

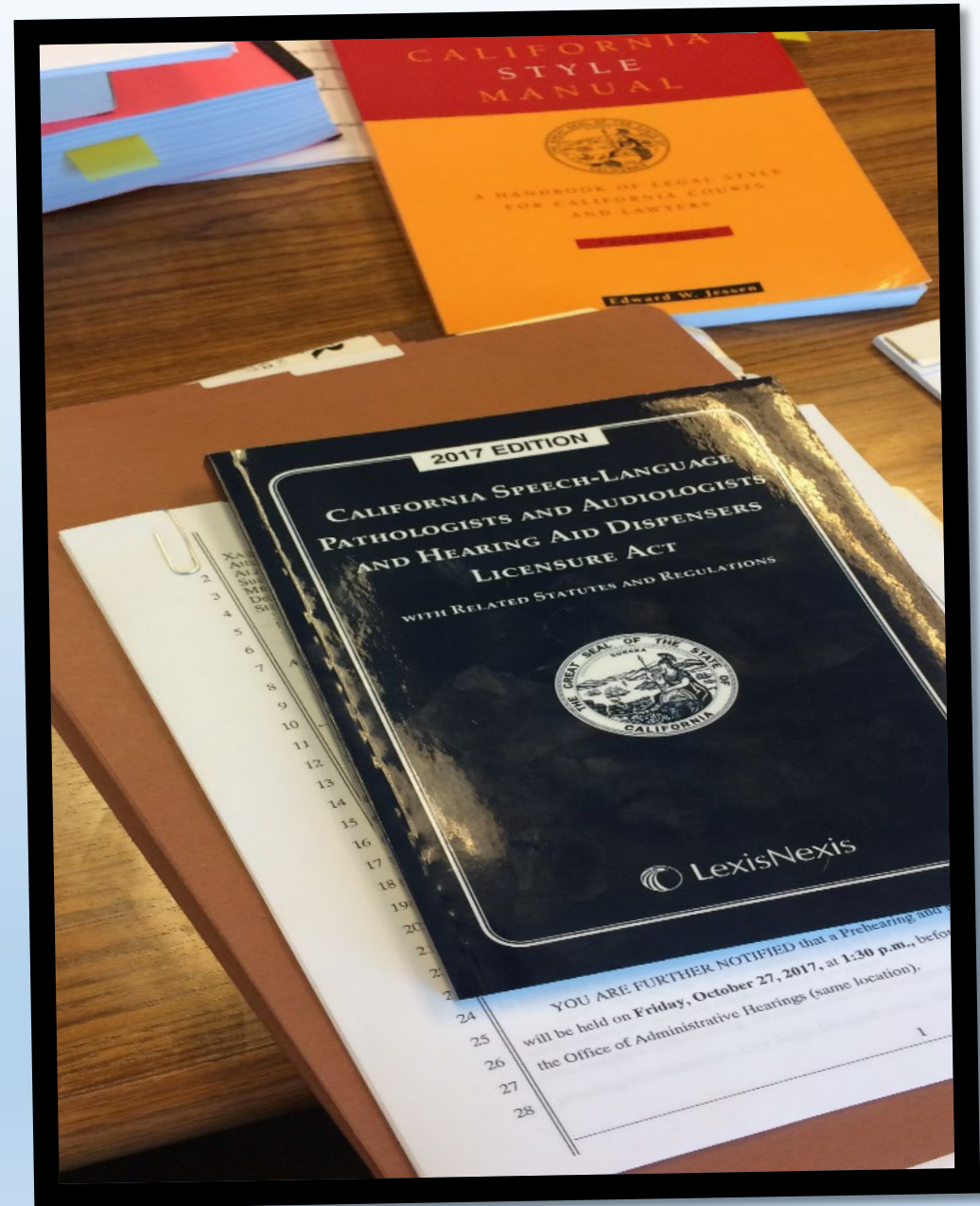
Overview of the Disciplinary Process

Presented by the
Health Quality Enforcement Section



Business and
Professions Code,
§ 3700, et. seq.

Respiratory Care
Practice Act



Section 3710.1: Public Protection Priority

Protection of the public shall be highest priority for the Respiratory Care Board of California 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.

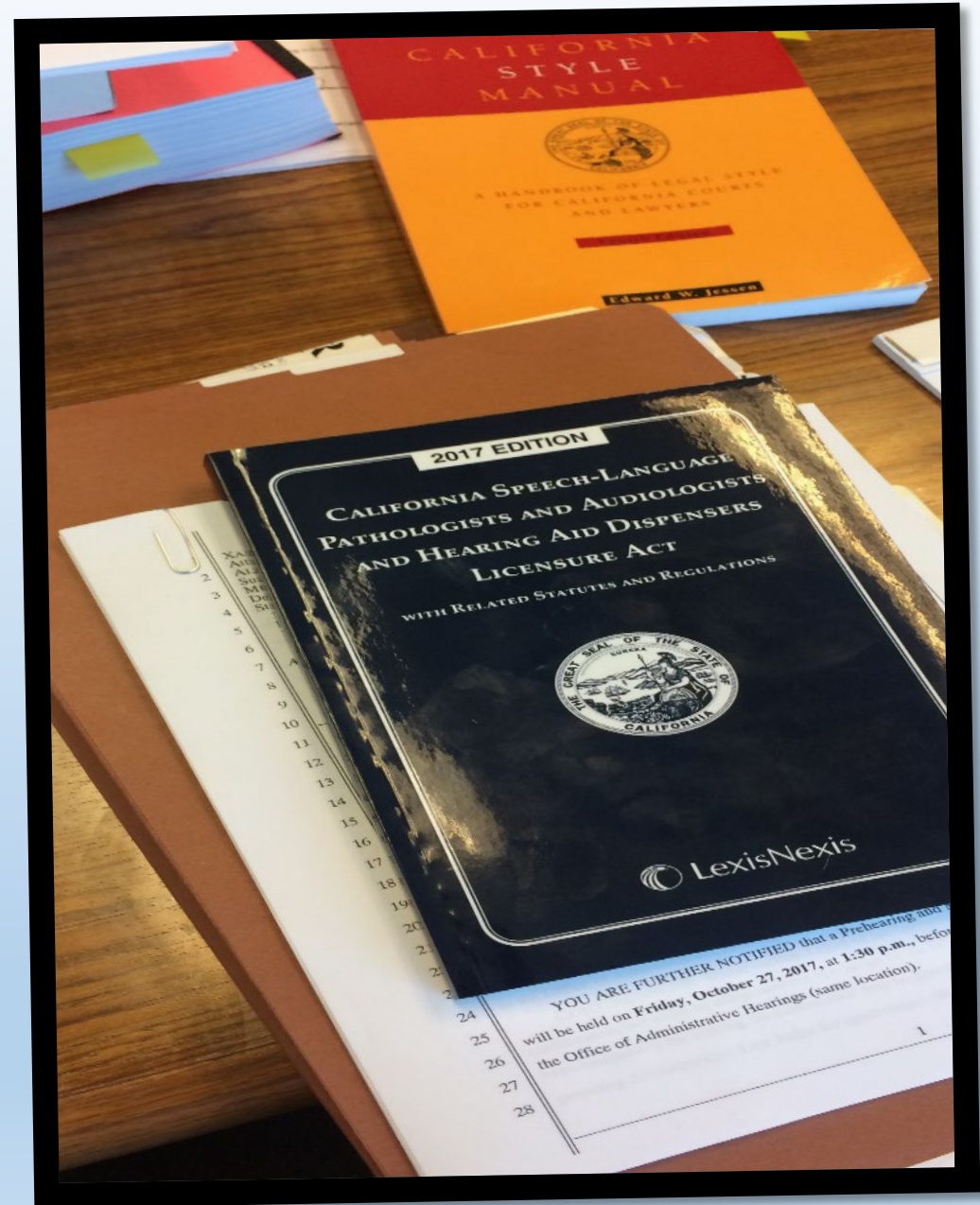


**California Code of
Regulations, tit. 16,
Division 13.6**

&

**2011 Disciplinary
Guidelines**

**Respiratory Care
Regulations &
Guidelines**



Disciplinary Process

- INVESTIGATION BY DCA
- Referral to AGO for Legal Review
- Accusation
- Discovery
- Settlement or Default
- Administrative Hearing
- Decision
- Post-Decision



Investigation

- Complaint received.
- Board staff reviews complaint.
- Board staff conducts investigation.
- Board staff retains expert to review gathered evidence and provide opinion on whether there has been unprofessional conduct.

Disciplinary Process

- Investigation by DCA
- **REFERRAL TO AGO
FOR LEGAL REVIEW**
- Accusation
- Discovery
- Settlement or Default
- Administrative Hearing
- Decision
- Post-Decision





Referral to the Attorney General's Office

- Attorney General's Office, California Department of Justice.
- Deputy Attorneys General of the Health Quality Enforcement Section serve as the Board's prosecutors.

Disciplinary Process

- Investigation by DCA
- Referral to AGO for Legal Review
- **EVIDENCE REVIEW AND LEGAL ASSESSMENT**
- Accusation
- Discovery
- Settlement or Default
- Administrative Hearing
- Decision
- Post-Decision





Ettinger v. Med. Bd. (1982)

“Since it is apparent that the underlying purpose of disciplining both attorneys and physicians is protection of the public [...] the proper standard of proof in an administrative hearing to revoke or suspend a doctor’s license should be *clear and convincing proof to a reasonable certainty* and not a mere *preponderance of the evidence*.”





Ettinger v. Med. Bd. (1982)

“Generally, proof in civil cases is required by preponderance of the evidence. However, in a number of situations, a greater degree of proof, usually clear and convincing evidence, is required. [. . .]

The purpose of an administrative proceeding concerning revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners.”





Evaluation of Evidence to Determine Recommendation for Prosecution

- Sufficient evidence to prove unprofessional conduct?
- Burden: “clear and convincing evidence to a reasonable certainty.”

Burden of Proof

Levels of Proof

**Preponderance of
evidence (51%)**



**Clear and convincing
evidence (75%)**



**Beyond a reasonable
doubt (95%)**



Disciplinary Process

- Investigation by DCA
- Referral to AGO for Legal Review
- Evidence Review and Legal Assessment
- **ACCUSATION**
- Discovery
- Settlement or Default
- Administrative Hearing
- Decision
- Post-Decision



Accusation

A document that notifies the licensee (Respondent) of the charges that are being brought against his or her license.



Statement of Issues

A document that notifies a license applicant of the charges that are being brought against him or her to deny a license.



Accusation: Charging A Licensee

- DAG recommends filing of an Accusation by accepting the case for prosecution.
- DAG drafts the Accusation listing the charges that are being brought against the Respondent based on the evidence. Reviewed by SDAG.
- The Executive Officer of the Board (Complainant) reviews the Accusation. If acceptable, she signs it.
- A copy of the Accusation is served on the Respondent and is published online (BreEZe.ca.gov).

Charging a Licensee

(Bus. & Prof. Code, § 3750)

- Unlawful advertising
- Fraud in the procurement of a license
- Conviction of a crime
- Quality of care: negligence or incompetence
- Fraudulent, dishonest, or corrupt acts
- Falsifying or making grossly incorrect/inconsistent medical records
- Changing the prescription of a physician or surgeon
- Discipline by another state or jurisdiction

Charging a Licensee

(Bus. & Prof. Code, § 3750.5)

- Obtained, possessed, used, or self-administered or furnished or administered to another any controlled substance or dangerous drug
- Use of any controlled substance or dangerous drug or alcoholic beverages to an extent or in a manner dangerous to her/himself or others
- Applied for employment or worked while under the influence of alcohol
- Criminal conviction involving consumption or self-administration of controlled substance, dangerous drug or alcohol
- Falsified or made grossly incorrect, grossly inconsistent or unintelligible entries in a medical record pertaining to controlled substances or dangerous drugs

Negligence and Incompetence

Standard of Care:

The degree of care that a reasonably prudent practitioner would provide under the same or similar circumstances.



Disciplinary Process

- Investigation by DCA
- Referral to AGO for Legal Review
- Evidence Review and Legal Assessment
- Accusation
- **DISCOVERY**
- **SETTLEMENT OR DEFAULT**
- Administrative Hearing
- Decision
- Post-Decision



Disciplinary Process

- Investigation by DCA/DOI
- Referral to AGO for Legal Review
- Evidence Review and Legal Assessment
- Accusation
- Discovery
- Settlement or Default
- **ADMINISTRATIVE HEARING**
- Decision
- Post-Decision



Questions?

