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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 13.7. Board of Behavioral Sciences [4990 - 4990.42] (*Chapter 13.7 added by Stats. 2006, Ch. 659, Sec. 21.*)

ARTICLE 2. Disciplinary Actions [4990.28 - 4990.42] (*Article 2 added by Stats. 2006, Ch. 659, Sec. 21.*)

4990.28. The board may refuse to issue a registration or license under the chapters it administers and enforces whenever it appears that the applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to denial of a license or registration pursuant to this section.

(*Added by Stats. 2006, Ch. 659, Sec. 21. Effective January 1, 2007.*)

4990.30. (a) A licensed marriage and family therapist, associate marriage and family therapist, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, associate professional clinical counselor, or licensed educational psychologist whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The petition shall be on a form provided by the board and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order. The petition shall be verified by the petitioner who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(b) The licensee or registrant may file the petition on or after the expiration of the following timeframes, each of which excludes any periods during which the probation was tolled, and commences on the effective date of the decision ordering the disciplinary action or, if the order of the board, or any portion of it, is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years. A registrant who is ineligible for reinstatement pursuant to Section 4984.01, 4996.28, or 4999.100 may apply for a subsequent registration number.

(2) Two years for early termination of any probation period of three years or more.

(3) One year for modification of a condition, reinstatement of a license or registration revoked for mental or physical illness, or termination of probation of less than three years. A registrant who is ineligible for reinstatement pursuant to Section 4984.01, 4996.28, or 4999.100 may apply for a subsequent registration number.

(c) The petition may be heard by the board itself or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code.

(d) If the petition is to be heard by the board, the petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(e) The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition and an opportunity to present both oral and documentary evidence and argument to the board or the administrative law judge.

(f) The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that they are entitled to the relief sought in the petition.

(g) The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities

during the time their license or registration was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(h) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate but in no case may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(i) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge, may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4990.40. If a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board. The board may take action with respect to the proposed decision and petition as it deems appropriate.

(j) The petitioner shall pay a fingerprinting fee and provide a current set of their fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.

(k) The board may delegate to its executive officer authority to order investigation of the contents of the petition.

(l) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(m) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(Amended by Stats. 2021, Ch. 647, Sec. 47. (SB 801) Effective January 1, 2022.)

4990.31. The board may deny without a hearing a request to petition for termination of probation or modification of penalty for any of the following reasons:

(a) The petitioner has failed to comply with the terms and conditions of the disciplinary order.

(b) The board is conducting an investigation of the petitioner while he or she is on probation.

(c) The petitioner has a subsequent arrest that is substantially related to the qualifications, functions, or duties of the licensee or registrant and this arrest occurred while on probation.

(d) The petitioner's probation with the board is currently tolled.

(Added by Stats. 2015, Ch. 261, Sec. 1. (SB 531) Effective January 1, 2016.)

4990.32. (a) Except as otherwise provided in this section, an accusation filed pursuant to Section 11503 of the Government Code against a licensee or registrant under the chapters the board administers and enforces shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitations period provided by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) An accusation alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action or within 10 years after the act or omission alleged as the grounds for disciplinary action occurred, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(e) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled until the minor reaches the age of majority. However, if the board discovers an alleged act of sexual contact with a minor under Section 261, 286, 287, 288, 288.5, or 289 of, or former Section 288a of, the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the board discovers that alleged act.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, "discovers" means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

- (1) The date the board received a complaint or report describing the act or omission.
- (2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.
- (3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.

(Amended by Stats. 2018, Ch. 423, Sec. 3. (SB 1494) Effective January 1, 2019.)

4990.33. Notwithstanding any other law, except as provided in Section 4990.32, the expiration, cancellation, forfeiture, or suspension of a license, registration, or other authority to practice by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license or registration by a licensee or registrant, of any license or registration within the authority of the board, shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or registrant or to render a decision suspending or revoking the license or registration.

(Added by Stats. 2015, Ch. 261, Sec. 2. (SB 531) Effective January 1, 2016.)

4990.34. (a) The board may place a license or registration issued under the chapters it administers and enforces on probation under the following circumstances:

- (1) In lieu of, or in addition to, any order of the board suspending or revoking the license or registration.
- (2) Upon the issuance of a license or registration to an individual who has been guilty of unprofessional conduct but who otherwise completed all education, training, and experience required for licensure or registration.
- (3) As a condition upon the reissuance or reinstatement of a license or registration that has been suspended or revoked by the board.

(b) The board may adopt regulations establishing a monitoring program to ensure compliance with any terms or conditions of probation imposed by the board pursuant to subdivision (a). The cost of probation or monitoring may be ordered to be paid by the licensee or registrant.

(Added by Stats. 2006, Ch. 659, Sec. 21. Effective January 1, 2007.)

4990.36. The board, in its discretion, may require a licensee or registrant whose license or registration has been placed on probation or whose license or registration has been suspended, to obtain additional professional training and to pass an examination upon completion of that training and to pay any necessary examination fee. The examination may be written, oral, or a practical or clinical examination.

(Added by Stats. 2006, Ch. 659, Sec. 21. Effective January 1, 2007.)

4990.38. The board may deny an application or may suspend or revoke a license or registration issued under the chapters it administers and enforces for any disciplinary action imposed by this state or another state or territory or possession of the United States, or by a governmental agency on a license, certificate or registration to practice marriage and family therapy, clinical social work, educational psychology, professional clinical counseling, or any other healing art. The disciplinary action, which may include denial of licensure or revocation or suspension of the license or imposition of restrictions on it, constitutes unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(Amended by Stats. 2011, Ch. 350, Sec. 33. (SB 943) Effective January 1, 2012.)

4990.40. The board shall revoke a license or registration issued under the chapters it administers and enforces upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains a finding of fact that the licensee or registrant engaged in an act of sexual contact, as defined in Section 729, when that act is with a patient or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(Added by Stats. 2006, Ch. 659, Sec. 21. Effective January 1, 2007.)

4990.42. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 2006, Ch. 659, Sec. 21. Effective January 1, 2007.)