessary to add maximum and minimum penalties for violations of

BPC section 5536.22, which requires architects to provide every client with a detailed written contract, as specified. In accordance with other violations of the Act, the maximum penalty is license revocation for failing to provide a client with the required written contract and specified terms. The Board regards the written contract as an essential element of the relationship with the client and as the contract outlines the architect's duties to the client. Many violations stem from this failure to specify these duties and can result in serious financial harm to the client, in which case, revocation may be warranted.

In accordance with other violations of the Act, the maximum penalty is license revocation for failing to provide a client with the required written contract and specified terms. Further, the proposal also would specify minimum penalties of stayed revocation and three years' probation on standard conditions and the optional condition of restitution to the client, if applicable. These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting. Further, three years is an appropriate timeframe to monitor a licensee on probation to ensure the violations do not continue and the individual completes the necessary probation terms. If the licensee fails to comply with the prescribed probationary terms during the three years, the Board will have a sufficient amount of time to take further action in most cases.

Addition of optional term for Restitution: The Board proposes to add "restitution [#17] (if applicable)" based on the same reasons discussed regarding the violation of BPC section 5536, above.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5536.4 (Instruments of Service – Consent)

Purpose: The purpose of this proposal is to add the heading "Section 5536.4 (Instruments of Service – Consent)" and establish maximum and minimum penalties for the unauthorized use of an architect's instruments of service as described in BPC section 5536.4 and provide readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from adding a heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from including the proposed penalties and providing notice of the Board's currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the heading "Section 5536.4 (Instruments of Service – Consent)."

This proposal is necessary to clarify and provide notice of the minimum recommended terms for violations of BPC section 5536.4, which prohibits a person from using an architect's instruments of service without the consent of the architect in a written contract, agreement, or license specifically authorizing that use. In accordance with other violations of the Act, the maximum penalty is license revocation for these violations. Further, the proposal would specify minimum penalties of stayed revocation, and three years' probation on all standard conditions with optional condition of restitution to a harmed consumer, if applicable.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Addition of optional term for Restitution: The Board proposes to add "Restitution [#17] (if applicable)" based on the same reasons discussed regarding the violation of BPC section 5536, above.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5536.5 (State of Emergency Following Natural Disaster – Penalty for Practice Without License or Holding Self Out as Architect)

Purpose: The purpose of this proposal is to add the heading "Section 5536.5 (State of Emergency Following Natural Disaster – Penalty for Practice Without License or Holding Self Out as Architect)" and establish maximum and minimum penalties for the unlicensed offer or performance of architectural services for the repair of damage to a structure caused by a natural disaster as described in BPC section 5536.5.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from adding the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from including the proposed penalties and providing notice of the Board's currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the heading "Section 5536.5 (State of Emergency Following Natural Disaster – Penalty for Practice Without License or Holding Self Out as Architect)"

This proposal is necessary to clarify and provide notice of the minimum terms for violations of BPC section 5536.5, which authorizes the Board to take disciplinary action against any unlicensed person who violates subdivision (a) of BPC section 5536 in connection with the offer or performance of architectural services for the repair of damage to a residential or nonresidential structure caused by a natural disaster. In accordance with other violations of the Act, the maximum penalty is license revocation

or denial of license application for these violations. Further, the proposal would specify minimum penalties of issue initial license (if applicable), stayed revocation, and five years' probation on all standard conditions with optional conditions of ethics course and restitution to a harmed consumer, if applicable. These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Addition of optional term Ethics course: The Board proposes to include the terms "Ethics course [#15]" based on the same reasons discussed regarding the violation of BPC section 5536, above.

Addition of optional term for Restitution: The Board proposes to add "Restitution [#17] (if applicable)" based on the same reasons discussed regarding the violation of BPC section 5536, above.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5558 (Mailing Address and Name and Address of Entity Through Which License Holder Provides Architectural Services; Filing Requirements)

Purpose: The purpose of this proposal is to add the heading "Section 5558 (Mailing Address and Name and Address of Entity Through Which License Holder Provides Architectural Services; Filing Requirements)" and establish maximum and minimum penalties for a licensee's failure to file with Board the licensee's current mailing address and name and address of the entity through which the licensee provides architectural services as described in BPC section 5558.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the heading "Section 5558 (Mailing Address and Name and Address of Entity Through Which License Holder Provides Architectural Services; Filing Requirements)." The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 5558, which authorizes the Board to take disciplinary action against a licensee who fails to file with the Board their current mailing address and the proper and current name and address of the entity through which they provide architectural

services. In accordance with other violations of the Act, the maximum penalty is license revocation for these violations. Further, the proposal would specify minimum penalties of stayed revocation, and three years' probation on all standard conditions.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5577 (Conviction of a Crime Substantially Related to the Qualifications, Functions, and Duties of an Architect)

Purpose: The purpose of the proposal is to update the maximum and minimum penalties for criminal convictions substantially related to the qualifications, functions, or duties of an architect.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from being provided notice of and specifying the Board's recommended maximum and minimum penalties for these violations.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

The proposal is necessary to make the *Guidelines* easier to read, incorporate current statutory penalties, and make minor, technical revisions. Add text "[#12]" for consistency with condition numbering; move and rephrase the statement "on all standard conditions [#1-11] and" from the listed conditions to a minimum penalty for clarity reasons due to a respondent, while on probation, must comply with all standard conditions; add term "optional" to clarify that the listed conditions are optional and are not required terms of probation; strike former optional conditions "a. all standard conditions [#1-#7] and "b. Cost reimbursement [#12]"; add the optional condition "b. Fine – Maximum \$5,000 [#20]" per BPC section 5565 subdivision (d); adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations

at its December 15, 2016, meeting. In addition, the \$5,000 fine term was added by the Board at its March 1, 2018, meeting to incorporate the fine that may be imposed under BPC section 5565, subdivision (d), and to advise users of the *Guidelines* of the fine that may be assessed.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5578 (Acts and Violation of the Architects Practice Act)

Purpose: The purpose of this proposal is to amend the *Guidelines* to add the maximum and minimum penalties consistent with existing penalties that are similar in severity.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: This proposal is necessary to add maximum and minimum penalties for violations of BPC section 5578, which authorizes the Board to take disciplinary action against a licensee practicing in violation of the Act. In accordance with other violations of the Act, the maximum penalty is license revocation for these violations. Further, the proposal would specify minimum penalties of stayed revocation, and three years' probation on all standard conditions with the optional condition of restitution to a harmed consumer, if applicable.

Addition of optional term for Restitution: The Board proposes to add "Restitution [#17] (if applicable)" based on the same reasons discussed regarding the violation of BPC section 5536, above.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5579 (Fraud or Misrepresentation in Obtaining Architect License)

Purpose: The purpose of this proposal is to revise the heading and amend the *Guidelines* to establish minimum penalties for fraud and misrepresentation violations.

Anticipated Benefits: The Board anticipates that it will benefit from revising the heading for greater comprehension and ease of use. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying minimum penalties for these violations.

Rationale: For greater clarity and ease of use for the users of these *Guidelines*, the Board is proposing to insert "Architect" to the title so that the title would read "Fraud of

Misrepresentation in Obtaining Architect License.”

This proposal is necessary to add minimum penalties for violations of BPC section 5579, which establishes that obtaining an architecture license by fraud or misrepresentation constitutes grounds for disciplinary action. The proposal would clarify the title of the section violation, specify minimum penalties of stayed revocation, 90 days actual suspension, and five years’ probation on standard conditions and the optional condition of restitution.

Addition of optional term for Restitution: The Board proposes to add “Restitution [#17] (if applicable)” based on the same reasons discussed regarding the violation of BPC section 5536, above.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5580 (Impersonation or Use of Assumed or Corporate Name)

Purpose: The purpose of this proposal is to amend the *Guidelines* to make clarifying revisions for improved readability and consistency with the other maximum and minimum terms.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from having notice of the Board’s currently recommended proposed penalties.

Rationale: The proposal is necessary to update the *Guidelines* to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: add text “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” from the listed conditions to a minimum penalty to clarify that a respondent, while on probation, must comply with all standard conditions; add the term “optional” to clarify that the listed conditions are optional and are not required terms of probation; strike former optional condition “a. All standard conditions [#1-#7]”; replace “Continuing education courses” with “Ethics course” to provide appropriate instruction for this type of violation that does not require continuing education concerning the services provided by an architect; strike “c. Cost reimbursement [#12]”; add the phrase “(if applicable)” to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations

established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Addition of optional term for Restitution: The Board proposes to add “Restitution [#17] (if applicable)” based on the same reasons discussed regarding the violation of BPC section 5536, above.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5582 (Aiding and Abetting the Unlicensed Practice of Architecture)

Purpose: The purpose of this proposal is to make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from notice of the Board’s currently recommended proposed penalties.

Rationale: The proposal is necessary to update the *Guidelines* to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: add text “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; strike former optional condition “a. all standard conditions [#1-#7]”; add the optional condition “Ethics course” to provide appropriate instruction for this type of violation that does not require continuing education of the services provided by an architect; strike former optional condition “c. Cost reimbursement [#12]”; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity; and add the phrase “(if applicable)” to clarify that restitution may not always apply.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Replacing the term “Continuing Education Course” with the optional term “Ethics course”: The Board proposes to add “ethics course [#15]” in lieu of continuing education courses to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements by aiding and abetting unlicensed practice may be seen as an ethical lapse (showing a tendency towards deception) in a

given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations. Further, to help ensure that ethical issues are specifically addressed in the rehabilitation efforts of the licensee, the Board proposes to replace the “continuing education courses” requirement (which could be general course work on a variety of topics) with the ethics course option.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5582.1 (Signing Others’ Instrument of Service or Permitting Misuse of Name to Evade Provisions of Architects Practice Act)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and be consistent with the Board’s proposed maximum and minimum penalties for signing others’ architectural instruments of service and make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board anticipates that it will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties and providing notice of the Board’s currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the words “to Evade Provisions of Architects Practice Act” to the heading for this section so that the title now reads “Signing Others’ Instruments of Service or Permitting Misuse of Name to Evade Provisions of Architects Practice Act.”

The proposal is necessary to update the Guidelines to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: revise the title of BPC section 5582.1 (Signing Others’ Instrument of Service or Permitting Misuse of Name to Evade Provisions of Architects Practice Act) by adding the words “to Evade Provisions of Architects Practice Act” to more accurately reflect the nature of the violation; add text “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” from the listed conditions to a minimum penalty to clarify that a respondent, while on probation, must comply with all standard conditions; add the term “optional” to clarify that the listed conditions are optional and are not required terms or probation; strike former optional condition “a. all standard conditions [#1-#7]”; replace the optional condition “continuing education courses” with “Ethics course” to provide appropriate instruction for this type of violation that does not require continuing education of the services provided by an architect; strike former optional condition “c. Cost reimbursement [#12]”; adjust condition numbers and letters due to conditions being added or removed; make minor, non-technical revisions for grammatical clarity; and add the phrase “(if applicable)” to clarify that restitution may not always apply.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations

established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5583 (Fraud or Deceit in the Practice of Architecture)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board anticipates that the Board will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the words “in the Practice of Architecture” to the heading for this section so that the title now reads “Fraud or Deceit in the Practice of Architecture.”

The proposal would: revise the title of BPC section 5583 (Fraud or Deceit in the Practice of Architecture) by adding the words “in the Practice of Architecture” for consistency; add text “[#12]” to more accurately reflect the nature of the violation with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “optional” to clarify that the listed conditions are optional; add the optional condition “Ethics course” to provide appropriate instruction for this type of violation that does not require continuing education of the services provided by an architect options for probation; strike former optional condition “c. Cost reimbursement [#12]”; adjust condition numbers and letters due to conditions being added or removed; make minor, non-technical revisions for grammatical clarity; and add the phrase “(if applicable)” to clarify that restitution may not always apply.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, subsection A. Business and Professions Code, Section 5584 (Negligence in the Practice of Architecture)

Purpose: The purpose of this proposal is to revise the heading and amend the *Guidelines* to make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board anticipates that it will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the words “in the Practice of Architecture” to the heading for this section so that the title now reads “Negligence in the Practice of Architecture.”

The proposal is necessary to update the *Guidelines* to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: revise the title of BPC section 5584 (Negligence in the Practice of Architecture) by adding the words “in the Practice of Architecture” for consistency; add text “[#12]” to more accurately reflect the nature of the violation with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “optional” to clarify that the listed conditions are optional; remove the optional condition “b. California Supplemental Examination [#9]” because it is not an appropriate condition for the violation; strike former optional condition “c. Cost reimbursement [#12]”; adjust condition numbers and letters due to conditions being added or removed; make minor, non-technical revisions for grammatical clarity; and add the phrase “(if applicable)” to clarify that restitution may not always apply.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5584 (Willful Misconduct in the Practice of Architecture)

Purpose: The purpose of this proposal is to revise the heading and make clarifying revisions for the improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the words “in the Practice of Architecture” to the heading for this section so that the title now reads “Willful Misconduct in the Practice of Architecture.”

The proposal is necessary to update the *Guidelines* to current probationary terms,

streamline the language, and make minor, technical revisions. The proposal would: revise the title of BPC section 5584 (Willful Misconduct in the Practice of Architecture) by adding the words “in the Practice of Architecture” to more accurately reflect the nature of the violation; add text “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” from the listed conditions to a minimum penalty to clarify that a respondent, while on probation, must comply with all standard conditions; add the term “optional” to clarify that the listed conditions are optional and are required terms of probation; add the optional condition “Ethics course” to provide appropriate instruction for this type of violation that does not require continuing education of the services provided by an architect; strike former optional condition “c. Cost reimbursement [#12]”; adjust condition numbers and letters due to conditions being added or removed; make minor, non-technical revisions for grammatical clarity; and add the phrase “(if applicable)” to clarify that restitution may not always apply.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5585 (Incompetency or Recklessness in the Practice of Architecture)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and be consistent with the Board’s proposed maximum and minimum penalties for incompetency or recklessness and make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board anticipates that it will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties and providing consistency.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the word “In the Practice of Architecture” to the heading for this section so that the title now reads “Incompetency or Recklessness in the Practice of Architecture.”

The proposal is necessary to update the *Guidelines* to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: revise the title of BPC section 5585 (Incompetency or Recklessness in the Practice of Architecture) by adding the words “in the Practice of Architecture” to more accurately reflect the nature of the violation; add text “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” from the listed conditions to a minimum penalty to clarify that a respondent, while on

probation, must comply with all standard conditions; for consistency with revisions to the other minimum terms; add the term “optional” to clarify that the listed conditions are optional; strike former optional condition “c. Cost reimbursement [#12]”; adjust condition numbers and letters due to conditions being added or removed; make minor, non-technical revisions for grammatical clarity; and add the phrase “(if applicable)” to clarify that restitution may not always apply.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5586 (Disciplinary Action by a Public Agency for an Act Substantially Related to the Qualifications, Functions, or Duties as an Architect)

Purpose: The purpose of this proposal is to establish maximum and minimum penalties for disciplinary action by a public agency for an act substantially related to the qualifications, functions, or duties as an architect as described in BPC section 5586.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: This proposal is necessary to add maximum and minimum penalties for violations of BPC section 5586, which authorizes the Board to take disciplinary action against any licensee who has had disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties as an architect. In accordance with other violations of the Act, the maximum penalty is license revocation for these violations. Further, the proposal would specify minimum penalties of stayed revocation, and 90 days’ actual suspension, five years’ probation on all standard conditions with optional conditions of continuing education courses and restitution to a harmed consumer, if applicable.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5588 (Failure to Report Settlement or Arbitration Award)

Purpose: The purpose of this proposal is to amend the *Guidelines* to assign a heading and to establish maximum and minimum penalties, for failing to report a settlement judgement, or arbitration award entered against the architect, as specified under BPC section 5588.

Anticipated Benefits: The Board anticipates that it will benefit from assigning a heading to assist the reader in searching for specific code sections and the recommended penalty for this type of violation. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale:

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 5588, which requires a licensee to report to the Board, as specified, if the licensee has knowledge of any civil action judgment, settlement, arbitration award, or administrative action resulting in a \$5,000 or more judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture. As such, the proposal would specify a maximum penalty of revocation and minimum penalties of stayed revocation and three years' probation on standard conditions. The proposal also would provide a civil penalty to be used in lieu of revocation and assess a civil penalty of between \$100 and \$1,000, or, if the architect knowingly and intentionally failed to report, assess a civil penalty up to \$20,000.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, Meeting. In addition, the civil penalty term was added by the Board at its March 1, 2018, meeting to incorporate the civil penalty imposed under BPC section 5588, subdivision (e), and to advise users of the *Guidelines* of the civil penalty that may be assessed.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5600.05 (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements)

Purpose: The purpose of this proposal is to establish maximum and minimum penalties for failing to complete and certify to the Board such completion of coursework regarding disability access requirements as described in BPC section 5600.05

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: This proposal is necessary to add maximum and minimum penalties for violations of BPC section 5600.05, which authorizes the Board to take disciplinary action against a licensee who provides false or misleading information as it relates specifically to the requirements of coursework regarding disability access. In accordance with other violations of the Act, the maximum penalty is license revocation for these violations. Further, the proposal would specify minimum penalties of stayed

revocation, and three years' probation on all standard conditions with optional condition of continuing education courses [#16].

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016 meeting.

Amend Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code

Purpose: The purpose of this proposal is to amend the *Guidelines* to add subsection "B."

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties and providing consistency.

Rationale: The proposal is necessary to add subsection "B." for organizational purposes.

Amend Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 125.6 (Licensee's Discrimination Against Individuals Based upon Personal Characteristics)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and make amendments to provide consistency between the Board's proposed maximum and minimum penalties for discrimination by a licensee.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties and providing consistency.

Rationale: The proposal is necessary to update the *Guidelines* to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: add the text "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" from the listed conditions to a minimum penalty for to clarify that a respondent, while on probation, must comply with all standard conditions; and strike former optional condition "b. Cost reimbursement [#12]"; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 140 (Failure to Record and Preserve Cash Transactions Involving Employee Wages or Failure to Make Those Records Available to Board Representative)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for failure to record and preserve cash transactions involving wages.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying and being provided notice of the maximum and minimum penalties for these violations.

Rationale: This proposal is necessary to add a maximum or revocation and a minimum penalty of stayed revocation and 3 years probation on all standards conditions [#1-#11] for violations of BPC section 140, which authorizes the Board to take disciplinary action against any licensee “upon the ground that the licensee has failed to record and preserve for not less than three years, any and all cash transactions involved in the payment of employee wages by a licensee. Failure to make these records available to an authorized representative of the board may be made grounds for disciplinary action.” Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for a violation of BPC section 140. This proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for this type of violation.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 141 (Effect of Disciplinary Action Taken Against Licensee by Another State, an Agency of the Federal Government, or Another Country)

Purpose: The purpose of the proposal is to assign a heading and establish maximum and minimum penalties for disciplinary action taken by another state, federal agency, or another country for any act substantially related to the practice of architecture pursuant to BPC section 141.

Anticipated Benefits: The Board anticipate that it will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from the proposal by incorporating the appropriate penalty for disciplinary actions taken by other jurisdictions.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 141. This

proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 141, which authorizes the Board to discipline a California licensed architect for disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license. As such, the proposal would specify a maximum penalty of revocation and minimum penalties of stayed revocation, 90 day's actual suspension, five years' probation on standard conditions and if warranted, optional conditions of continuing education course and restitution, if applicable.

In addition to the standard terms proposed in every case, the Board also proposes two new optional terms: continuing education courses and restitution. These terms are proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area or where the misconduct caused financial harm to the consumer. In the Board's experience, such terms would help aid in the rehabilitation of the licensee or remediate the harm caused by the violation. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 143.5 (Settlement Agreements Prohibited Provisions; Regulations; Exemptions)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for prohibited settlement agreement terms.

Anticipated Benefits: The Board anticipates that it will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 143.5. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 143.5, which authorizes the Board to discipline an architect for including or permitting to be included a provision in a civil settlement agreement that prohibits the other party from contacting, filing a complaint with, or cooperating with the Department

of Consumer Affairs, the Board, or the Committee. As such, the proposal would specify a maximum penalty of revocation and minimum penalties of stayed revocation, three years' probation on standard conditions and optional condition of an Ethics course.

In the Board's experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation for those cases where the facts of the case demonstrate that a more severe penalty is warranted. Since the use of gag clauses in consumer settlement agreements may evince unethical conduct, such as pressuring aggrieved consumers and injured parties into agreeing to such clauses with the intent to prevent regulatory review and oversight by the Board, the Board proposes the optional term of taking an ethics course as part of probation. An educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 480(a) (Grounds for Denial of the License Application)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and clarify the penalties applicable to criminal convictions substantially related to the qualifications, functions, or duties of the practice of architecture, establish minimum penalties, and make other technical revisions.

Anticipated Benefits: The Board anticipates that it will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties, removing unnecessary information, and providing notice of the Board's currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the words "Grounds for" and "of the License Application" and striking the word "Licenses" to the heading for this section so that the title now reads "Grounds for Denial of the License Application."

The proposal is necessary to strike from the *Guidelines* the descriptive paragraph listing the previous four grounds for application denial under BPC section 480, subdivision (a). Operative on July 1, 2020, BPC section 480, subdivision (a), authorizes the Board to deny a license application on the basis of a substantially related criminal conviction or professional misconduct that results in formal discipline by a licensing board in or

outside of California. (BPC §480, subd. (a), as added by AB 2138, §4.) AB 2138 repealed Board authority to deny a license on the basis of acts involving dishonesty, fraud, or deceit with the intent to substantially benefit themselves or another or substantially injure another. (BPC §480, subd. (a), as repealed by AB 2138, §3.)

Notably, the descriptive paragraph provided in the *Guidelines* for BPC section 480, subdivision (a), is the only paragraph describing the statute for which it provides minimum and maximum penalties. To conform to the new provisions of BPC section 480, subdivision (a), implemented by AB 2138 and to conform this section to the other BPC section violations listed in the *Guidelines*, the proposal must strike the unnecessary descriptive paragraph of the grounds for denying an application due to the repealed provisions of BPC section 480.

In addition, this proposal is necessary to revise the maximum penalty and add minimum penalties for violations of BPC section 480, subdivision (a). The proposal clarifies that the maximum penalty would be denial of the license application and specifies minimum penalties of issuance of initial application, stayed revocation, and five years' probation on standard conditions and optional conditions of an Ethics course, continuing education courses, and restitution, if applicable. The proposal would also make minor and technical revisions to the language.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

The Board considers these types of violations serious, as these violations show a history of violating the law, failure to exercise good judgment and, in the case of false statements on the licensing application, a deliberate attempt to undermine the very intent and purpose of licensure and regulation of the profession. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board re-evaluated this minimum penalty and determined that changes to the minimum recommended penalty for this violation are warranted, which would include removal of the recommended minimum penalty of denial and replacing it with stayed revocation, and five years' probation on standard conditions, and optional conditions of an ethics course, continuing education courses, and restitution, if warranted. This minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to applicants and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than denial of the application.

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 490 (Grounds for Suspension, Revocation; Conviction of Crime)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for criminal convictions substantially related to the qualifications, functions, or duties of an architect.

Anticipated Benefits: The Board anticipates that it will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 490. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 490, which authorizes the Board to suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of an architect. As such, the proposal would specify a maximum penalty of revocation and minimum penalties of stayed revocation, 90 days' actual suspension, and five years' probation on standard conditions and optional condition of criminal probation reports.

The Board considers these types of violations serious, as these violations show a history of criminally violating the law and a failure to exercise good judgment. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the recommended minimum penalty of 90 days' actual suspension and five years' probation on standard conditions, and optional condition of "Criminal Probation Reports." Since the violation involves a criminal conviction, this optional term can be a vital aspect of monitoring a probationer, especially for those cases where the licensee has not completed their criminal probation. Overall, this minimum penalty should be sufficient in many cases to convey the seriousness of the offense to the regulated community and to monitor respondent for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 496 (Subversion of Licensing

Examinations or Administration of Examinations)

Purpose: The purpose of this proposal is to amend the *Guidelines* to establish minimum penalties for subversion of licensing examinations or administration of examinations and make minor clarifying revisions.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the *Guidelines* and specifying minimum penalties for these violations.

Rationale: This proposal is necessary to add minimum penalties for violations of BPC section 496, which establishes that the Board may deny, suspend, revoke, or otherwise restrict a license on the ground that the applicant or licensee subverted or attempted to subvert a licensing examination or the administration of an examination. As such, the proposal would specify minimum penalties of initial license issuance, stayed revocation, and five years' probation on standard conditions and optional conditions of an Ethics course, continuing education courses and restitution, if applicable. These terms are based on the proposed changes to the Board's *Guidelines*, and the minimum penalties for these violations that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting.

The Board considers this type of violation serious, as this violation shows a deliberate attempt to undermine the very intent and purpose of licensure and regulation of the profession. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board re-evaluated this minimum penalty and determined that changes to the minimum recommended penalty for this violation are warranted, which would include removal of the recommended minimum penalty of revocation or denial of the application, and replacing it with stayed revocation, and five years' probation on standard conditions, and optional conditions of an ethics course, continuing education courses, and restitution, if warranted. This minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to licensees and applicants, and to monitor respondents for possible recurrence while providing respondents with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation or denial of the licensing application.

The Board proposes to add an "ethics course", "continuing education courses," and "restitution" to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., cheating, destroying or attempting to destroy the integrity of the examination process by stealing examination questions and answers), an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. The optional use of continuing education course or restitution is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area, or where the misconduct caused financial harm to the agency or consumers who participated in the examination process. In the Board's experience,

such terms would help aid in the rehabilitation of the applicant or remediate the harm caused by the violation. A maximum penalty of revocation or denial of license application is retained for those cases where the facts of the case demonstrate that an unrestricted license or a license on probation is not appropriate.

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 499 (Licensee's False Statements in Support of Application Not Their Own)

Purpose: The purpose of this proposal is to amend the *Guidelines* to assign a heading and establish maximum and minimum penalties for a licensee, in support of another person's application for license, knowingly making a false statement of a material fact or knowingly omitting to state a material fact to the Board regarding the application.

Anticipated Benefits: The Board anticipates that it will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 499. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 499, which authorizes the Board to revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the Board regarding the application. The proposal would also implement the collaborative effort to provide consistency between the Board's proposed changes to its *Guidelines* and the LATC's *Guidelines* by specifying a maximum penalty of revocation and minimum penalties of stayed revocation, 90 days' actual suspension, and five years' probation on standard conditions and the optional condition of an ethics course. These terms are based on proposed changes to the Board's *Guidelines*, maximum and minimum penalties for criminal convictions under BPC section 490 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting.

In the Board's experience, this minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while ensuring that there is a time period where the licensee is suspended from practice. Such a proposed penalty protects the public for a significant period of time and allows for licensee self-reflection and compliance preparation. Since the provision of false statements in support of another's application evinces unethical conduct because it shows a history or tendency to mislead or lie, the Board proposes the optional term of taking an ethics course as part of probation. An educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. A maximum penalty of revocation is

proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Article 9. Professional Conduct

Purpose: The purpose of this proposal is to amend the *Guidelines* to clarify the article location of the architect regulations covered in the *Guidelines*.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from making clarifying revisions to the *Guidelines*.

Rationale: The proposal is necessary to add subsection “C.” for organizational purposes. Relocate the term “Title 16” and add the phrase “Division 2” to correctly identify the article location of the architect regulations in the CCR.

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Article 9. Professional Conduct, Section 160, (a.) Competence

Purpose: The purpose of this proposal is to amend the *Guidelines* to provide consistency between the Board’s maximum and minimum penalties for architect incompetency or recklessness and for competence violations.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties and providing consistency between the Board’s *Guidelines* and LATC’s *Guidelines*.

Rationale: The proposal is necessary to update the *Guidelines* to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: add the text “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” from the listed conditions to a minimum penalty to clarify that a respondent, while on probation, must comply with all standard conditions; add the term “optional” to clarify that the listed conditions are optional and not required terms of probation; strike former optional condition “d. Cost reimbursement [#12]”; add the phrase “(if applicable)” to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

These terms were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016 meeting.

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Article 9. Professional Conduct, Section 160, (b.) Willful Misconduct

Purpose: The purpose of this proposal is to amend the *Guidelines* to establish maximum and minimum penalty guidelines for violations of this subsection.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: The proposal is necessary to update the *Guidelines* to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: add the text “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” from the listed conditions to a minimum penalty to clarify that a respondent, while on probation, must comply with all standard conditions; add the term “optional” to clarify that the listed conditions are optional and not required terms of probation; replace the optional condition “California Supplemental Examination” with “Ethics course” to provide a more appropriate option for probation; strike former optional condition “c. Cost reimbursement [#12]”; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity; and add the phrase “(if applicable)” to clarify that restitution may not always apply.

The Board considers this type of violation serious, as this violation shows a willful disregard for the standards of the profession and the Board’s authority. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the recommended minimum penalty of revocation stayed, 90 days’ suspension, and five years’ probation on standard conditions, and optional conditions of an ethics course, continuing education courses, and restitution, if warranted. This minimum penalty should be sufficient in the Board’s experience to convey the seriousness of the offense to licensees, and to monitor respondents for possible recurrence while providing respondents with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation.

The Board also proposes to add an “ethics course”, “continuing education courses,” and “restitution” to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., willful disregard of professional standards or the Board’s authority in requesting or investigating a case), an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. The optional use of continuing education course or restitution is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area, or where the misconduct caused financial harm to consumers. In the Board’s experience, such terms would help aid in the rehabilitation of the licensee or remediate the harm caused by the violation. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that an unrestricted license or a license on probation is not appropriate.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Article 9. Professional Conduct, Section 160, (c.) Conflict of Interest

Purpose: The purpose of the proposal is to amend the *Guidelines* to make clarifying revisions for improved readability and consistency with other maximum and minimum terms and to be consistent with proposed maximum and minimum penalties for conflict of interest violations and make minor, non-technical revisions.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from receiving notice of the Board's recommended penalties for conflict of interest violations.

Rationale: The Board proposes to add "Ethics course [#15]" in lieu of continuing education courses to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Having a conflict of interest is considered an ethical lapse (e.g., see section 2670(e)(3): "soliciting or accepting payments, rebates, refunds or commissions whether in the form of money or otherwise from material or equipment suppliers in return for specifying their products to a client of the architect"). Consequently, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. Further, to help ensure that ethical issues are specifically addressed in the rehabilitation efforts of the licensee, the Board proposes to replace the "continuing education courses" requirement (which could be general course work on a variety of topics) with the ethics course option.

This proposal would also add the phrase "(if applicable)" to clarify that restitution may not always apply; strike former optional condition "c. Cost reimbursement [#12]"; and adjust condition numbers and letters due to conditions being added or removed. These terms are based on proposed changes to the Board's *Disciplinary Guidelines*, minimum penalties for all conflicts of interest of architects listed under CCR section 160 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and the Board reviewed and approved this language at its September 10, 2021 meeting.

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Article 9. Professional Conduct, Section 160, (d.) Full Disclosure

Purpose: The purpose of this proposal is to amend the *Guidelines* to provide

consistency between the Board's maximum and minimum penalties for client disclosure violations and make minor, non-technical revisions.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the proposed penalties and providing consistency and providing consistency between the proposed changes to the Board's *Disciplinary Guidelines* and LATC's *Guidelines*.

Rationale: The proposal is necessary to update the *Guidelines* to current probationary terms, streamline the language, and make minor, technical revisions. The proposal would: add the text "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with revisions to the other minimum terms; add the term "optional" to clarify that the listed conditions are optional and not required terms of probation; replace the optional condition "Continuing education courses" with "Ethics course" to provide appropriate instruction for this type of violation that does not require continuing education of the services provided by an architect; strike former optional condition "b. Cost reimbursement [#12]"; adjust condition numbers and letters due to conditions being added or removed; make minor, non-technical revisions for grammatical clarity; and add the phrase "(if applicable)" to clarify that restitution may not always apply.

Addition of optional term ethics course: The Board proposes to add "Ethics course [#15]" in lieu of continuing education courses to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failing to accurately represent to a prospective or existing client or employer his or her qualifications and the scope of his or her responsibility in connection with projects or services is considered an ethical lapse (showing a tendency towards deception), an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations. Further, to help ensure that ethical issues are specifically addressed in the rehabilitation efforts of the licensee, the Board proposes to replace the "continuing education courses" requirement (which could be general course work on a variety of topics) with the ethics course option.

This proposal would also add the phrase "(if applicable)" to clarify that restitution may not always apply; and adjust condition numbers and letters due to conditions being added or removed. These terms are based on proposed changes to the Board's *Disciplinary Guidelines*, minimum penalties for full disclosure violations under CCR section 160 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting and the Board reviewed and approved this language at its September 10, 2021 meeting.

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Article 9. Professional Conduct, Section 160, (e.) Copyright Infringement

Purpose: The purpose of this proposal is to amend the *Guidelines* to provide consistency between the Board's maximum and minimum penalties for copyright infringement violations and make minor, non-technical revisions.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from receiving notice of the Board's recommended penalties and providing consistency between the proposed change to the Board's *Guidelines* and proposed changes to LATC's *Guidelines*.

Rationale: The proposal is necessary to update the minimum terms for violations of CCR section 160(f). The proposal would: add the text "[#12]" for consistency with condition numbering; rephrase and move statement "on all standard conditions [#1-11] and" from the listed conditions to a minimum penalty to clarify that a respondent, while on probation, must comply with all standard conditions; add the term "optional" to clarify that the listed conditions are optional and not required terms of probation; add the optional condition "Ethics course" to provide appropriate instruction for this type of violation; strike former optional condition "b. Cost reimbursement [#12]"; adjust condition numbers and letters due to conditions being added or removed; make minor, non-technical revisions for grammatical clarity; and add the phrase "(if applicable)" to clarify that restitution may not always apply.

This proposal would add the phrase "(if applicable)" to clarify that restitution may not always apply; and adjust condition numbers and letters were adjusted due to conditions being added or removed. The Board also proposes to add an "ethics course" to the optional terms for this type of violation. Since copyright infringement may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting.

Add Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Article 9. Professional Conduct, Section 160, (f.) Informed Consent

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for materially altering the scope or objective of a project without first fully informing the client and obtaining the client's consent in writing.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from receiving notice of the Board's recommended penalties for

informed client consent violations.

Rationale: This proposal is necessary to update the minimum terms for violations of CCR section 160(f). On August 11, 2007, CCR section 160 (Rules of Professional Conduct) was amended to include an additional rule [subsection (f)] prohibiting a licensee from materially altering the scope or objective of a project without first fully informing the client and obtaining the client's written consent. In response to this regulatory amendment to the Rules of Professional Conduct, guidelines for violations of subsection (f) (Informed Consent) were added to the *Guidelines*.

This proposal is necessary to add maximum and minimum penalties for violations of CCR section 160, subdivision (f.), which requires that an architect shall not materially alter the scope or objective of a project without first fully informing the client and obtaining the consent of the client in writing. In accordance with other violations of the Act, the maximum penalty is license revocation for these violations. Further, the proposal would specify minimum penalties of stayed revocation, 90 days' actual suspension, five years' probation on all standard conditions with optional conditions of ethics course, continuing education courses and restitution to a harmed consumer, if applicable.

These terms were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and are based on minimum terms for similar violations established by other DCA boards and bureaus in their Disciplinary Guidelines. The Board reviewed and approved the maximum and minimum penalties for these violations at its December 15, 2016, meeting. The proposed penalties for violating this new subsection are consistent with existing penalties for violations of other subsections of the Rules of Professional Conduct.

Amend Section IV, Disciplinary Guidelines, Subsection D. Violation of Probation

Purpose: The purpose of this proposal is to amend the *Guidelines* to add subsection "D."

Anticipated Benefits: The Board anticipates that the public, licensees, and Board staff will benefit from clarifying the *Guidelines*.

Rationale: The proposal is necessary to add subsection "D." for organizational purposes.

Add Section V, Model Orders

Purpose: The purpose of this proposal is to include Model Orders, which includes orders for licensees, petitions for reinstatement, petitions to revoke probation, and orders for applicants, to be used by ALJs when drafting proposed decisions and DAGs and Board staff when drafting stipulated settlements of disciplinary cases. The term "Disciplinary" is struck from the heading for clarity.

Anticipated Benefits: The Board anticipates that providing specific standard order

language applicable to different terms of discipline will make the terms easier for respondents and the public to understand and easier for Board staff to enforce.

Rationale: The proposal is necessary to add model orders to be included in proposed decisions or stipulated settlements, as applicable. Numerous DCA boards have adopted similar model orders to simplify the decision writing process, provide clarity for applicants, respondents, attorneys, and Board staff, and provide transparency for consumers through specific, standard language applicable to each type of disciplinary action. In the Board's experience, providing these templates of model language helps avoid possible mistakes in the Board's orders, and helps guide users of the *Guidelines* to better understand the Board's orders, requirements, and their legal effects. This proposal would provide applicable language for different enforcement actions authorized by law to be taken by the Board: section A is model language for licensees/respondents in a disciplinary matter (per BPC section 5510.1); section B is model language for petitioners seeking reinstatement of their license (Gov. Code § 11522); section C applies to petitions brought by the Board's executive officer to revoke the licensee's probation; and section D is model language to be used for applicants in cases where a Statement of Issues has been filed. Finally, the Board also includes model language to help implement its BPC section 5588 civil penalty authority. Described below are the proposed model disciplinary orders, and a discussion of the anticipated benefits and rationale for each order:

Licensee Model Orders

1. Revocation of License. This model order is necessary to instruct the ALJs and DAGs of the clear and concise language to be included in the disciplinary order for the Board's approval. This model order reflects the correct action that would be taken by the Board if the discipline to be imposed on a license is revocation. The proposal clarifies the respondent's responsibility to relinquish and forward or deliver their license to practice architecture and wall certificate to the Board. The proposal is necessary to provide a clear and reasonable deadline of ten days for relinquishing the license and wall certificate, such action is necessary to ensure that all indicia of licensure is returned, consistent with the Board's revocation action. The proposal is also necessary to advise respondents when they can reapply or petition the Board for reinstatement of their revoked license; the one year time frame is based on Gov. Code section 11522 of the APA, which provides that a person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision. The proposal would also include in the model language the requirement of respondent to pay the costs of investigation and prosecution within 30 days of the effective date of the decision, which in the Board's experience, is a reasonable amount of time for compliance with the order. This provision is necessary to assist the Board in recovering its costs of enforcement as authorized by BPC section 125.3. If the respondent is unable to pay the costs within 30 days, the model order would provide the option of a condition precedent

that the respondent could pay these enforcement costs prior to reinstatement of their license and which must be paid in full prior to reinstatement, which is authorized by BPC section 125.3.

2. Revocation Stayed and License Placed on Probation. Gov. Code section 11519(b) provides the Board with the following authority:

“A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.”

Similar authority to issue a license on probation is found at BPC section 488(a)(2). This model order is necessary to implement the authority in BPC sections 488 and 11519 and to provide ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation, stayed, and probation with terms and conditions.

3. Public Reproval. The *Guidelines* provide minimum terms and conditions that may include issuance of a public reproval. BPC section 495 authorizes the Board to issue a public reproval. This proposal would add model order language when the proposed decision or stipulated settlement would publicly reprove the licensee/respondent. The proposal is necessary to advise the licensee that the reproval constitutes disciplinary action and becomes a part of their license history with the Board consistent with BPC section 27(c)(9) (which requires public disclosure on the Internet of all enforcement actions) and the requirements of the CPRA (Gov. Code §§ 6250 et seq.-- see discussion above in section entitled “**Amend Section I, Introduction**”). This proposal also is necessary to provide to ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed is public reproval.
4. Surrender License in Lieu of Revocation. This model order is needed when the licensee, after receiving notice of a possible revocation by the Board by way of an Accusation, proposes to settle the matter by surrendering their license (see settlement authority at Gov. Code section 11415.60). In addition, BPC section 118(b) authorizes the Board to continue disciplinary actions where a licensee’s surrender is done without the written consent of the Board. This model order is therefore necessary to provide clear instruction and notice to the licensee who agrees to surrender their license in lieu of revocation of the Board’s conditions and requirements for acceptance of a surrender. The proposal advises that the surrender would be effective as of the date of the Decision and requires respondent to relinquish and forward or deliver their license to practice and wall certificate to the Board. The proposal is necessary to provide a deadline of ten

days, which in the Board's experience is a reasonable amount of time for the licensee to comply, for relinquishing the license and wall certificate. The model order is also necessary to make clear to the licensee and the public that the license surrender, and Board acceptance of the surrender, constitutes the imposition of discipline against the licensee and becomes part of the licensee's history with the Board. This is necessary to comply with BPC section 27(c)(9) (which requires public disclosure of all enforcement actions on the Internet) and the requirements of the CPRA (Gov. Code §§ 6250 et seq.-- see discussion above in section entitled "**Amend Section I, Introduction**"). The Board anticipates that ALJs, DAGs, and respondents will benefit by having standard language that could be included in a decision or stipulated settlement, and the public will be better informed and thereby benefit from clear language describing the implication of the discipline imposed.

Model Orders for Petition for Reinstatement

5. Grant Petition with No Restrictions on License. Following formal discipline, the APA authorizes licensees to petition the Board for reinstatement of a revoked or suspended license not less than one year from the effective date of the Board's decision to revoke or suspend the license. (Gov. Code § 11522.) This model order is necessary to make clear to the licensee/respondent and the public one of the possible outcomes of a licensee's petition for reinstatement of a revoked or suspended license. In those cases where the Board agrees to grant the petition outright with no restrictions on the reinstated license, this model order would specify that the Board granted the petition for reinstatement of the license, and it will be fully restored.

6. Grant Petition and Place License on Probation. Following formal discipline, the APA authorizes licensees to petition the Board for reinstatement after a period of not less than one year after the effective date of the Board's decision to revoke or suspend the license. (Gov. Code § 11522.) Pursuant to the authority to stay any order under Gov. Code section 11519 discussed above, the Board may stay any order and place a license on probation with terms and conditions. This template language is necessary to provide ALJs and other interested parties notice of how to draft an order to reflect the Board's intent to reinstate a license on probation pursuant to Gov. Code section 11519's authority. This model order is necessary to make clear to the licensee/respondent and the public the outcome of a licensee's petition for reinstatement of a revoked or suspended license. This model order would specify that the Board granted the petition for reinstatement of the license, the license shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions. This model order would be used for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the license through probation before restoring the license to an unrestricted license status.

7. Grant Petition and Place License on Probation After Completion of Conditions Precedent. Following formal discipline, the APA authorizes licensees to petition the Board for reinstatement after a period of not less than one year after the effective date of the Board's decision to revoke or suspend the license. (Gov. Code § 11522.) This model order is necessary to make clear to the licensee/respondent and the public the outcome of a licensee's petition for reinstatement of a revoked or suspended license. This model order would specify that once the Board granted the petition for reinstatement of the license, the license shall be reinstated after petitioner's completion of specified conditions in which examples are provided so ALJs and DAGs have a clearer understanding what can be required as a condition precedent to be satisfied before a license is reinstated. The order would allow an ALJ or the Board to require that an applicant meet certain conditions prior to issuance of a license to help ensure public protection and the minimum standards for licensure are met. Examples include paying restitution, cost reimbursement, completion of CE, completion of rehabilitation program, take and pass the California Supplemental Examination and/or specified sections of the Architect Registration Examination (ARE). All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in rehabilitating the licensee and ensuring competency in the profession. This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make penalty determinations more effective and related to the violations alleged. The Board has had problems with different ALJ's interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the *Guidelines* when outright denial of a reinstated license is not warranted.

The model order also includes a different provision that upon completion of the conditions precedent, the license shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the licensee through probation before restoring the license to an unrestricted status.

8. Deny Petition. Another possible outcome of a petition matter is outright denial of the petition. This model order would provide that the petition for reinstatement filed by the petitioner [blank space to insert name], is hereby denied. This proposed model language is necessary to specify the clear and concise language to be used by an ALJ drafting a proposed decision when the petition for reinstatement of the license is denied by the Board. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

Model Orders for Petition to Revoke Probation

Revocation of Probation. When a licensee on probation has been found, following a formal proceeding under the APA, to have violated the terms of their probation, the Board may order revocation of the licensee's probation. (See, e.g., *Goldsmith v. California State Bd. of Pharmacy* (1961) 191 Cal.App.2d 866, 873 petition to revoke probation is merely a continuation of the original Accusation case and board had continuing jurisdiction over the matter to revoke probation.) This model order is necessary to provide clear and concise language to be used when the Board has determined that the licensee's probation is revoked. This change is also needed to ensure consistency in the issuance and application of the Board's orders. This proposal also adds to the order notice that petitioner is not eligible to apply for reinstatement or reduction of penalty (sometimes petitioners plead both options to the Board) for one year from the effective date of the decision. This statement is necessary to provide notice to the licensee of the eligibility requirements for filing a new petition and the legal bar to petitioning the Board again before one year has elapsed, pursuant to Gov. Code section 11522.

9. Extension of Probation. When a licensee on probation has been found, following a formal proceeding under the APA, to have violated the terms of their probation, one possible outcome and alternative to revocation is that the Board may order the licensee's probation term to be extended from the time specified in the Board's original disciplinary decision. This model order is necessary to provide clear and concise language to be used when the licensee's probation is extended. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

Model Orders for Applicants

10. Grant Application with No Restrictions on License. BPC section 488 authorizes the Board to consider a variety of actions following a hearing on a statement of issues for a possible denial of license, including granting the license upon completion of all licensing requirements. These model orders would help implement those various options. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the license application with no restrictions. BPC section 5551 authorizes the executive officer to issue a license upon satisfactory examination and payment of the fee fixed by the Act. Further, there may be additional information that may need to be updated or submitted as part of the application (CCR §§ 109 and 111). This model order is therefore necessary to implement these requirements, provide adequate notice to the licensee that additional action may be needed prior to issuance of the license, and to provide clear and consistent language to be used in the Board's decision to grant the license application and issue the license upon

successful completion of all licensing requirements, including payment of all licensure fees.

11. Grant Application and Place License on Probation. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the license application but determine the applicant should be monitored by the Board for public protection (BPC section 488(a)(2)). This model order is necessary to provide clear and concise language to be used in the Board's decision to grant the license application and issue the license upon successful completion of all licensing requirements, including payment of all licensure fees, with immediate revocation, stayed, and probation with specified terms and conditions. This model order also helps ensure that applicants have notice that specified licensing conditions (as discussed above under "Grant Application with No Restrictions on License") have to be met prior to issuance of the probationary license.

12. Grant Application and Place License on Probation After Completion of Conditions Precedent. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the license application after the applicant satisfies certain conditions, such as completing criminal probation (see BPC section 488(a)(2), (4)). This model order is necessary to provide clear and concise language to be used in the Board's decision to grant the license application and issue the license upon successful completion of specified terms and conditions. Examples are provided so ALJs and DAGs have a clearer understanding what can be required as terms and conditions precedent to be satisfied before a license is reinstated. Examples include paying restitution, cost reimbursement, completion of CE, completion of rehabilitation program, take and pass the California Supplemental Examination, and/or specified sections of the ARE. All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in ensuring the applicant is adequately rehabilitated before being issued an unrestricted license. This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make applicant orders and determinations more effective and related to the issues that serve as grounds for denial of the application. The Board has had problems with different ALJ's interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the *Guidelines* when outright denial of a license is not warranted.

The model order also includes a different provision that upon completion of the conditions precedent, including payment of all fees, the license shall be issued, immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be used for circumstances where the applicant has

demonstrated they should be able to practice, but the Board determines the public would be better protected by monitoring the license through probation before issuing a permanent, unrestricted license. The prompt instructing to list the standard and optional conditions of probation is necessary to remind ALJs and DAGs of the need to specify those terms and conditions in the order, and where the Board recommends that they be placed in the order for easier comprehension.

13. Deny Application. This model order would provide for the circumstance when an applicant is being denied licensure (BPC section 488(a)(3)). This model order is necessary to provide clear and concise language to reflect the correct action that would be taken by the Board if the application is denied, and no license is issued. This change is also needed to ensure consistency in the issuance and application of the Board's orders.
14. Civil Penalty. This model order would reiterate the civil penalties that can be used in lieu of revocation that are described in BPC section 5588. This language duplicates the language of BPC section 5588 so that this information concerning the civil penalties that the Board may assess in certain circumstances is included in the *Guidelines* for clarity. This change is also needed to ensure consistency in the issuance and application of the Board's orders and to help ensure that the orders accurately reflect the requirements in BPC section 5588. A note is added to provide notice to the user that this term should only be used in cases involving the violations of BPC section 5588.

Amend Section VI, Conditions of Probation

Purpose: The purpose of this proposal is to amend the *Guidelines* to add section "VI. Conditions of Probation." Additionally, minor, non-technical revisions will be made throughout all conditions of probation along with the adjustment of condition numbers to accommodate for conditions that have been added or removed.

Anticipated Benefits: The Board anticipates that the public and licensees will benefit from clarifying the *Guidelines* to include the Conditions of Probation, which should make it easier to locate relevant information.

Rationale: The proposal is necessary to add section "VI. Conditions of Probation" to create a main heading for all conditions so that standard conditions and optional conditions are under one section. Minor, non-technical revisions will be made throughout all conditions of probation for clarity and condition numbers will be adjusted to accommodate for conditions that have been added or removed for organizational purposes.

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions

Purpose: The purpose of this proposal is to amend the *Guidelines* to add the letter "A." to label the subsection on Standard Conditions and remove the term "of Probation" from the subsection title. Additionally, minor, non-technical revisions will be made throughout all conditions of probation along with the adjustment of condition numbers to

accommodate for conditions that have been added or removed.

Anticipated Benefits: The Board anticipates that the public, licensees, and Board staff will benefit from having this heading clarified in the *Guidelines*, which should make it easier to locate relevant information.

Rationale: The proposal is necessary to add the letter “A.” to label the subsection on Standard Conditions for organizational purposes. Remove the term “of Probation” for clarity. The proposal is necessary to add a subsection heading and title of the “Standard Conditions” to indicate the standard conditions of probation and their descriptions, which will clarify the *Guidelines* and improve readability. Minor, non-technical revisions will be made throughout all conditions of probation for clarity and condition numbers will be adjusted to accommodate for conditions that have been added or removed for organizational purposes.

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 1 (Obey All Laws)

Purpose: The purpose of this proposal is to amend the Guidelines to specify that complying with all laws includes complying with all conditions of probation.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licenses, and Board staff will benefit from clarifying the terms of probation and providing consistency between the proposed changes to the Board’s *Guidelines* and LATC’s *Guidelines*.

Rationale: The Board’s *Guidelines* provide standard language for conditions of probation so that probationers, their attorneys, ALJs, DAGs, the public, the Board, and Board staff are informed as to the requirements of probation. The standard language is used in proposed decisions and stipulated settlements, as adopted by the Board, so that the terms of probation are used consistently.

The proposal is necessary to better protect the public and inform probationers that they are required to comply with all conditions of probation. In the previous edition of the *Guidelines*, probationers were only required to obey all federal, state, and local laws and regulations governing the practice of architecture. All licensees currently have a duty to obey the laws and regulations governing the practice of architecture and keeping the existing language would place probationers on the same level as undisciplined licensees.

Licensees on probation have already violated provisions of the laws and regulations governing the practice of architecture warranting disciplinary action against their licenses; therefore, probationers should be held to a higher standard of conduct to effectively protect the health, safety, and welfare of the public. Probation is a period of time for a probationer to prove to the Board that they are rehabilitated from a previous violation of law, and a violation of any law while on probation, whether related to the practice of architecture or not, may not demonstrate rehabilitation. This proposal would ensure compliance with the terms of probation by requiring probationers to comply with

all conditions of probation. The proposal would remove redundant language. This proposal was developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting, and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 2 (Submit Quarterly Reports)

Purpose: The purpose of this proposal is to amend the *Guidelines* to remove the current "Quarterly Report of Compliance form (01/00) obtained from the Board (Attachment A)" and replace it with a list that includes the contents of the form in a narrative format. This proposal would specify that the quarterly written report needs to provide: (1) the respondent's full legal name, telephone number, and address of record, (2) the name of the firm respondent works for, respondent's title, firm address and telephone number, and (3) a statement of all of respondent's architecture activities during the reporting period. The statement shall include: the client's name, address and telephone number, project title/address, project description, project's start and end date and a description of respondent's involvement. Section No. 4 would require the Respondent to provide a list of activities related to the practice of architecture by activity and date; and, Section No. 5 would require the respondent to provide a certification under penalty of perjury that the information provided in the report is true and correct.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from seeing requirements set forth in an itemized list rather than a prescribed form, which would also allow probationers to submit information in a variety of other formats.

Rationale: The proposal is necessary to implement that collaboration with the goal of providing consistency between the proposed changes to the Board's *Guidelines* and the Committee's *Guidelines* and would remove the incorporation by reference of the current version (01/00) of the Board's Quarterly Probation Report of Compliance form and all information requested in the form is added here. While staff may provide convenience forms to probationers on which to provide this information, providing the information in an itemized list allows for alternative methods of delivering the information to the Board, including on-line submissions. The information required in a quarterly report is the same information that had been requested in the form previously attached at the end of the *Guidelines*. Knowing this basic information allows the Board to investigate or otherwise supervise the respondent's architecture activity while on probation. The Board has also not received any indication that probationers are unclear or confused about the information that needs to be reported.

In the Board's experience, this information is relevant and necessary to adequately investigate and monitor a licensee's compliance with the Board's probationary orders, for the following reasons:

Item No. 1 (full legal name, telephone number and address of record): is needed for identification purposes and to ensure that the Board has the most accurate contact information. Accurate information is important to ensure timely and accurate

communications, investigation of compliance with the terms of probation and service of legal process on the probationer, if necessary.

Item No. 2 (name of firm respondent works for, respondent's title, firm address and telephone number): is needed for identification purposes and to ensure that the Board has the most accurate contact information. Accurate information is important to ensure timely and accurate communications, investigation of compliance with the terms of probation and service of legal process on the probationer, if necessary. In addition, this information would be used to ensure that the Board is aware of and can investigate all locations where a respondent engages in the practice of architecture to help ensure compliance with the "Obey All Laws" term of probation (including compliance with the standards contained in the Act).

Item No. 3 (a statement of all respondent's architecture activities during the reporting period, including specific client and project identifying information): is needed to ensure that the Board is aware of and can investigate all locations where a respondent engages in the practice of architecture and information related to consumers who are being provided architecture services. Further, this information would assist the Board in investigation of compliance with probation and to help ensure compliance with the "Obey All Laws" term of probation (including compliance with the standards contained in the Act).

Item No. 4 (a list of any other of respondent's activities related to the practice of architecture by activity and date): is needed to ensure that the Board is aware of and can investigate activity related to the practice. Further, this information would assist the Board in investigation of compliance with probation and to help ensure compliance with the "Obey All Laws" term of probation (including any "substantially related" act related to the practice per BPC section 141).

Item No. 5 (certification under penalty of perjury that the information provided in the report is true and correct): is needed to for the following reasons. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: "The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith."] .) Accordingly, the certification under penalty of perjury in the form is necessary to ensure that applicants submit truthful and accurate information to the Board.

In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate, or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete, or accurate. ["The oath or declaration must be in such form that criminal sanctions of

perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

These proposed amendments are consistent with and based on proposed amendments to the Board’s *Guidelines*, and the terms of probation, that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting.

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 5 (Maintain Active and Current License)

Purpose: The purpose of this proposal is to add a standard condition of maintaining an active and current license because rehabilitation and compliance with probation is contingent on the respondent being actively licensed for the Board to effectively monitor and evaluate respondent in the practice of architecture. This proposal would also provide that failure to pay all renewal fees prior to respondent’s license expiration constitutes a violation of probation. Finally, this new provision would require a licensee, as a condition of probation, to renew a license that is expired within 30 days of the effective date of the decision.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from being provided notice of these new terms, clarifying the Board’s recommended standard terms of probation and providing consistency in the form and content of the Board’s orders.

Rationale: The Board’s *Guidelines* would add a condition for the licensee to maintain an active and current license to protect consumers by ensuring the Board can continue to monitor the respondent in the practice of architecture and consistently apply and enforce of the laws and regulations under the Board’s jurisdiction. In the Board’s experience, licensees who are placed on probation may attempt to evade compliance with probation, and thus fail to demonstrate rehabilitation over an extended period of time, by simply allowing their licenses to lapse or expire prior to or during the term of probation. The addition of this term will prevent such evasion attempts and allow the Board to effectively monitor a probationer’s compliance and establish rehabilitation by monitoring a probationer in active practice and while they are under practice restrictions.

Further, requiring a licensee to pay all renewal fees and renew a license (if already expired at the time of the Board’s decision) as a condition of probation will help ensure that the Board can actively monitor and review a probationer’s progress and compliance with the Board’s order. Again, BPC section 118(b) authorizes the Board to continue any disciplinary proceeding and take disciplinary action despite the expiration of the license, as follows:

“The suspension, **expiration**, or forfeiture by operation of law **of a license issued by a board in the department**, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its

authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground. (Emphasis added.)”

As a result, this provision is necessary to implement this legal authority, and make clear to the regulated community the Board’s authority to take further action against the license if a licensee fails to comply with this term and condition of probation.

Probation is contingent on the respondent being licensed for the Board to monitor respondent in the practice of architecture. The proposal is necessary to add a condition for the licensee to maintain an active and current license to protect consumers by providing standards for the consistent application and enforcement of the laws and regulations under the Board’s jurisdiction. These terms are consistent with and based on similar terms established by other DCA boards and bureaus in their Disciplinary Guidelines. This proposal was developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting, and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 6 (Notification of Changes to Address, Telephone Number, and/or Employment)

Purpose: The purpose of this proposal is to amend the *Guidelines* to add a standard condition to notify the Board of contact information changes pertaining to a respondent. The proposal is also intended to provide consistency in the form and content of the Board’s orders.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from receiving advanced notice of this new term and clarifying the terms of probation that should be used in every case.

Rationale: This proposal would add a condition to notify the Board in writing of any changes to a respondent’s address of record, telephone number, and/or employment for the Board within 10 calendar days of such change. This will enable the Board to have current and accurate information regarding the respondent, which will help ensure timely communications between the Board and the respondents and prompt follow-up and investigation of compliance with the terms and conditions of probation. In the Board’s experience, ten days is sufficient time for a licensee to communicate this information to the Board and licensees have a variety of methods of providing that information in such a timeframe (e.g. electronically or by mail).

These terms are consistent with and based on similar terms established by other DCA boards and bureaus in their Disciplinary Guidelines. This proposal was developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting, and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions,

Standard Condition 7 (Tolling for Out-of-State Practice, Residence or In-State Non-Practice)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate the term from “5” to “7” to clarify that if a respondent ceases to practice in California, while their probation will be tolled they are not relieved of the obligation to maintain a current and active license and it will be a probation violation for a respondent’s license to remain tolled due to this condition for more than five years. This proposal also adds a sentence that specifies that a respondent’s probation is tolled when they cease practicing in California. Current provisions that permit respondents to be relieved of certain terms of probation during tolling and then allow probation to resume when respondents resume practice in California would be deleted from this standard condition. Instead, the Board proposes to add a requirement to this term that “periods of non-practice do not relieve respondent of the responsibility to comply with the terms and conditions of probation.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from further explanation regarding how tolling works during probation.

Rationale: Current standard condition number 6 requires that during probation, a probationer must inform the Board within ten (now being changed to “10” for ease of comprehension) calendar days if respondent should leave California to reside or practice outside of California or for any reason stops practicing architecture in California. The condition number will be updated from “5” to “7” because additional standard conditions are being added to the *Guidelines*.

Tolling is a difficult legal concept for many respondents to understand, so the Board is adding an additional sentence to help respondents understand that their probation is tolled “when they cease practicing in California.” This will provide better guidance on the factual “trigger” for when probation is tolled. The 30-day non-practice period would be retained; however, the word “thirty” is struck and replaced with “30” for easier comprehension. This information will also assist the Board in accurately tolling probation for periods of non-practice within the State of California.

This proposal would strike the sentences that permit all provisions of probation (excluding quarterly reporting requirements, examination requirements, and education requirements) to be held in abeyance until respondent resumes practice and recommence on the effective date of resumption of practice. These provisions are being eliminated because they allow licensees to evade the most serious aspects of probation, including obeying all laws, by simply moving out of state or not practicing. Instead, the Board proposes to add a requirement that clearly states that periods of non-practice do not relieve respondent of the responsibility to comply with the terms and conditions of probation. This will help eliminate this compliance loophole and ensure consistent treatment of all respondents and active monitoring by the Board for the protection of the public.

This condition restates the requirement that a respondent maintain an active and current architect license with the Board and clarifies that tolling does not relieve the respondent of that obligation. In the Board's experience, some respondents believe that nonpractice or moving to another state somehow eliminates the need to keep an active license to comply with probation. This sentence would help resolve that possible confusion.

Existing regulation does not explain the consequences of allowing tolling to continue with the possible implication that a licensee could remain tolled indefinitely. This proposal would eliminate that uncertainty and confusion by stating that it is a violation of probation to allow probation to remain tolled for a period exceeding a total of five years. This would allow the Board to effectively monitor the respondent by limiting the amount of time probation may be tolled to no longer than a total of five years. In the Board's experience, five years is a sufficient and reasonable amount of time for a licensee to determine whether to retire, resume practice in California, petition for termination of probation or request voluntary surrender of the license (all possible methods for resolving status without the Board resorting to disciplinary action to enforce its order). Further, this change would make it clear that the Board considers it a violation of probation to not resume practice within 5 years and would help the regulated community understand how such nonpractice violations would be managed. As a result, this change is necessary to implement how the Board would respond to a licensee who fails to resume practice in California for a total of five years (i.e., any action to revoke probation for this violation would be noticed in a petition to revoke probation or accusation and served on the probationer in compliance with the Administrative Procedure Act (Gov. Code § 11500 et seq.) and would include a right to a hearing).

This proposal was developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting, and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 8 (Violation of Probation)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this term from "6" to "8," remove one of two uses of the phrase "until the matter is final" for grammatical reasons (it's duplicative) and make other grammatical changes to this section ("which" to "that") to make the sentence structure easier to read and understand.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the terms of probation and providing consistency.

Rationale: This proposal would remove and add words to the sentence that states that if an accusation or petition to revoke probation is filed against a probationer, or the matter is referred to the Attorney General's office, prior to the conclusion of the probationary period, the Board shall have continuing jurisdiction, and the probationary period shall be extended until the matter is final. The use of the phrase "until the matter is final" two times is redundant, and one use will be removed for clarity. The condition number will

be updated from “6” to “8” because additional standard conditions will be added to the *Guidelines*.

These terms are consistent with and based on similar terms established by other DCA boards and bureaus in their Disciplinary Guidelines. This proposal was developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting, and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 9 (License Surrender While on Probation)

Purpose: The purpose of this proposal is to amend the *Guidelines* to include a condition for license surrender while on probation to provide a procedure to follow if the probationer decides to cease practice for either retirement, health reasons, etc. The condition number will be updated from “7” to “9.” The proposal would include requirements for the respondent to submit the request in writing and include name, license number, case number, address of record, and an explanation of the reason(s) why the respondent seeks to surrender their license. The proposal also provides a reservation of rights clause, which would allow the Board the right to continue probation while it considers whether to grant the respondent’s request to surrender their license. The proposal states the criteria the Board will consider in deciding whether or not accepting the surrender of the license would compromise public protection. This language will assist the Board with knowing what to consider when evaluating a request for license surrender and give the licensees notice of what will be considered by the Board. The proposal further provides that, upon formal acceptance, respondent has 15 days to deliver their wall certificate and shall no longer practice architecture. This proposal would also notify a respondent they would no longer be subject to the terms and conditions of probation, the surrender of respondent’s license shall be deemed disciplinary action; and, if respondent re-applies for an architect’s license, the application shall be treated as a petition for reinstatement of a revoked license.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from having advanced notice of the Board’s requirements for accepting a surrender, clarifying the terms of probation and providing consistency in the form and content of the Board’s orders.

Rationale: This proposal would add a condition with requirements for acceptance of a license surrender while on probation. This will allow the respondent to request to terminate probation in the event the licensee is unable to complete probation due to various circumstances, however the respondent cannot surrender their license in order to avoid the requirements of their probation. Currently, there is no requirement specifying what is needed for the Board to process a request for surrender, making it unclear to the public and the regulated community regarding what standards must be met to implement a voluntary surrender. This proposal would set criteria for what the Board would need to process a surrender and clarifies, in accordance with BPC section 118, that the Board does not lose jurisdiction to act on the license and that a respondent is not relieved from complying with probation until the Board acts to accept their surrender. The Board maintains the discretion to accept the respondent’s surrendered

license under the authority of BPC section 118 (see discussion above “Surrender License in Lieu of Revocation”). This proposal is therefore necessary to set forth those minimum requirements for the Board’s consent to the surrender of a license. The Board further clarifies those conditions and explains the legal effect of such a surrender on the license by including the following statements: If the Board accepts the surrender of the license, the probationer must surrender their wall certificate and cease practice, they will no longer be subject to the terms and conditions of probation, the surrender will be treated by the Board as a disciplinary action, and if they re-apply for a license, it will be treated as a petition for reinstatement of a revoked license.

The condition number will be numbered “9” because of additional standard conditions added to the *Guidelines*. These terms are consistent with and based on the Board’s proposed changes to its *Guidelines*, terms of probation, that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting.

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 10 (Completion of Probation)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate the condition number from “7” to “10.”

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from providing accurate numbering to its headings.

Rationale: The proposal is necessary to update the condition numbering because additional standard conditions will be added to the *Guidelines*.

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 11 (Cost Reimbursement)

Purpose: The purpose of this proposal is to amend the *Guidelines* to move this condition from an optional condition to a standard condition of probation. None of the existing order language would be altered, but the language would be moved from the list of optional terms to the list of standard terms of probation.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from providing consistency with the LATC’s policy to prioritize seeking cost reimbursement.

Rationale: The Board proposes to include this standard term of probation based on the same reasons discussed in rationale discussed in Section II, General Consideration, Subsection D. Cost Reimbursement. As a result, the proposal is necessary to update the condition so that it is reflected as a standard condition of probation instead of an optional condition to better align the *Guidelines* with the Board's policy to prioritize seeking cost reimbursement so that the wrongdoer, not all licensees, bears the costs of the violation. By making this term a standard term, rather than an optional one, cost recovery would also help the Board maintain existing resources for its statutorily mandated purpose of protecting the public from unprofessional, incompetent, and

dishonest licensees. The Board is retaining the existing language content (currently listed as item no. 11 in the Optional terms), which in the Board's experience has made it easier for licensees to understand the investigative and prosecution costs owed to the Board and the conditions under which that money must be paid to the Board. The Board retains the option language at the end of the term to provide consistent model language and examples of how to draft payment schedule terms in the event that the licensee expresses a need for additional time to comply or in hardship cases.

The proposal implements the collaborative effort to provide consistency between the Board's proposed changes to its *Guidelines* and LATC's *Guidelines*. The condition number will be "11" because it is added as a standard condition to the *Guidelines*. This language is consistent with and based on the proposed changes to the Board's *Guidelines* and terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting.

Amend Conditions of Probation, Subsection B. Optional Conditions

Purpose: The purpose of this proposal is to amend the *Guidelines* to make Section "VII. Optional Conditions of Probation" into a Subsection "B. Optional Conditions" under the new Section "VI. Conditions of Probation."

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the *Guidelines*.

Rationale: The proposal is necessary to make the section on Optional Conditions of Probation into a subsection of "Conditions of Probation" for organizational purposes, clarity, and improved readability.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 12 (Suspension)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate the condition number from "8" to "11," and replace the word "the" with "this."

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying which decision the *Guidelines* is referring to in this section and improving comprehension.

Rationale: The proposal is necessary to update the condition numbering because additional conditions will be added to the *Guidelines* and to replace the word "the" with "this" to clarify the condition pertains to the current Decision.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 13 (California Supplemental Examination)

Purpose: The purpose of this proposal is to amend the *Guidelines* to expand on the two options that require a respondent pass the California Supplemental Examination (CSE). Option 1 requires respondent pass the CSE exam within six months of the effective date of the Decision and adds that if a respondent does not pass within six months, they

must notify the Board and cease to practice until they have passed the CSE exam, submitted proof to the Board, and been notified by the Board they may resume practice. Option 1 clarifies that tolling provisions apply during non-practice due to failure to pass the CSE exam, that it will be deemed a violation of probation for respondent's probation to remain tolled for more than three years for failure to pass the CSE exam. Option 2 requires, before a respondent can resume practice, they must pass the CSE exam within two years of the effective date of the Decision, and the probation period will not begin until respondent passes the CSE exam, submits proof to the Board, and has been notified by the Board they may practice.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from having specified terms that make it clear the expectation to prove competency to take and pass the CSE exam the terms of probation and providing consistency between the Board's *Guidelines* and LATC's *Guidelines*.

Rationale: The purpose of a licensing examination is to identify persons who possess the minimum knowledge and experience necessary to perform tasks on the job safely and competently. The CSE is a written examination of subject areas that are unique to the practice of architecture in California (see CCR § 124). This term would be necessary for rehabilitation for those cases where serious practice deficiencies or incompetence are involved in practice, specifically as it relates to practice in California. This type of testing requirement would help ensure that the licensee is still able to meet minimum standards for the practice of architecture in California for the protection of the public. Depending on facts of the case and what would best meet the rehabilitative needs of the Board, the Board proposes two options.

For those respondents for whom the Board believes are a lesser risk to the public and should be allowed to continue to practice while they demonstrate competency through the taking and passing of an examination, option 1 is proposed. This option permits the licensee to continue practicing after issuance of the probationary order (condition subsequent) and only would require them to cease practice if they fail to pass the CSE within six months.

The Board decided it is reasonable to allow a respondent six months to pass the CSE, since, in the Board's experience it is sufficient time to study or prepare for the exam while ensuring the Board can monitor and investigate any potential practice issues in the interim. To ensure compliance and appropriate monitoring of respondent's compliance, Option 1 requires respondent to notify the Board that they have failed to pass the exam. Since failure to pass the exam raises competency and knowledge concerns, the respondent would be further required to cease practice until they pass the exam and have been notified by the Board that they may resume practice.

Option 1 also clarifies it is a violation of probation for a probation term to remain tolled for failure to pass the CSE and provide proof to the Board for more than three years, and the respondent is responsible for all costs of the exam. The Board decided that for the protection of the public, a respondent's failure to pass the CSE within three years

must be considered a violation of probation. In the Board's experience, a licensee's failure to pass the exam within this time frame evinces serious practice and knowledge deficiencies that are not likely to be addressed even if a longer practice period were permitted. As a result, failure to pass the examination would be a violation of probation and therefore grounds for revocation of the license.

Option 1 further provides that tolling provisions contained in paragraph 7 (of the standard terms) apply during any period of non-practice due to the respondent's failure to pass the required examination within six months of the effective date of the Decision. This provision is necessary to avoid confusion about whether ceasing practice qualifies as "tolling", and further provides notice to the affected licensee that if so tolled, the term of probation shall be extended by the period of time during which the respondent ceased practice. These terms are necessary to effectively monitor whether the licensee is competent to practice, while allowing the licensee sufficient time to prepare to take the examination.

For those respondents for whom the Board believes are a greater risk to the public and should not continue to practice while they demonstrate competency through the taking and passing of an examination (as specified), Option 2 is proposed. Option 2 (Condition Precedent) will provide an additional option for more egregious violations to require a respondent to cease practice until successfully completing the CSE, at which time they may resume practice and probation will commence. With this option, the probationer must pass the CSE within two years of the effective date of the Decision, and the respondent is responsible for all costs of the exam. In the Board's experience, a licensee's failure to pass the exam within two years evinces serious practice and knowledge deficiencies that are not likely to be addressed even if a longer period in which to pass the exam was permitted. Since failure to pass the exam raises competency and knowledge concerns, the respondent would be further required to cease practice until they pass the exam and have been notified by the Board that they may resume practice.

Both options would contain a requirement that respondent is responsible for paying all costs of the examination. This proposed text is necessary to ensure that respondents who are subject to this condition have advance notice that they will be responsible for financial compliance with their probationary orders, specifically, the costs of taking and passing the exam.

These terms are consistent with and based on proposed changes to the Board's *Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and the Board reviewed and approved this language at its September 10, 2021, meeting.

As such, the proposal is necessary to implement the collaborative effort to provide consistency between the Board's proposed changes to its *Guidelines* and the LATC's *Guidelines* and would add a condition requiring taking and passing the CSE.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 14 (Written Examination)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this optional condition from “10” to “14,” to provide two options that require a respondent pass specified sections of the Architect Registration Examination (ARE). Option 1 requires the ARE exam sections to be passed within one year of the effective date of the Decision and adds in the time limitation of “within one year” to when a respondent must pass the ARE exam sections.

Option 1 (Condition Subsequent) clarifies that tolling provisions apply during non-practice due to failure to pass the ARE exam, and that it will be deemed a violation of probation for respondent’s probation to remain tolled for a total of three years for failure to pass the ARE exam.

Option 2 (Condition Precedent) requires that before a respondent can resume practice, they must pass specified sections of the ARE exam within two years of the effective date of the Decision. Option 2 clarifies that before resuming practice, respondent must pass and provide proof of passing the ARE exam sections to the Board and be notified by the Board that they may resume practice. Additionally, Option 2 clarifies that respondent is responsible for paying all costs of taking the ARE exam.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from consistent content and better understanding of the Board’s expected compliance timeframes for compliance with this term and condition of probation.

Rationale: The condition number will be updated from “9” to “14” because additional conditions will be added to the *Guidelines*. The ARE is the national licensing examination that measures knowledge, skills, and abilities as they relate to the profession of architecture. The Board’s *Guidelines* provide standard language for conditions of probation so that respondents, their attorneys, ALJs, DAGs, the public, the Board, and Board staff are informed as to the requirements of probation. The standard language is used in proposed decisions and stipulated settlements, as adopted by the Board, so that the terms of probation are used consistently.

The proposal is necessary to clarify the conditions for taking the ARE. The proposal would establish two options from which to choose when determining an appropriate penalty to include in a proposed decision or stipulated settlement. Option 1 will require a respondent to take and pass the required examination ARE within one year and clarify that tolling provisions apply during any period of non-practice.

Currently, if a respondent fails to pass the required examination within one year or two attempts, they are required to notify the Board and cease practice until they retake and pass the examination, submit proof to the Board, and are notified by the Board that they may resume practice. As noted above, Standard Condition 7 (Tolling for Out-of-State Practice, Residence or In-State Non-Practice) requires probation to be tolled if a probationer ceases practice and clarifies that having a respondent’s probation remain

tolled for failure to take and pass the ARE for a period exceeding a total of three years would be a violation of probation. Therefore, this condition will be amended to explain that the term of probation shall be extended by the period of time during which the respondent ceased practice and clarify that remaining tolled for failure to take and pass the ARE for a period exceeding a total of three years would be a violation of probation. In addition, the proposal would clarify that the respondent is responsible for paying all costs.

Option 2 would provide an additional option for more egregious violations to require the respondent to cease practice until successful completion of the ARE at which time they may resume practice and probation will commence. Similar to the new condition precedent terms for taking the California Supplemental Examination established under Condition 13, the proposal would require the respondent to take and pass specified sections of the ARE within two years of the effective date of the Decision to ensure the respondent completes the requirement. In the same way as Option 1, the respondent would be responsible for paying all costs of examination.

This option also clarifies that respondent is responsible for paying all costs. This proposed text is necessary to ensure that respondents who are subject to this condition have advance notice that they will be responsible for financial compliance with their probationary orders, specifically, the costs of taking and passing the exam(s).

The condition number will be updated from “10” to “14” because additional conditions will be added to the *Guidelines*. This proposal was developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting, and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Add Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 15 (Ethics Course)

Purpose: The purpose of this proposal is to amend the *Guidelines* to add a new section number 15, “Ethics course” as an optional term and condition of probation. This proposal would require that, within 30 days of the effective date of the Decision, respondent must submit by mail a written request for prior Board approval of a course in ethics to be completed within the first year of probation. The proposal states what information must be in a request, and how the Board will evaluate such requests, giving respondents notice of what is required. This proposal adds that: (1) failure to complete the required course within the first year of probation constitutes a violation of probation, (2) clarifies that respondent is responsible for submitting the specifics of the course for prior Board or designee approval; and, (3) respondent must pay all costs of the course.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from advance notice of these requirements, and from consistent content and forms of orders for this type of condition. Members of the public and probationers will also benefit from having a more informed and rehabilitated licensee as such training will help increase the likelihood that licensees will act ethically in the professional relationship.

Rationale: The Board proposes to add “Ethics course [#15]” to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for various types of violations (see cross-references throughout this document) based upon the facts of the case. This is based on the same reasons discussed in Section IV, above, regarding the violation of BPC section 5536. In the Board’s experience, ethics courses help focus probationers on understanding the fundamental causes of violations and help educate the probationer about how to act ethically in the professional relationship for the protection of the public. In the Board’s view, this is key to helping to prevent the conduct that led to the violation from recurring and ensure that licensees can meet the minimum standards for conduct in the profession. The addition of this optional term with its specified conditions is therefore necessary to help the Board implement these policy goals, and to assist probationers with a more effective rehabilitation effort.

Specifically, this proposal would require a respondent to provide the Board or its designee, for prior approval, a course in ethics that will be completed within the first year of probation. In the Board’s experience, 30 days is a reasonable amount of time for a probationer to find an ethics course and submit it to the Board for approval. The approval may be done by the Board itself or a designee (e.g., Executive Officer or other delegated staff) for administrative efficiency and to help ensure a minimum of delay in review for the respondents. Prior approval is required by the Board to help ensure that the ethics courses selected are relevant to professional practice and would be evaluated on a case-by-case basis to ensure maximum relevancy to the violations alleged. The course would need to be completed during the first year of probation to ensure that the training is received as soon as possible and to provide the educational foundation for the remaining probationary period, if any.

Some probationers may believe that simply submitting a course for board approval or attending the course may be sufficient to satisfy this requirement. However, depending on the Board-approved course’s requirements, the course provider may require self-assessment, testing, or other interactive participation by the participants to complete the course. As a result, to make it clear to the respondents and users of the *Guidelines* that Board approval and compliance with this term is contingent on satisfactory course completion, the Board is specifying that failure to satisfactorily complete the required course within the first year of probation constitutes a violation of probation.

Finally, to ensure that respondents have notice of what their responsibilities are for obtaining Board approval and paying for the approved course, the Board would specify that the respondent is responsible for submitting the specifics of the course for prior Board or designee approval and must pay all costs of the course.

As such, the proposal is necessary to implement the collaborative effort to provide consistency between the proposed changes to the Board’s *Guidelines* and LATC’s *Guidelines*. These terms are consistent with and based on these updated *Guidelines*, and the terms of probation that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting and the Board reviewed and

approved the proposal at its December 15, 2016, meeting.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 16 (Continuing Education Courses)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this condition from “11” to “16” and clarify this term of probation.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clarifying the terms of probation and providing consistency.

Rationale: Some respondents may believe that simply submitting a course for Board approval or attending the course may be sufficient to satisfy this requirement. However, depending on the Board-approved course’s requirements, the course provider may require self-assessment, testing, or other interactive participation by the participants to complete the course. As a result, to make it clear to the respondents and users of the *Guidelines* that Board approval and compliance with this term is contingent on successful course completion and passage of the course, the Board is specifying that a probationer must successfully complete and pass professional education courses to meet this requirement. The Board is adding the requirement that the course must be approved in advance to provide notice of this requirement to respondents and to help ensure respondents do not inadvertently take a course not ultimately approved by Board. This proposal would require the respondent to submit a written request by mail for prior Board approval of the requested professional education course(s). The proposal states what information must be in a request, and how the Board will evaluate such requests, giving respondents notice of what is required. The approval may be done by the Board itself or a designee (e.g., Executive Officer or other delegated staff) for administrative efficiency and to help ensure a minimum of delay in review for the respondents. The proposal also adds a requirement and notice that the probationer is responsible for submitting courses to the Board for approval and paying all costs associated with the fulfillment of this condition. This is necessary to help ensure that respondents have notice of what their responsibilities are for obtaining Board approval and paying for the approved course.

In addition, the deadline to successfully complete the continuing education coursework will be updated from 100 days to one year prior to the termination of probation to ensure the Board has sufficient time to monitor compliance, and also to refer the matter to the AG’s office and file a petition to revoke probation prior to the conclusion of the probationary period in the event the probationer fails to comply with this condition of probation.

The condition number will be updated from “10” to “16” because additional conditions are being added to the *Guidelines*. This proposal was developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting, and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions,

Optional Condition 16 (Cost Reimbursement)

Purpose: The purpose of this proposal is to amend the *Guidelines* to repeal this term as an optional condition as it has been moved to the standard conditions and re-designated as standard condition number “11.”

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from having notice and a better understanding of the Board’s decision regarding collection of cost recovery in its disciplinary cases and will help ensure consistency in the content and form of the Board’s disciplinary decisions.

Rationale: The Board proposes to include this optional term of probation based on the same reasons discussed in rationale discussed in Section II, General Consideration, Subsection D. Cost Reimbursement. However, having this term as an “optional” condition of probation in the *Guidelines* is inconsistent with the Board’s policy of seeking costs authorized by BPC section 125.3 in every case. As a result, it is necessary to delete this condition from the optional conditions section of the *Guidelines* and move it to the standard conditions section. Such a change would implement the Board’s stated policy position by requiring cost recovery in every disciplinary case. This proposal was developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting, and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 17 (Restitution)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this condition from “13” to “17,” add a requirement that all restitution be completed no later than one year before the termination of probation; and, add a note citing to BPC section 143.5, the limitations on restitution in cases that are based on a complaint that also been the subject of a civil action that has been settled for monetary damages.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from having notice of the Board’s requirements for restitution and the limitations regarding restitution payments prescribed by law, as well as providing consistency between proposed changes to the Board’s *Guidelines* and LATC’s *Guidelines*.

Rationale: The Board supports restitution as an optional condition of probation based on the same reasons discussed in Section IV, above, regarding the violation of BPC section 5536. The proposal is necessary to provide consistency between proposed changes to the Board’s *Guidelines* and LATC’s *Guidelines* and would require the payment of restitution no later than one year prior to the termination of probation. This condition will be updated to help ensure more timely restitution payments to consumers and to help ensure the Board has sufficient time to investigate this violation, refer the matter to the AG’s office and file a petition to revoke probation prior to the conclusion of the probationary period in the event the probationer fails to comply with this condition of probation.

The note section pertaining to BPC section 143.5 is being added to indicate the Board's limitations in requiring restitution as an optional condition of probation. BPC section 143.5 prohibits the Board from imposing restitution as a condition of probation when the Board's case is based upon on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties in the civil action. To avoid possible legal errors in its decisions, the Board provides this notice of BPC section 143.5's limitations to the users of the *Guidelines*, including ALJs who prepare decisions and orders for the Board. The condition number will also be updated from "12" to "17" because additional conditions are being added to the *Guidelines*. These terms are consistent with and based on proposed changes to the Board's *Guidelines* and terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 18 (Criminal Probation Reports)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate these terms from "14" to "18," remove the gendered reference to "he/she," and specify in the introductory phrase that this condition would apply "if respondent is convicted of a crime".

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from clearer direction about when this term may apply and consistent numbering and organization of this section.

Rationale: The proposal is necessary to implement the collaborative effort to provide consistency between proposed changes to the Board's *Guidelines* and the LATC's *Guidelines* and would clarify that a respondent is required to provide the Board with information regarding their standard conditions of criminal probation, copies of all criminal probation reports, and the name of their probation officer in the event of conviction of any crime. The existing language does not specify the initial action necessary to prompt the submittal of the required reports regarding criminal probation and this has created confusion for respondents and other users of the *Guidelines*. As a result, the Board is adding notice to the users of the *Guidelines* that this term would be triggered, and the reports submitted, if the respondent is "convicted of any crime."

The proposal is also necessary to make changes to the use of the gendered pronoun "he/she" as discussed in greater detail in the section entitled "Modification of Pronouns" herein. The condition number will be updated from "14" to "18" because additional conditions will be added to the *Guidelines*. These terms are consistent with and based on proposed changes to the Board's *Guidelines* and terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and the Board reviewed and approved the proposal at its December 15, 2016, meeting.

Repeal Section V, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 15 (Relinquish License and Wall Certificate)

Purpose: The purpose of this proposal is to amend the *Guidelines* to repeal this section and remove it from consideration as an optional term of probation.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from removal of this term as an optional term as its use has caused confusion regarding when this term should be used in the Board's disciplinary decisions and orders.

Rationale: The proposal is necessary to implement the collaborative effort to provide consistency between proposed changes to the Board's *Guidelines* and the LATC's *Guidelines* and would remove the condition to relinquish architect license and wall certificate.

The repeal of this provision is necessary because this is a condition that should be used only in cases where the license is revoked, surrendered, or practice is otherwise suspended. In those cases, it would be appropriate to require relinquishment of all indicia of licensure since the respondent no longer has legal authority to practice from the Board. However, as currently written, this condition could and has been used in probationary orders that do not include suspension or cessation of practice, which is not appropriate since the licensee still has practice rights (although restricted). This change is, therefore, necessary to avoid further errors and inconsistencies in the Board's decisions and orders. Relinquishment requirements have been moved to other appropriate sections of the *Guidelines* (e.g., voluntary surrender term and model orders relating to revocation).

These terms are consistent with and based on proposed changes to the Board's *Guidelines* and terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and the Board reviewed and approved the proposal at its December 15, 2016 meeting.

Amend Section V, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 19 (Notification to Clients/Cessation of Practice)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this condition from "16" to "19" and clarify this term of probation, repeal provisions that require respondent to comply with procedures they provided to the Board regarding management of clients and instead specify how respondents must provide notice of cessation of practice and evidence of such notice to the Board, including providing clients with whom they have a contractual relationship with a copy of the Board's decision and order.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from having more specific notice requirements for what to tell their clients when cessation of practice is ordered by the Board.

Rationale: The proposal is necessary to implement the collaborative effort to provide consistency between the proposed changes to the Board's *Guidelines* and LATC's

Guidelines and would add clarifying language on the process and requirements of notifying clients of respondent's cessation or suspension of practice. Existing regulations for this term simply require the respondent who is subject to an order which provides for cessation or suspension of practice to "comply with all procedures provided by the Board regarding notification to, and management of clients." However, this could possibly lead to unclear and inconsistent guidance regarding what type and how such notice should be conveyed to the clients. This proposal would resolve that potential ambiguity by specifically requiring the respondent to provide all clients with whom they have a contractual relationship (as notice would only need to be provided to those who have a direct relationship with the respondent) with a copy of the Board's decision and order. This would ensure consistent and simple notice of the action to the affected consumers.

The Board also proposes that this notice be provided within 30 days of the effective date of the Decision. In the Board's experience, this helps ensure that the licensee has adequate time to notify all potential clients affected by the cessation or suspension from practice and provide such evidence to the Board. The Board would further specify that such evidence of notice to the Board would need to include the name and address of each person or entity required to be notified. This provision is necessary to ensure that the Board receives accurate information and may audit this information (contact the consumers) to verify compliance with this condition.

These terms are consistent with and based on proposed changes to the Board's *Guidelines* and terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016, meeting and the Board reviewed and approved this language at its December 15, 2016, meeting.

Add Section V, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 20 (Fine)

Purpose: The purpose of this proposal is to amend the *Guidelines* to include the fine penalty imposed by BPC section 5565, subdivision (d), for criminal convictions substantially related to the qualifications, functions, and duties of an architect under BPC section 5577.

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from the proposal.

Rationale: The Board's *Guidelines* provide standard language for conditions of probation so that probationers, their attorneys, ALJs, DAGs, the public, the Board, and Board staff are informed as to the requirements of probation. The standard language is used in proposed decisions and stipulated settlements, as adopted by the Board, so that the terms of probation are used consistently.

The proposal is necessary to incorporate the fine penalty established in current law pursuant to BPC section 5565, subdivision (d), which states the Board may, "assess a

fine not in excess of five thousand dollars (\$5,000) against the holder of a license for any of the causes specified in Section 5577. A fine may be assessed in lieu of, or in addition to, a suspension or revocation. All fines collected pursuant to this subdivision shall be deposited to the credit of the California Architects Board Fund.” Accordingly, if a license is being disciplined for a criminal conviction substantially related to the qualifications, functions, and duties of an architect, the optional probation term of a fine up to \$5,000 may be assessed. This term is consistent with the statutory authority to assess the fine and was adopted by the Board at its February 27, 2019, meeting.

Repeal Section IV, Rehabilitation Criteria

Purpose: The purpose of this proposal is to amend the *Guidelines* to remove this outdated section quoting the rehabilitation criteria of California Code of Regulations section 110.1 as these criteria have been revised and summarized in another section of the *Guidelines* (see section II. E. “Criteria to be Considered”).

Anticipated Benefits: The Board anticipates that ALJs, DAGs, the public, licensees, and Board staff will benefit from having this section repealed to avoid confusion regarding the Board’s current rehabilitation criteria for architects.

Rationale: The proposal is necessary to implement the collaborative effort to provide consistency between proposed changes to the Board’s *Guidelines* and LATC’s *Guidelines* and would remove this section because it is summarized and captured under Section II. General Considerations, Subsection E. Criteria to be Considered. The repeal of this section is consistent with and based on proposed changes to the Board’s *Disciplinary Guidelines*, in which the Rehabilitation Criteria section was removed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016, meeting.

Further, in accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), operative on July 1, 2020, BPC section 482 will require the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction or discipline for professional misconduct, pursuant to BPC sections 480 or 490, to consider whether the applicant or licensee is rehabilitated based on either: (1) having completed their criminal sentence without violating parole or probation; or (2) the Board’s standard criteria for evaluating rehabilitation. (BPC § 482, as added by AB 2138, § 9.) To address the new criteria required to be evaluated by the Board, the Board is amending CCR sections 110 and 110.1 in a separate rulemaking. To maintain consistency with the new rehabilitation criteria requirements imposed by AB 2138 that will be incorporated in CCR sections 110 and 110.1, the proposal is necessary to revise the *Guidelines* to strike the outdated enumerated rehabilitation criteria.

Amend Attachment (Quarterly Probation Report)

Purpose: The purpose of this proposal is to amend the *Guidelines* to remove the attachment “Quarterly Report of Compliance.”

Anticipated Benefits: The Board anticipates that licensees subject to Board discipline and Board staff will benefit from these changes by removing the specific quarterly report

form requirement, which will allow for reporting of the quarterly report information in alternative formats and thereby ease administrative reporting burdens for licensees.

Rationale: The proposal is necessary to provide more accessibility and options for reporting this information to the Board. Additionally, the information requested in the form are set out in section VI. CONDITIONS OF PROBATION, subdivision A. Standard Conditions, paragraph 2 – Submit Quarterly Reports, and thus the attachment is no longer necessary. Staff will also have a convenience form available on the Board’s website that mirrors the information required in the “Submit Quarterly Reports” condition (Standard Condition No. 2), but respondents will not be required to use it to make their quarterly reports to the Board.

Amend Disciplinary Guidelines – Modification of Pronouns

Purpose: The purpose of this proposal is to amend the *Guidelines* to be gender neutral by changing gendered terms in general to gender neutral pronouns when referring to respondents.

Anticipated Benefits: The Board anticipates that the public, licensees, and Board staff will benefit from updating the Guidelines to reflect current law.

Rationale: The proposal is necessary to update the *Guidelines* to conform to the gender-neutral pronouns in accordance with recent statutory changes made by Senate Bill (SB) 179 (Atkins, Chapter 853, Statutes of 2017), which recognized nonbinary gender preferences of California residents and, among other things, authorized the change of a person’s gender on a birth certificate to be female, male, or nonbinary. That bill supports the conversion of the “he or she” pronouns to instead refer to “they.”

Following the Board’s adoption of the proposed *Guidelines*, the Executive Officer made non-substantive corrections to the text of the *Guidelines* to update the use of the gendered pronouns in general to gender neutral pronouns. The Executive Officer is making these non-substantive changes pursuant to the authority delegated by the Board to the Executive Officer in its motion to adopt this regulatory proposal. (See March 1, 2018 Board Meeting Minutes, p. 5.)

Underlying Data

1. California Architects Board (Board) Strategic Plan 2013
2. April 25, 2013 Regulatory and Enforcement Committee (REC) Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
3. Board Strategic Plan 2014
4. April 24, 2014 REC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
5. December 10-11, 2014 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
6. June 10, 2015 Board Meeting Agenda; Meeting Materials; and Meeting Minutes

7. September 10, 2015 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
8. December 10, 2015 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
9. November 8, 2016 REC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
10. December 15-16, 2016 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
11. September 7, 2017 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
12. December 7, 2017 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
13. March 1, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
14. June 13, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
15. February 27, 2019 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
16. September 10, 2021 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
17. "Guidelines for Access to Public Records," LGL-21-02, dated August 15, 2021.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulatory action only impacts licensees and applicants who are disciplined by the Board for violations of the laws and regulations within its jurisdiction. The Board does not have the authority to take administrative action against a business.

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 adversely 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 economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the laws and regulations governing

the practice of architecture in California.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposal only provides updated guidelines for imposing penalties on a negligible number of licensees and applicants who, through to their conduct, are subject to disciplinary action due to violations of the laws and regulations governing the practice of architecture. Therefore, the overall economic impact on jobs is insignificant.
- It will not create new business or eliminate existing businesses within the State of California because the proposal only affects a negligible number of licensees and applicants who are disciplined by the Board for violations of the laws and/or regulations governing the practice of architecture. The Board does not have the authority to take administrative action against a business and does not maintain data regarding the number or percentage of licensees and applicants who own a business. Businesses operated by or employing licensees and applicants who are in compliance with the laws and regulations within the Board's jurisdiction will not be affected by this proposal. Therefore, the overall economic impact on businesses is insignificant.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only affects a negligible number of licensees and applicants who are disciplined for violations of the laws or regulations within the Board's jurisdiction. Businesses operated by or employing licensees and applicants who are in compliance with the laws and regulations within the Board's jurisdiction will not incur any fiscal impact, including the ability to expand business in California. Therefore, the overall economic effect on the expansion of business in California is insignificant.
- This regulatory proposal benefits the health, safety, and welfare of California residents because it would provide protection to California residents by enhancing the Board's ability to take appropriate action against licensees and applicants who, through their conduct, expose themselves to administrative disciplinary action for violations of the laws and regulations within the Board's jurisdiction.
- This regulatory proposal does not affect worker safety because it does not relate to worker safety.
- This regulatory proposal does not affect the state's environment because it is not related to the environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome 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.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected.

The Board considered keeping the status quo; however, this alternative was rejected because the revisions made to the *Guidelines* will conform to recent statutory amendments and provide assistance and clarity to individuals involved in the disciplinary process.