

TITLE 16. CALIFORNIA ARCHITECTS BOARD

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING: Disciplinary Guidelines

NOTICE IS HEREBY GIVEN that the California Architects Board (Board) is proposing to take the action described in the Informative Digest, below.

Public Hearing

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his/her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under **Contact Person** in this Notice.

Written Comment Period

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under **Contact Person** in this Notice, must be received by the Board at its office not later than **by 5:00 p.m. on Tuesday, January 9, 2024**, or must be received by the Board at the hearing, should one be scheduled.

Availability of Changed or Modified Text

The Board, upon its own motion or at the insistence of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 5510.1 and 5526 of the Business and Professions Code (BPC), and section 11400.20 of the Government Code (Gov. Code), and to implement, interpret or make specific sections 125.3, 125.6, 140, 141, 143.5, 480, 481, 482, 490, 496, 499, 5536, 5536.1, 5536.22, 5536.4, 5536.5, 5553, 5558, 5560, 5561.5, 5565, 5577, 5578, 5579, 5580, 5582, 5582.1, 5583, 5584, 5585, 5586, 5588, and 5600.05 of the BPC, and sections 11400.20 and 11425.50 of the Gov. Code, the Board is considering changes to article 8 of division 2 of title 16 of the California Code of Regulations (CCR) as follows:

Informative Digest/Policy Statement Overview

The Board licenses architects and enforces the Architect Practice Act (Act) (BPC section 5500, et seq.). BPC section 5510.5 mandates that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with 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) (Gov. Code section 11400 et seq.), to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Act.

The Board is responsible for discipline of architects and enforcement of Chapter 3.5 of Division 3 of the BPC that regulates the profession (Act) (BPC, §§ 5510.1, 5525). Existing regulation at 16 CCR section 154 requires the Board, in reaching a decision on a disciplinary action under the APA, to consider the Disciplinary Guidelines [Rev. 2000] (*Guidelines*), which are incorporated by reference. Deviation from the *Guidelines*, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems; and rehabilitation.

The Board has determined that, in order to better protect the public from licensees who have committed one or more violations of the BPC or the CCR, conform the *Guidelines* to recent statutory changes, and provide clarity to probationers of the terms of probation, the Board needs to revise its *Guidelines*. 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, 16 CCR section 154, must also be amended to incorporate by reference the revised *Guidelines* as revised and approved by the Board in April 2013 and April 2014, approved by the Board on September 10-11, 2014, revised and approved in February 27, 2019, August 1, 2019, and September 8, 2023, by the Board.

The Board is proposing the following changes:

- Amend Section 154 of Article 8 of Division 2 of Title 16 of the CCR
The existing regulation references the “*Disciplinary Guidelines*” [2000]. This regulatory proposal will update that regulatory reference to reflect a new revision date of 2023 and new title content to include the words “and Model Orders”. This means that it is necessary to incorporate the updated *Guidelines* by reference due to the size of the document. The proposal would also update the authority and reference sections of the regulation to add relevant BPC and Gov. Code sections.

- Amend the Disciplinary Guidelines that are incorporated by reference in Section 154 of Article 8 of Division 2 of Title 16 of the CCR

The proposed amendments to the *Guidelines* are as follows:

- Add a Cover Page to the *Guidelines*
This proposal will add a cover page to provide the title “California Architects Board Disciplinary Guidelines and Model Orders (Revised 2023), and the Board’s address and contact information.
- Update the Table of Contents to the *Guidelines*
This proposal will update the Table of Contents to provide the organization of the *Guidelines*.
- Amend the Introduction of the *Guidelines*
This proposal would amend the Introduction to accurately reflect the appropriate terminology used throughout the *Guidelines*. The Introduction would also be amended to clarify that the *Guidelines* reference statutory and regulatory provisions, provide notice that all disciplinary actions will be published on the Internet, and add language about obtaining copies of the *Guidelines* and the possible charge assessed for providing paper copies.
- Amend the “General Considerations” Section of the *Guidelines*
This proposal would amend the “General Considerations” section to add general recommendations and policy language regarding citations, proposed decisions, stipulated settlements, cost reimbursement, criteria to be considered in denying, suspending, or revoking a license, and mitigation and rehabilitation evidence.
- Amend the “Definition of Penalties” Section of the *Guidelines*
This proposal would amend the “Definition of Penalties” section to add the definition of “public reproof” as a type of penalty and provide the definition of public reproof.
- Amend or Modify the Board’s Use of Pronouns
This proposal would also make other syntax or clean-up changes to change “his/her” to “their” wherever used in the *Guidelines*.
- Update the “Business and Professions Code” Section of the *Guidelines*
This proposal would amend the “Business and Professions Code” section to add additional titles and minimum and maximum proposed penalties for violations of the Act, including for violations of BPC sections 5536, 5536.1, 5536.22, 5536.4, 5536.5, 5558, 5586, 5588, and 5600.05, This proposal would also amend the maximum and/or minimum penalties for the existing BPC code section violations already listed in this section to include more appropriate penalties, revise recommendations for optional terms and conditions of probation, and make grammatical and other technical clean-up changes.

- Update the “General Provisions of Business and Professions Code” Section of the *Guidelines*
This proposal would amend the “General Provisions of Business and Professions Code” section to add additional titles and minimum and maximum proposed penalties for violations of the BPC provisions that are enforced by the Board, including for violations of 140, 141, 143.5, 490, and 499. This proposal would also amend the maximum and/or minimum penalties for the violations of the other BPC sections already listed in the Guidelines to include more appropriate penalties, revise recommendations for optional terms and conditions of probation, and make grammatical and other technical clean-up changes.

- Update the “California Code of Regulations” Section of the *Guidelines*
This proposal would amend the “California Code of Regulations” section to add a new title and proposed minimum and maximum penalties for violation of section 160(f) (informed consent), include the minimum and maximum penalties for violations of the other regulatory provisions and include penalties and optional conditions of probation, and make grammatical and other technical clean-up changes.

- Make technical and non-substantive changes to the title of the “Violation of Probation” Section
This proposal would re-number and change the formatting of this section to make it consistent with the formatting and titles of other sections of the *Guidelines*.

- Add a Model Orders Section
This proposal would add a Model Orders section to include model orders that the Board recommends be used for the following:
 - A. licensees’ discipline (with model order language for revocation of license, revocation stayed and licensee placed on probation, public reproof, or surrender of license in lieu of revocation);
 - B. petitions for reinstatement (with model order language for when the Board acts to grant petition with no restrictions on the license, grant petition and place licensee on probation, grant petition and place licensee on probation after completion of condition precedent, or deny the petition);
 - C. petitions to revoke probation (with model order language for when the Board acts to revoke probation or extend probation after violations have been found);
 - D. applicants (with model order language for when the Board acts to grant the application with no restrictions, grant the application and place licensee on probation, grant application and place licensee on probation after completion of conditions precedent, or deny the application); and,
 - E. civil penalty (with model order language to be used only in cases

applicable to the authority in BPC section 5588 and used in lieu of revocation).

- Update the Standard Conditions of Probation
This proposal would add a sentence providing notice that the Board reserves discretion to waive any conditions of probation on a case-by-case basis. This proposal adds new titles and Standard Conditions with model language for use in every probationary order: “Maintain Active and Current License;” “Notification of Changes to Address and/or Telephone Number;” “License Surrender While on Probation;” and “Cost Reimbursement;” and would make revisions to compliance requirements for the following existing standard terms: “Obey All Laws;” “Submit Quarterly Reports;” and “Tolling for Out-of-State Practice, Residence or in-State Practice” conditions. This proposal also would make other minor grammatical and technical clean-up changes to existing conditions.
- Update the Optional Conditions of Probation
This proposal would create the following new titles and Optional Conditions of probation with model language that may be used as recommended in these Guidelines: “Written Examination,” “Ethics Course;” and “Fine.” This proposal also would revise the following existing optional terms and model language for: “California Supplemental Examination,” “Continuing Education Courses,” “Restitution,” “Criminal Probation Reports,” and “Notification to Clients/Cessation of Practice” conditions. Additionally, this proposal would delete the term for “Cost Reimbursement” (which is proposed to be moved to the standard conditions of probation section) license and wall certificate relinquishment and make minor changes to existing conditions including minor grammatical and technical clean-up changes to existing conditions.
- Delete the “Rehabilitation Criteria”
This proposal would remove the “Rehabilitation Criteria” section in its entirety as outdated. The summary for the Board’s current rehabilitation criteria and reference to the regulation that already covers this issue (section 110) is proposed to be added to the new “Criteria to be Considered” section of the *Guidelines*.
- Repeal the Quarterly Probation Report of Compliance Form; Add narrative summary to the standard condition for “Submit Quarterly Reports” condition
This proposal would strike the “Quarterly Probation Report of Compliance [Rev 2/2019]” form as an attachment at the end of the *Guidelines* as the information requested in the form has been added to the “Submit Quarterly Reports” condition as a narrative list, including:
(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;
- (3) a statement of all of respondent's landscape 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;
- (4) a requirement that respondent provide a list of activities related to the practice of landscape architecture by activity and date; and,
- (5) a requirement that respondent provide a certification under penalty of perjury that the information provided in the report is true and correct.

This proposal would allow probationers to submit the current information required by the form in alternative formats to the Board.

Anticipated Benefits of Proposal

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

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

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

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Incorporation by Reference

This proposal would incorporate by reference the document entitled "Disciplinary Guidelines" (Revised 2023). The *Guidelines* are incorporated by reference as they are too lengthy and cumbersome to be included in the CCR.

Fiscal Impact Estimates

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. The proposed regulations do not result in a fiscal impact to the state.

This proposal provides a more accurate overview of the Board's processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the Board, the Office of Attorney General, and ALJs by outlining relevant and transparent standards directly related to violations outlined in law.

The Board does not anticipate additional workload or costs resulting from the proposed regulations. This proposal does not change the fines for violations, so no additional revenues are anticipated.

The regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: 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 following studies/relevant data were relied upon in making the above determination:

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 11,000 applicants who are in the process of meeting examination and licensure requirements.

The proposed regulatory action only affects a negligible number of licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction. Any "adverse 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 existing laws and regulations governing the practice of architecture in California.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations would revise existing disciplinary guidelines but would not change fine amounts. 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 potential "adverse economic impact" may be avoided simply by complying with the existing laws and regulations governing the practice of architecture in California.

Effect on Housing Costs: None

Effect on Small Business

The Board has determined that the proposed regulation would not affect small businesses as it only affects licensees and applicants who are disciplined for violations of the Act and/or Board regulations. Businesses operated by licensees and applicants who are in compliance with the law will not incur any fiscal impact. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

Results of Economic Impact Assessment/Analysis

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. 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 11,000 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.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents:

The Board has determined that updating its Disciplinary Guidelines through this regulatory proposal will benefit the health and welfare of California residents by enhancing the Board's ability to take appropriate action against licensees and applicants who, through their conduct, subject themselves to disciplinary action by violating the Act and/or Board regulations.

Additionally, this proposal will benefit Deputy Attorneys General (DAG), ALJs, and others involved in the disciplinary process by ensuring consistency in the interpretation and application of penalties in administrative disciplinary actions.

This regulatory proposal does not affect worker safety and this proposal is not related to the State's environment.

Consideration of Alternatives

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally if a hearing is requested or in writing relevant to the above determinations.

Initial Statement of Reasons and Information

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

Text of Proposal

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Architects Board at 2420 Del Paso Road, Suite 105, Sacramento, California 95834 or by telephoning the Contact Person listed below.

Availability and Location of the Final Statement of Reasons and Rulemaking File

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below or by accessing the website listed below.

Contact Person

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Timothy Rodda
Address: 2420 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone No.: (279) 895-1246
E-Mail Address: timothy.rodde@dca.ca.gov

The backup contact person is:

Name: Laura Zuniga
Address: 2420 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone No.: (916) 471-0760
E-Mail Address: laura.zuniga@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.cab.ca.gov (https://cab.ca.gov/news/laws/proposed_regulation.shtml).