

Mail Ballot Procedures in Administrative Disciplinary Matters
(pursuant to Government Code section 11526)

Government Code section 11526 allows the Board to vote on all administrative disciplinary matters via mail ballot. "Administrative disciplinary matters" include stipulations, proposed decisions, default decisions, and petitions for reconsideration of decisions previously adopted by the Board.

The process the Board follows to take administrative disciplinary action against a licensee is addressed in the Administrative Procedure Act (also referred to as the "APA"), which is part of the California Government Code. "Administrative disciplinary action" includes such things as revocation or suspension of a license, placing a licensee on probation, and issuing letters of public reproof (or reprimand). Typically, these matters are presented to the Board for discussion and vote during Closed Session at a Board meeting. Under the provisions of the Bagley-Keene Open Meeting Act, which is also part of the California Government Code, the Board cannot take action on items unless it does so at publicly-noticed meetings, even if those items are acted upon during the Closed Session portion of the meeting. The Bagley-Keene Open Meeting Act allows the Board to meet in Closed Session specifically to discuss and take action on administrative disciplinary matters. However, the APA contains a provision that allows the Board to vote on administrative disciplinary matters outside of a publicly-noticed meeting via mail ballot (which also includes via fax and e-mail).

Voting on administrative disciplinary matters via mail ballot allows the disciplinary process to proceed in a timely manner and allows the Board to act on them on a flow basis as they are received, rather than waiting for the next regularly-scheduled meeting.

Over the last year, the Department of Consumer Affairs (DCA) has become very concerned with the length of time it takes for administrative disciplinary action to be taken against licensees. DCA has established a goal for all of its constituent boards, bureaus, and programs of an average of 12-18 months for cases to be processed from receipt of the initial complaint to the final decision becoming effective. Currently, the average for our cases is 60 months. We have been advised that our average is by far the oldest (the next closest is 36 months) and that this will be an issue that is raised during the Board's upcoming sunset review. While the previous backlog and aging of our complaint investigation cases is a contributing factor, the other main factor that is causing the aging is the length of time between Board meetings. In the past, Board meetings were held approximately every 6 to 8 weeks; they are now being held every 3 months. Holding the administrative disciplinary matters until a Board meeting can add several months to the aging of the cases, whereas voting on them via mail ballot as they are received would help to reduce the aging.

In addition to reducing the aging of the cases, voting by mail ballot expedites the resolution of the matter, which is a benefit to the licensees and the consumers both. The majority of the Board's administrative disciplinary cases are resolved through a

stipulated settlement in which all of the parties have agreed to the terms and conditions. The respondents (subjects) want to move forward to comply with those terms and conditions in an expeditious manner, and the consumers are awaiting notice of the final resolution of their complaints; however, they must wait until the Board votes to accept the stipulated settlement.

Another benefit to voting by mail, rather than holding all administrative disciplinary matters for discussion in Closed Session at a Board meeting, is that it would reduce the amount of time the Board spends in Closed Session, during which the public must wait for the Board to resume the Open Session (public) portion of the meeting.

When voting by mail ballot, the Board members would have the option to accept or reject the administrative disciplinary decision or to request that it be held for discussion at the next regularly-scheduled Board meeting.

The only other option to speed up the process would be for the Board to schedule more meetings throughout the year. Board meetings could be specifically dedicated to consideration of only administrative disciplinary matters in Closed Session; however, the meetings would still have to be noticed with Open Sessions for the public both before and after Closed Session, as required by the Bagley-Keene Open Meeting Act. Holding additional meetings would increase the Board's expenses for things such as travel and meeting rooms. The meetings could also be held via teleconference; however, each location from which a Board member calls in to the meeting must be included on the notice as a place where the public may attend to participate in the meeting and must meet accessibility requirements.

Due to the aging that holding the administrative disciplinary matters for a Board meeting is causing for the cases, and in order to allow the matters to be resolved in a more expeditious manner to the benefit of the licensees and the consumers, staff recommends that the Board begin voting on administrative disciplinary matters via mail ballot.