

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. COURT REPORTERS BOARD OF CALIFORNIA

PROPOSED REGULATORY LANGUAGE
Disciplinary and Denial Guidelines

Legend:	Added text is indicated with an <u>underline</u> . Deleted text is indicated by strikeout .
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Article 8

Amend section 2472 of Division 24 of Title 16 of the California Code of Regulations to read as follows:

§ 2472. Disciplinary and Denial Guidelines.

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.) and in reaching a decision on whether to deny a license under provisions of the Business and Professions Code, the ~~h~~Board shall consider the disciplinary and denial guidelines entitled “Disciplinary and Denial Guidelines,” (~~Rev. 2/18/89 (New [OAL insert effective date])~~), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the ~~h~~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; or evidentiary problems.

Note: Authority cited: Sections 8007, 8025, and 8047, Business and Professions Code.
Reference: Sections 8025 and 8047, Business and Professions Code; and Sections 11425.50(e) and 11519, Government Code.

**CERTIFIED SHORTHAND REPORTERS BOARD
DISCIPLINARY GUIDELINES
Adopted 2-18-89**

I. INTRODUCTION

To foster uniformity of penalties and to make sure licensees understand the consequences of violating the CSR Board law and regulations, the Board has established these guidelines.

The CSR Board law specifies the offenses for which the Board may take disciplinary action. These guidelines provide a range of penalties for each section of law which is found to be violated. The Board recognizes that there are often factors of aggravation or of mitigation which may necessitate variation. The Board respectfully requests that the Administrative Law Judge take into account the factors of mitigation and aggravation listed below in Part V, when deciding the severity of the penalty within the range. However, when such circumstances are found to exist, they should be detailed in the "Findings of Fact." In determining appropriate discipline, the Administrative Law Judge should note the Board's determination of severity of various offenses as outlined in the Citation and Fine regulations, per Title 16, California Code of Regulation, section 2480. In addition, cost recovery as authorized by Business & Professions Code, section 125.3 should generally be imposed.

Should a probationary period be part of a proposed decision, the Board requests that the Administrative Law Judge impose the appropriate conditions of probation as outlined below in Part III. These conditions are intended to protect the public from the probationer without being unduly burdensome or anti-competitive.

If an order of probation is issued staying a revocation or suspension, and the order of probation is proven at hearing to have been violated, then following 10 days notice to the licensee, the Board shall lift the stay and the revocation and/or suspension shall go into effect immediately.

Whenever a revocation is ordered, the licensee shall be required to return the original and any duplicate (wall) licenses which the Board issued, to the Board office, within 15 days of the effective date of the revocation order.

II. PENALTY GUIDELINES

Business & Professions Code:

Penalty:

8016
Necessity of Certificate

This section would most generally apply to licensees who are practicing with expired licenses (see Section 8024). It may also apply to exam applicants (see 8020 and 8025(b)).

Maximum: Revocation of license or Denial of admittance to exam. In the case of licensees who practice without a license, the maximum penalty would be imposed in cases where the licensee had been notified by the Board of an expired license and had failed to renew the license. In the case of the exam applicant, in addition to the refusal to admit the applicant, he/she cannot reapply to take the exam for a minimum of one year from the date of the Decision, and the appropriate fine should be part of the order.

Minimum: Revocation - stayed and probation for 4 years. The 4 year period is related to 8024.5.

Conditions of probation: A1,2,3,4,6,7,B,C,D,E1,4,5.

8018
Title and Abbreviation

This section would most generally apply to violators of 8024 through 8024.5, as well as unlicensed practice.

Maximum: Revocation. This would apply to people who have failed to comply with previous notices from the Board.

Minimum: Suspension - stayed, probation for 4 years. The 4 year period is related to 8024.5.

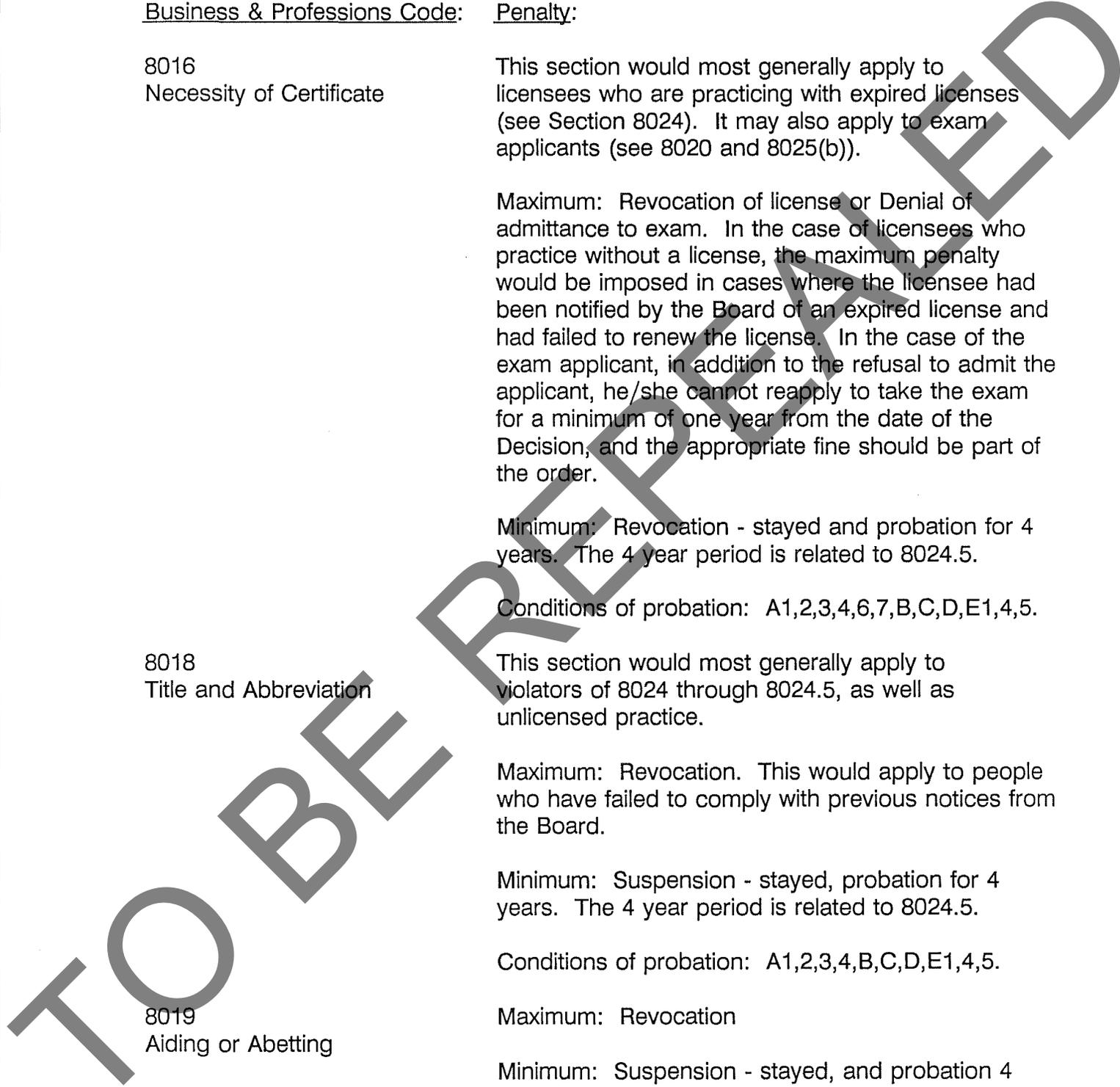
Conditions of probation: A1,2,3,4,B,C,D,E1,4,5.

8019
Aiding or Abetting

Maximum: Revocation

Minimum: Suspension - stayed, and probation 4 years.

Conditions of probation: A1,2,3,4,6,7,B,C,D,E.



8025(a)
Conviction of a Crime
Substantially Related
to the qualifications,
functions & duties of
a CSR.

Maximum: Revocation

Minimum: Suspension plus probation for 3 years or
same period as given for conviction, whichever is
longer.

Conditions of Probation: A through D, and E1,2,4,5.

8025(b)
Fraud or Misrepresentation
resorted to in obtaining
a certificate hereby.

Maximum: See 8016 above. Denial of application
for (entrance to) exam. Applicant prohibited from
applying for the exam for 1 year from date of
decision and fine. In the case where a license has
already been issued: Revocation.

Minimum: Revocation

Conditions of Probation: None

8025(c)
Fraud, Dishonesty,
Corruption, Willful
Violation of Duty

Maximum: Revocation

Minimum: Suspension and 4 years probation.

Conditions of Probation: A thru E.

8025(c)
Gross Incompetence in
Practice

Maximum: Revocation

Minimum: Suspension - stayed, probation 4 years.

Conditions of Probation: A1,2,3,4,B through E.

8025(c)
Unprofessional Conduct

Maximum: Revocation

Minimum: Suspension - stayed, probation 4 years.

Conditions of Probation: A thru E.

8025(d)
Failure to Transcribe
or File Notes

Maximum: Revocation

Minimum: Suspension - stayed, probation 2 years.

Conditions of Probation: A1,2,3,4,6,7,B,C,D,E.

III. CONDITIONS OF PROBATION

A. Standard Conditions of Probation

During the period of probation, respondent(s) shall:

- (1) Obey all laws and regulations governing shorthand reporters.
- (2) Report to the Board or its designee, either in person or in writing as directed, on a schedule set by the Board, but at least once each quarter. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.
- (3) Make restitution to each identified victim when the evidence has demonstrated that there are uncompensated victims.
- (4) Cost recovery.

Standard terms #4 through #7 apply only to licensees who operate reporting firms:

- (4) Report to the Board, in writing within 30 days of the effective date of this decision, any financial interest which the respondent has in any corporation required to be registered pursuant to Section 8040 of the Business & Professions Code. Respondent shall notify the Board thirty (30) days prior to changing their financial interest in any such corporation.
- (5) Post and circulate to all employees a notice which accurately recites the terms and conditions of probation. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees, and independent contractors employed or hired at any time during probation.
- (6) Provide signed and dated statements, within 30 days after the effective date of this decision, from the owners, officers, or any owner or holder of 10% or more of the interest in respondent or respondent's stock, stating said individuals have read and are familiar with state laws and regulations governing the practice of shorthand reporting.
- (7) Submit any proposed advertising copy, whether revised or new, to the Board at least thirty (30) days prior to its intended use. Any such copy must be approved by the Board prior to being used.

- B. Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
- C. Should respondent leave California to reside or practice outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.
- D. Upon successful completion of probation, respondent's license will be fully restored.
- E. Optional Conditions of Probation

During the period of probation, respondent(s) shall:

- (1) Notify employer or reporting firm owner, of the decision in case # _____ and the terms, conditions, and restrictions imposed on respondent by said decision.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, or associating with a different reporting agency, respondent shall cause his/her employer or firm owner, to report to the Board in writing, acknowledging the employer has read the decision in case # _____.

- (2) Submit to the Board, for its prior approval, within 30 days of the effective date of this decision, the name, address, phone number, and description of a rehabilitation program, which respondent shall successfully participate in and complete. The costs for such rehabilitation program shall be borne by respondent.

- (3) Submit to the Board, for its prior approval, within 30 days of the effective date of this decision, the name and qualifications of a physician or psychotherapist of respondent's choice. Upon approval, per Business & Professions Code, section 8025.1(c), respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require respondent to undergo psychiatric evaluations by a Board appointed psychiatrist.

The costs for the psychotherapy shall be borne by respondent. The Board will bear the costs of any psychiatric evaluations by Board appointed psychiatrists.

- (4) Attend a recognized court reporting school and successfully complete a final examination in one or more specified courses.
- (5) Pass the (name of examination section(s)) portion(s) of the next regularly scheduled CSR examination after the effective date of this decision. Should respondent fail said examination, respondent shall be suspended, upon written notice of failure, until he/she takes and passes the same (name of examination session(s)) portion(s) at a subsequent examination.
- (6) Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board appointed physician who shall furnish a medical report to the Board or its designee.

If respondent is required by the Board or its designee to undergo physical or mental treatment, respondent shall, within 30 days of written notice from the Board, submit to the Board, for its prior approval, the name and qualifications of a physician of respondent's choice. Upon approval of the treating physician by the Board, respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board.

(Optional) Upon the effective date of this decision, respondent shall not engage in the practice of shorthand reporting until notified in writing by the Board of its determination that respondent is physically and/or mentally fit to practice safely.

(Optional) If recommended by the physician and approved by the Board or its designee, respondent shall be barred from practicing shorthand reporting until the treating physician recommends, in writing and stating the basis therefore, that respondent can safely practice shorthand reporting, and the Board approves said recommendation.

IV. TERMS OF SUSPENSION

It is the position of the CSR Board that the minimum period of suspension should be 30 days and that item A should apply in most instances.

During the period of suspension, the respondent(s) shall:

- A. Attend a recognized court reporting school and successfully complete the specified number of hours and final examination(s) in specified course(s), in accordance with Board regulations.
- B. Pass the (name of examination section(s)) portion(s) of the next regularly scheduled Certified Shorthand Reporters Examination after the effective date of this decision. Should respondent fail said portion(s) of the examination, the period of suspension shall be extended until respondent successfully passes said (name of examination section(s)) portion(s) of the examination.
- C. Notify employer(s) or reporting firm owner(s), of the decision in case # _____ and the terms, conditions, and restrictions imposed on respondent by said decision.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, or associating with a different reporting agency, respondent shall accuse his/her employer or firm owner, to report to the Board in writing, acknowledging the employer has read the decision in case # _____.

V. FACTORS IN AGGRAVATION AND IN MITIGATION

In determining whether to impose penalties ranging from the maximum level to the minimum level, it is requested that the Administrative Law Judge consider the following factors:

A. Factors in Aggravation

- (1) Prior warnings from CSRB.
- (2) Prior Notice of Violations.
- (3) Failure to accept CSRB's suggested resolution to consumer complaint.
- (4) Attempts to intimidate consumer.
- (5) Negligent or willful delinquent preparation of transcripts.
- (6) Evidence that the unlawful act was part of a pattern of practice.
- (7) Currently on probation for improper acts.
- (8) Failure to successfully complete prior period of probation.
- (9) Violation of previous court order.
- (10) Prior similar violations resulting in discipline.

B. Factors in Mitigation

- (1) Evidence that respondent accepted CSRB's suggested resolution to consumer complaint.
- (2) Voluntary participation in retraining.
- (3) Evidence of temporary medical condition that prevented respondent from exercising supervision and control over employees or others which led to wrongdoing.
- (4) No loss or harm to consumer.
- (5) No previous violation of law or regulation.
- (6) Evidence of voluntary resolution of consumer's complaint.