

## **EXHIBIT A**

# **GUAM BOARD OF ALLIED HEALTH EXAMINERS ADMINISTRATIVE RULES AND REGULATIONS**



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## INTRODUCTION

"The practice of allied health is a *privilege* granted by the people acting through their elected representatives. It is *not* a natural right of individuals. In the interests of public health, safety, and welfare, and to protect the public from the unprofessional, improper, incompetent, unlawful, fraudulent and/or deceptive practice of allied health professions, it is necessary to provide laws and regulations to govern the granting and subsequent use of the privilege to practice allied health professions. The primary responsibility and obligation of the Guam Board of Allied Health Examiners is to protect the people of Guam." 10 GCA § 12801(c).

## § 10101. CONSTRUCTION

(a) Whenever the context requires, the masculine shall include the feminine and neuter, and conversely; the singular shall include the plural, and conversely; and the present tense shall include the future as well as the present.

(b) If any of the provisions of these Rules, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of these Rules which can be given effect without the invalid provision or application, and to this end the provisions of these Rules are severable.

(c) Headings are for organization, convenience, and clarity. In interpreting these Rules, they shall be subordinated in importance to the other written materials, and shall not in any manner affect the scope, meaning, or intent of the provisions of these Rules.

## § 10102. DEFINITIONS

To the extent not otherwise defined by law, as used in these rules the terms and acronyms listed below shall have the following meanings:

(a) *Accredited educational institution* means any educational institution which grants an associate, baccalaureate, master's, or doctoral degree and is accredited by a professional accrediting body in the United States or by another accrediting agency recognized by the Board.

(b) *Advertising* includes, but is not limited to, business solicitations, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building; or in any newspaper, magazine, directory, or other printed matter. Advertising also includes business solicitations communicated by individual, radio, video, Internet, social media, television and radio broadcasting, or any other means designed to secure public attention.

(c) *ASHA* means the American Speech, Language, Hearing Association, the recognized national association which sets educational, ethical, and practice standards for the field of Speech-Language Pathology.

(d) *Board* means the Guam Board of Allied Health Examiners.

(e) *Collaborative Practice Agreement* or *CPA* means an agreement between an allied health professional and a Guam licensed physician practicing in the Allied Health professional's area of specialty, wherein the parties mutually agree, in writing, to the terms and conditions of the ordering and prescribing of Schedule Drugs II - V.

(f) *DPHSS* refers to the Department of Public Health and Social Services.

(g) *GBAHE* refers to the Guam Board of Allied Health Examiners

(h) *HPLO* refers to the Health Professional Licensing Office

(i) *Practice* means to do or attempt to do, or to hold oneself out or to allow oneself to be held out as ready to do, any act constituting a part of the healing arts for a fee, gift, reward or in anticipation of any fee, gift, or reward whether tangible or intangible. Practice of a healing art profession shall mean to use any title, words, abbreviation, or letters, or by any other means to represent directly or indirectly, publicly, or privately, an ability or willingness to perform any of the acts constituting the practice of any allied health profession under the purview of the Board.

(j) *Prescription* means an order for drugs, treatment, services, or devices written, signed, or transmitted by word of mouth, telephone, or electronically by a practitioner of the healing art.

(k) *SLPA-B* means Speech Language Pathology Assistant, Bachelor's Level.

(l) *SLPA-M* means Speech Language Pathology Assistant, Master's Level.

## **§ 10201. OPERATIONS**

### **§ 10202. Board Member Standards**

(a) Board members shall:

(1) familiarize themselves and maintain a working knowledge of the laws, rules, policies, and procedures under the jurisdiction of the Board;

(2) regularly attend and meaningfully participate in Board meetings and other Board proceedings, including committee work, to the fullest extent;

(3) prepare for Board meetings by reviewing available material, including prior Board meeting minutes and committee reports, in advance;

(4) decline to deliberate, participate, or otherwise attempt to affect or influence the outcome of any matter before the Board when to do so may result in a conflict of interest or the appearance of a conflict of interest; and

(5) be an advocate for the Board's programs.

(b) Board members shall not:

(1) have private contracts or business dealings with the Board, other than Board member compensation or reimbursement as may be otherwise provided by law.

(2) receive any payment or benefit from transactions of the Board, other than the benefit derived from licensure by the Board if the Board member is a licensee of the Board.

(3) solicit or receive a gift or favor from any person, company, organization, or any intermediary interest which may compromise or appear to compromise the independent



judgment of the Board member regarding fulfillment of any Board or Board member obligations.

(4) attempt to obtain favorable treatment by the Board for any individual or entity.

(5) use his or her position on the Board to advance any private interest.

(6) commit the Board or themselves on behalf of the Board to any action without authorization from the Board.

(7) seek to evade the requirements of Guam's open meetings and public records laws with respect to all communications, whether written or electronic, between Board members or between Board members Board staff including, but not limited to, emails, social media, and telephone text messages.

#### **§ 10203. Officers**

At the first meeting following the start of the new calendar year the Board shall elect from its members the following officers:

(a) Chair – The chair shall preside at all Board meetings and shall represent the Board. The chair with the advisement of the Board may appoint another officer as a representative.

(b) Vice-chair – The vice-chair shall assist the chair in the performance of the chair's duties and shall assume other duties as assigned by the chair and with the consent and approval of the Board. In the absence or disqualification of the chair, the vice-chair shall assume the duties and the responsibilities of the chair and shall preside over the meetings of the Board. If the chair should become unable to carry out the responsibilities of the office, the vice chair will serve the remainder of the chair's term.

(c) Secretary – The secretary together with the staff of the HPLO shall be responsible for correspondence from the Board, and for maintaining accurate minutes, records, and accounts of all meetings. In the absence of the chair and vice-chair, the secretary shall assume the duties and the responsibilities of the chair and shall preside over the meetings of the Board.

(d) Treasurer – The treasurer together with the staff of the HPLO and those departments and agencies responsible for the administration of finances of the government of Guam shall be responsible for the oversight of the Board's budget and finances. The treasurer may also work with third parties to prepare financial reports and to prepare for audits.

#### **§ 10204. Board Meetings**

The time, place, and frequency of regular Board meetings shall be decided by the Board or at the call of the chair except that at least one meeting shall be held at least every 60 days.

(a) Regular meetings of the Board shall be held at the time and place stated in the public notices of the meeting. The chair shall set the items to be discussed on the agenda, subject to approval of the Board. To allow time for notice to be published as required by the Open Government Law, requests for matters to be placed on the agenda shall be submitted to the chair *not less than ten (10) calendar days* prior to the date of the meeting. The decision of the chair as to

any matter to be placed on the agenda is final, subject to a vote of a majority of the members present that the matter be placed on the agenda of the next public meeting.

(b) Special meetings may be called at the discretion of the chair or at the request of two members of the Board. Notice of special meetings must be delivered personally, or by postal or electronic mail, to each member of the Board at least five (5) working days before the time of such meeting as specified in the notice unless waived in writing prior to or after the meeting, or by the member's actual presence at the meeting. The call and notice of special meeting shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered.

(c) All meetings, whether regular or special, shall be announced and notice thereof given in accordance with the Open Government Law. Notices shall contain the agenda of matters to be discussed at the meeting and shall contain sufficient detail to put the public on notice as to what is to be discussed.

(1) Regular Meetings. Public notice of regular meetings must be published in at least one newspaper of general circulation as provided in the Open Government Law at least five (5) working days (excluding weekends and government of Guam holidays), and a second public notice at least forty-eight (48) hours, before the time of such meeting as specified in the notice.

(2) Special Meetings. Public notice for special meetings shall also be provided to each newspaper of general circulation and broadcasting station known to air a regular local news program within Guam at least five (5) working days, and a second public notice at least forty-eight (48) hours, before the time of such meeting as specified in the notice.

(3) Emergency Meetings. The five (5) days' notice and the forty-eight (48) hours' notice may be waived in the event of an emergency certified to in writing by the chair and stating the exact nature of the emergency. The Board may also consider all necessary business in the event of an emergency. This does not require the Board to give notice of its meetings by paid advertisements in any newspaper or over any broadcasting station. Written notice may be dispensed with as to any member of the Board who is actually present at a meeting at the time it convenes.

#### **§ 10205. Order of Business at Regular Meetings**

Subject to modification and approval of the Board, the order of business at meetings shall be as follows:

- (a) Call to order; determination of quorum;
- (b) Determination of proof of publication of notice of meeting in accordance with the Open Government Law;
- (c) Approval of agenda items (note: the Open Government Law does not permit the addition of new items or subjects to be added to the agenda as already published; however, the order of published agenda items may be rearranged);
- (d) Reading and disposition of minutes of prior Board meeting(s);

- (e) Executive Officer's Report;
- (f) Treasurer's Report;
- (g) Legal Counsel's Report;
- (h) Committee Reports:
  - (1) Finance & Budget;
  - (2) Statutes, Rules, and Forms;
  - (3) Disciplinary Complaint and Investigation;
  - (4) Continuing Education;
  - (5) Other committee reports, but only if specified in the published agenda,
- (j) Old Business – to be specified in the agenda in sufficient detail to put the public on notice as to what is to be discussed;
- (k) New Business – to be specified in the agenda in sufficient detail to put the public on notice as to what is to be discussed;
- (l) Consideration of applications for licensure and renewal of licenses;
- (m) Communications and Correspondence;
- (n) Calendaring of Next Meeting; and
- (o) Adjournment.

#### **§ 10206. Rules of Order**

Except during disciplinary hearings and where otherwise provided by law and in these rules all proceedings of the Board shall be governed by Robert's Rules of Order, latest revised edition.

#### **§ 10207. Quorum and Voting**

(a) A quorum must be present to conduct a Board meeting. A quorum consists of a majority of the whole number of appointed members of the Board as of the time of the meeting.

(b) The vote of the majority present and authorized to vote shall constitute an official action of the Board. The majority vote shall consist of half of the vote plus one (1) of those members present.

(c) All members of the Board, including the chair, are entitled to vote and to make or second motions. The chair shall vote as a member of the Board.

(d) No motion, resolution, or other action of the Board may be taken in secret or by secret ballot. All members present are required to vote on every motion, action, or resolution for which a vote is called, unless the member is excused for cause, e.g., in the case of a conflict disclosed on

the record, or the member is otherwise barred by law from participating and voting on a particular matter.

#### **§ 10208. Committees**

Immediately following the election of officers or in the event of a vacancy the Board shall appoint all standing committee chairs and co-chairs.

(a) Standing Committees shall include:

- (1) Finance and Budget;
- (2) Statutes, Rules, and Forms;
- (3) Continuing Education;
- (4) Website development and public education.

(b) Whenever deemed necessary by the chair special committees may be formed from the membership of the Board and may also include any persons licensed by the Board and volunteers with special expertise or interest in the subject matter. The duties, powers, authority, and membership of the Committee shall be determined by the chair with the advice of the Board.

#### **§ 10209. Adjournment / Recess**

(a) The Board may adjourn or recess any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may also adjourn a meeting from time to time.

(b) If all voting members of the Board are absent from any regular or adjourned regular meeting the director of the HPLO or the director's designee may by telephone consult with the chair, the Vice chair, or in their absence any other officer of the Board, and declare the meeting adjourned to a stated time and place. At that time the director of the HPLO shall cause a written notice of the adjournment to be given in the same manner as provided in 5 GCA § 8109.

(c) A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, special, or adjourned meeting was held within twenty-four (24) hours after the time of the adjournment.

(d) When a regular or adjourned regular meeting is adjourned, the resulting adjourned regular meeting is a regular meeting for all purposes.

(e) When an order of adjournment of any meeting fails to state the hour or location at which the adjourned meeting is to be held it shall be held at the hour and location historically specified for regular meetings.

#### **§ 10210. Board Meeting Participation by Video Teleconference**

(a) Board members are expected to make every effort to attend meetings in person. When personal attendance is not possible or practical, a Board member may participate in a meeting of the Board by video teleconference *provided* that Board member's video is active and the Board member's facial features may be observed, that all persons participating in or attending the meeting

in person and by video teleconference are able to hear and see the Board members and other participants in the meeting.

(b) Participation in a Board meeting by video conferencing constitutes presence in person at the meeting for purposes of establishing a quorum. Meetings may be chaired by video teleconference. Executive sessions and due process hearings may *not* be conducted via video teleconference. Whenever one or more Board members are attending by video teleconference voting shall be by roll call only. A Board member whose video is not turned on shall be deemed to have left the meeting and shall no longer continue to be counted toward a quorum.

(c) The location and means of attending a Board meeting by any member participating by video teleconferencing shall be recorded in the minutes. Board members participating by video teleconference shall identify themselves each time they address the Board.

(d) The chair may cause or direct the temporary disconnection or muting of a member's or meeting participant's connection if it is causing undue interference with the meeting, and the chair's decision to do so shall be recorded in the minutes. In the event it is determined by the chair that either the absent Board member or the Board members in attendance in person cannot hear or be heard by one another, the absent Board member shall not vote, nor continue to be counted toward a quorum.

#### **§ 10211. Board Member Conflict of Interest or Disqualification**

(a) Any Board member who knows, or with reasonable investigation should know, that the member has a personal, private, or financial interest in any matter under consideration by the Board shall not vote for or against, discuss, decide, or in any way participate in considering the matter, or seek to influence the votes or decisions of others on such matter.

(b) Prior to any determination of the matter, the Board member shall verbally disclose the nature of such interest and the reason or reasons therefore shall be recorded in the minutes. Should a Board member be absent from that meeting or a portion of that meeting, the Board member shall verbally disclose the nature of the conflict at the next attended meeting and the disclosure shall be placed in the records of the Board.

(c) If the nature of the conflict is that the Board member may have a financial interest in a decision pending before the Board, the Board member must complete and file a Disclosure of Conflicts of Interest form with the Guam Election Commission within three (3) working days upon the Board member's recognition of the conflict.

#### **§ 10212. Disclosure of Board Information**

(a) A Board member shall:

(1) obtain the permission, vote, or approval of the Board as to the information that may be shared when speaking on behalf of the Board;

(2) promptly refer any requests for comment by the media to designated Board staff unless such comment has been previously sanctioned and approved by a Board majority to speak on behalf of the Board; and

(3) exercise due diligence to avoid any breach of duty as a Board member arising out of negligence, intentional action or omission, or unauthorized communication with any individuals.

(b) All information disseminated by Board members shall be factual and limited to information that is otherwise appropriate to be disclosed to the public.

(c) This section shall not be construed to limit the freedom of expression of a Board member as an individual member of the public in which case the Board member shall make it known that the member is speaking on their own behalf and not as a representative of the Board.

#### **§ 10213. Removal from Office for Absences**

The unexcused absences of a member from three (3) consecutive regular meetings of the Board shall constitute cause for removal of the member from the Board, which shall be certified to the Governor who may thereupon remove the member from the Board. The determination whether a member's absence is excused or unexcused shall be made by the chair, and in the event of a dispute then by the majority of the Board.

#### **§ 10214. Consultants and Volunteers**

The Board may employ or retain the services of consultants on a paid or volunteer basis who may be vested with the authority to do the following:

(a) Investigate disciplinary complaints and other matters brought to attention of the Board when instructed or otherwise directed to do so by the Board or a subcommittee of the Board.

(b) Recommend whether and what type of disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Board.

(c) Recommend whether and under what terms a complaint, case, or disciplinary action might be settled. Any matter proposed for settlement must be approved by a majority vote of the Board in a regular or special meeting before it will become effective.

(d) Undertake any other matter that may be authorized by the chair or by a majority vote of the Board.

#### **§ 10215. Public Records and Complaints**

(a) All requests, applications, notices, communications, and correspondence shall be directed to the Board in care of the HPLO. To be considered by the Board any requests or inquiries requiring a Board decision or official Board action, except for documents relating to disciplinary actions or hearing requests, must be received in the HPLO fourteen (14) days prior to a scheduled Board meeting and will be retained by the HPLO and presented to the Board at the Board meeting. Where possible, the request, application, notice, or other communication shall be delivered via email to the Board members in advance of the meeting. Any request, application, notice, or other communication that is not timely received by the HPLO shall be set over to the next Board meeting.

(b) "Public record" means all Board records which are reasonably necessary to record the business and activities required to be done or carried on by the Board so that the status and condition of the Board's business and activities can be known to the public. Records which do not

constitute "public records" include those received by the Board in confidence; personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy; applications for licensure or certification; complaints against licensees or applicants, and investigative records relating to complaints against licensees or applicants. All records of the Board, except those made confidential by law and as provided herein, are open for inspection and examination and copying during regular office hours, under the supervision of an employee or staff of the HPLO.

(c) Complaints made against a licensed practitioner become public information only upon the filing of a notice of formal charges also known as an accusation by the Board. Otherwise, records of complaints, and records of investigations conducted by or on behalf of the Board are *not* public records.

(d) Copies of public records shall be provided to any person for free if requested in electronic format via the Internet, and upon payment of costs allowable by law for hard copies or copies in electronic media.

#### **§ 10216. Petition for Declaratory Ruling**

(a) The Board is authorized to issue declaratory rulings with respect to the applicability to any person, property, or state of facts any rule or statute enforceable by it. Such rulings may be issued provided:

(1) The petitioner demonstrates that he or she is, or in the case of an organization its members are, or will be substantially affected by the rule in question;

(2) Sufficient facts are supplied in the petition to permit the Board to make a valid determination; and

(3) The request for declaratory ruling arises from an actual question or controversy.

(b) A petition for a declaratory ruling must be in writing and shall contain the following minimum information:

(1) A title reflecting that the petition seeks a declaratory ruling on a rule or rules.

(2) The petitioner's name, mailing address, telephone number, and email address.

(3) The name, mailing address, email address, and telephone number of all persons known to have an interest in the outcome of the declaratory ruling.

(4) A statement identifying all rules or statutes that may be involved, if known, should the relief sought in the petition be granted in whole or in part.

(5) The exact question to which an answer is requested.

(6) The reason for submitting the petition, if not apparent from the face of the petition.

(7) Full disclosure of the petitioner's interest.

(8) A statement as to whether the petitioner's question presented is presently under consideration by the Board, another Board, or by any judicial or quasi-judicial body in any pending proceedings, and, if so, where.

(9) A certification and signature before a notary public or other person authorized by law to administer oaths, or unsworn declaration in conformance with § 4308 of Title 6, Guam Code Annotated that the information contained in the petition is true and correct to the best of the petitioner's information and belief, and that the petition has not been filed for any improper purposes, or for delay or harassment.

(c) The Board is not bound by the exact phrasing of the request for declaratory ruling but may alter the question to either narrow or broaden its application.

(d) Failure or refusal to completely disclose or provide the minimum information required by these rules shall be grounds for dismissal of the petition.

(e) Declaratory rulings shall not issue with respect to generalized grievances or matters that are currently pending before the Board or any judicial or quasi-judicial body in any proceeding, contested case, or litigation, nor may a petition for declaratory ruling be utilized as a means of collateral attack or appellate review of any final decision of the Board, or any judicial or quasi-judicial body.

(f) A declaratory ruling, if issued after argument and stated to be binding, is binding between the Board and the petitioner on the state of facts alleged, unless altered or set aside by a court.

(g) Declaratory rulings entered by the Board are subject to review in the Superior Court of Guam in the manner provided for the review of decisions in contested cases.

(h) Guam law provides that the validity of any rule may be determined upon petition for a declaratory judgment addressed to the Superior Court of Guam, when it appears that the rule, or its threatened application, interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the petitioner. The law further provides that the Board shall be made a party to the petition. *Provided*, however, that the declaratory judgment may be rendered by the Superior Court only after the petitioner has first requested the Board to pass upon the validity of the rule in question and the agency has either ruled adversely to the petitioner or has failed to rule within ninety (90) days.

#### **§ 10217. Petition for the Adoption, Repeal, or Change of Rule**

(a) Any person may petition the Board for the adoption of a new rule or for the repeal or change of any existing rule.

(b) In order to be considered, a petition for a rule change shall be in writing and contain the following minimum information:

(1) A title reflecting that the petition seeks the adoption of a new rule, or the modification or repeal of an existing rule or rules;

(2) The petitioner's name, mailing address, telephone number, and email address.



(3) A statement identifying all rules or statutes that may be involved should the relief sought in the petition be granted in whole or in part;

(4) A clear and concise statement or narrative as to why the new rule, or modification or repeal of an existing rule is needed, specifying:

(A) the legal authority for the proposed rule, modification, or change;

(B) the persons or class of persons it would affect and how it would affect them;

(C) the benefits and disadvantages of the proposed rule, modification, or repeal;

(D) an economic impact statement or preliminary cost impact assessment if required by 5 GCA § 9301(f);

(E) any other reasons why the rule, modification, or repeal should be accepted by the Board; and

(F) the name, mailing address, email address, and telephone number of any person, firm, organization, and the identity of any class of persons known to the petitioner, who would be or could be adversely affected by the proposed rule, modification, or repeal;

(5) The reason for submitting the petition, if not apparent from the face of the petition;

(6) Full disclosure of the petitioner's interest;

(7) A statement as to whether the issues presented by the petition are presently under consideration by the Board or by any judicial or quasi-judicial body in any pending proceedings, and, if so where;

(8) A certification and signature before a notary public or unsworn declaration in conformance with § 4308 of Title 6, Guam Code Annotated that the information contained in the petition is true and correct to the best of petitioner's information and belief, and that the petition has not been filed for any improper purposes, or for delay or harassment.

(c) At the next regularly scheduled Board meeting following submission of the petition for the adoption of a new rule or for the repeal or change of any existing rule, the Board shall:

(1) deny the petition, specifying the reasons therefor on the minutes of the meeting to be confirmed in writing by the chair of the Board to the petitioner; or

(2) set the matter for hearing in accordance with the provisions of Administrative Adjudication Law within sixty (60) days of the date of the filing thereof, or at the next available regularly scheduled Board meeting.

### **§ 10301. SCOPE OF PRACTICE OF PROFESSIONS LICENSED BY THE BOARD**

A license to practice an allied health profession is circumscribed not only by the scope of practice defined by statute, rule, and regulation, but also the ethical proscription applicable to all practitioners of the healing arts not to engage in any practice beyond their education, training, skill, and expertise. The fact that an allied health profession's scope of practice allows or does not expressly exclude a particular service, application, or technique, is *not* a license to engage in any practice beyond the practitioner's education, training, skill, and expertise.

### **§ 10302. Acupuncture and Oriental Medicine**

Acupuncture and Oriental Medicine is the science and art of examination and diagnosis based on Traditional Oriental Medicine, and treatment of symptoms and diseases by the insertion of needles into the respective three hundred sixty five (365) major trigger points of twelve (12) meridians, eight (8) extra trigger points of extra meridians, Ashi (regional or local) points, as well as other extra points on the human body, by piercing the skin of the body to control and regulate the flow and balance of vital energy in the body and to treat ailments or diseases of the mind, body, any wound, bodily injury, or deformity. The term includes therapies that use manual, mechanical, thermal, electrical, or electromagnetic treatment based on the principles of Oriental Medicine to prevent or modify the perception of pain or to normalize physiological functions including pain control for the treatment of diseases or dysfunction of the Yin and Yang organic systems, and includes the application of acupuncture needles, electro-acupuncture, electrodynamics stimulation, i.e., electro-stimulation, neuromuscular stimulation, etc., ultrasound, or diathermy devices, cold lasers, magnets, cupping, moxibustion, heat and cold therapy, i.e., heat and cold pads, heat lamp, infrared heat, etc., hydrotherapy, acupressure, Tui Na, Oriental massage, massage therapy, Chi-gong, breathing techniques, therapeutic exercise, manual traction, naturopathy and related natural medicine techniques, and nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health. Ordering blood and laboratory tests, x-rays, or image tests to assist in making a diagnosis and monitoring of a treatment plan is within the scope of practice of acupuncture and oriental medicine. It shall exclude operative surgery and the prescription of scheduled drugs.

### **§ 10303. Audiology**

*Audiology* means the application of principles, methods and procedures for measurement, testing, evaluation, prediction, counseling, selling, instruction, habilitation, or rehabilitation related to hearing aids or ear molds, including the fitting of such devices, or disorders of hearing for the purpose of evaluation, identifying preventing, rehabilitating, ameliorating, or modifying such disorders and conditions in individuals.

### **§ 10304. Chiropractic**

*Chiropractic* means the science, art, and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body, by the correction of misalignments or subluxation of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health. It shall include the use of all natural agencies to assist in the healing art, such as food, water, heat, cold, electricity, mechanical appliances, and the ordering of laboratory tests. The use of imaging procedures shall be limited to skeletal imaging and shall exclude the therapeutic use of X-radiation, the use of contrast studies that introduce dyes, isotopes, or similar

contrast media through the skin, orally, via catheterization or retrograde into any body cavity. It shall exclude operative surgery and the prescription of scheduled drugs.

**§ 10305. Clinical Psychology**

(a) *Clinical psychology* is a subspecialty of psychology which is primarily concerned with assessing and alleviating emotional, mental, and behavioral disorders in a hospital, institution, or other clinical setting.

(b) The practice of clinical psychology includes:

(1) the rendering to individuals, groups, organizations or the public any psychological service involving the application of principles, methods and procedures of understanding, predicting and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions and inter-personal relationships; the methods and procedures of interviewing, counseling and psychotherapy; constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion and motivation, and of assessing public opinion;

(2) the application of said principles and methods, including, but not limited to, diagnosis, prevention and amelioration of adjustment problems, and emotional and mental disorders of individuals and groups, hypnosis, educational and vocational counseling, personnel selection and management, the evaluation and planning for effective work and learning situations, advertising and market research and the resolution of interpersonal and social conflicts; or

(3) psychotherapy by the use of learning, conditioning methods, and emotional reactions, in a professional relationship, to assist a person or persons to modify feelings, attitudes and behavior which are intellectually, socially, or emotionally mal-adjustive or ineffectual.

(4) When specifically authorized by the Board, a clinical psychologist may administer, prescribe, and dispense licensed drugs or class of drugs, within their education, training, and competence as determined by the Board. Ordering laboratory tests for purposes of diagnosis and monitoring therapeutic levels of prescribed medication is included within the scope of practice of clinical psychology.

**§ 10306. Licensed Psychology Associate.**

(a) A person other than a licensed clinical psychologist may be employed by a licensed clinical psychologist, licensed psychiatrist, or by a mental health and substance-related disorder clinic or facility to provide psychological services *provided* that the individual:

(1) is designated as a "Licensed Psychology Associate";

(2) has a doctorate or master's degree in clinical psychology or related field such as educational psychology, school psychology, or counseling psychology from a regionally accredited institution of higher education; and

(3) is under the immediate supervision of a licensed clinical psychologist or licensed psychiatrist who is located on the same premises as the patient or client and who is ultimately responsible for the psychological services rendered.

(b) No one person, clinic or other facility may employ more than six (6) psychology associates at any one time.

#### **§ 10307. Licensed Professional Counselor**

*Licensed Professional Counselors* use psychotherapeutic techniques to prevent, assess, evaluate, diagnose, develop treatment goals, plans and objectives, treat and evaluate outcomes for mental, emotional, or behavioral disorders and associated distresses that interfere with mental health.

#### **§ 10308. Licensed Mental Health Counselor**

Licensed Mental Health Counselors are qualified to provide services to individuals, couples, families, and groups. They apply theories, principles, and methods of counseling and psychotherapy to define goals and develop plans of action aimed toward the prevention, treatment, and resolution of mental and emotional dysfunction and intra- or interpersonal difficulties. The practice of mental health counseling includes, but is not limited to, the assessment, diagnosis, and non-medical treatment of mental and emotional disorders, the application of psychoeducational techniques and measures aimed at the prevention of such disorders, and consultation to individuals, couples, families, groups, organizations, and communities.

#### **§ 10309. Marriage and Family Therapy**

(a) Marriage and Family Therapy means the rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(b) Marriage and Family Therapists use psychotherapeutic techniques to prevent, assess, evaluate, diagnose, develop treatment goals, plans and objectives, treat and evaluate outcomes for mental, emotional, or behavioral disorders and associated distresses that interfere with mental health.

(c) Marriage and Family Therapy includes, but is not limited to:

(1) assessment and diagnosis of presenting problems through inquiry, observation, evaluation, and integration of diagnostic information;

(2) designing and developing treatment plans by incorporating and integrating recognized psychotherapeutic theories, in establishing treatment goals and interventions collaboratively with clients; and

(3) implementing and evaluating the course of treatment by incorporating psychotherapeutic theories to assist individuals, couples, families, and groups.

### **§ 10310. Occupational Therapy**

*Occupational therapy* means the evaluation and treatment provided to people whose lives have been disrupted by physical injury, illness, developmental problems, the aging process, or psychosocial or cognitive difficulties. Treatment entails the assessment, evaluation, and treatment to assist each individual to achieve or return to an independent and productive life through techniques which prevent disability, assisting the individual in recovery from illness or accident, and by promoting the development of functions which may have been impaired or delayed. The treatment provided may include, but shall not be limited to, the adaptation of the environment and the selection, design and fabrication of assistive and orthotic devices, and other technology to facilitate development and promote the acquisition of functional skills through purposeful activity.

### **§ 10311. Physical Therapy**

*Physical therapy* means the utilization of scientific principles for the evaluation and treatment of any disability, injury or disease by the use of physical, chemical or mechanical means, including, but not limited to, heat, cold, air, light, sound, electricity, water, massage, therapeutic exercise and rehabilitative procedures, with or without assistive devices, for the purpose of preventing, correcting or alleviating dysfunction resulting from such disability, injury or disease; the performance of tests and measurements of neuromuscular function as an aid to the diagnosis or treatment of the human condition; performance of treatments on the basis of test findings; supervision of selective forms of treatment by trained, supportive personnel; and provisions of consultative services for health, education and community agencies, provided, however, that physical therapy shall not include the use of Roentgen rays and radium for diagnostic and therapeutic purposes, or the use of electricity for surgical purposes, including cauterization. Physical therapy and physical therapy services are not generic terms; they are the use of any intervention, including physical agent modalities/electrotherapy, that is provided by, or under the direction of, a licensed physical therapist. It shall exclude operative surgery and the prescription of scheduled drugs.

### **§ 10312. Speech-Language Pathologist**

(a) The scope of practice for Speech-Language Pathologist includes:

(1) screening, identifying, assessing, and interpreting, diagnosing, rehabilitating, and preventing disorders of speech (e.g., articulation, fluency, voice,) and language;

(2) screening, identifying, assessing, and interpreting, diagnosing, rehabilitating, and preventing disorders of dysphagia (swallowing), and related disorders;

(3) screening, identifying, assessing, and interpreting, diagnosing, and rehabilitating cognitive and communication disorders (e.g., individuals who have been diagnosed with mental deficiency, traumatic brain injury, aphasia, stroke, or other neurological disorders);

(4) assessing, selecting, and developing augmentative and alternative communication systems, and providing training in their use;

(5) providing aural rehabilitation and related counseling services to hearing impaired individuals and their families;

(6) enhancing speech-language proficiency and communication effectiveness (e.g., accent reduction); and

(7) screening of hearing and other factors for the purpose of speech-language evaluation or the initial identification of individuals with other communication disorders.

(b) A licensed Speech-Language Pathologist is professionally and legally responsible for patient care given by SLPA-B and SLPA-M under the Speech-Language Pathologist's supervision. If a Speech-Language Pathologist fails to adequately supervise the patient care by supportive personnel, as strictly provided and authorized pursuant to this Article, the Board may take disciplinary action against the licensee. Supervision of supportive personnel requires that the Licensed Speech-Language Pathologist:

(1) assess the competence of supportive personnel to perform an assigned task; and

(2) document sufficient in-service training and periodic evaluation of performance to assure safe performance of the tasks assigned to supportive personnel.

#### **§ 10313. Speech-Language Pathology Assistant**

(a) A Speech-Language Pathology Assistant (Bachelor's level) (SLPA-B) must work under the direct or indirect supervision of the supervising licensed SLP and may only implement the therapeutic plan designed by the supervising licensed SLP in conjunction with treatment goals and be responsible for all documentation of treatment which is co-signed by the supervising speech-language pathologist.

(b) A Speech-Language Pathology Assistant (Master's level) (SLPA-M) who does not possess a Certificate of Clinical Competence is required to work under the indirect supervision of a supervising licensed SLP, to confer with, and have all reports co-signed by the supervising licensed SLP. The Master's level Speech-Language Pathology Assistant is authorized to perform any of the following duties under the indirect supervision of a license Speech-Language Pathologist: diagnostic testing; interpreting evaluation results; documenting all evaluation results; developing written goals and objectives based upon evaluation results; teacher/parent reports; attending all informal/formal student meetings; maintaining a therapeutic and consultative case load; performing and documenting all therapeutic intervention; and designing or selecting appropriate therapy materials or augmentative or alternative communication systems or devices.

#### **§ 10314. Veterinary Medicine**

*Veterinary medicine* means veterinary surgery, obstetrics, dentistry means to diagnose, treat, correct, change, relieve or prevent animal disease, deformity, defect, injury or other physical or mental condition, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or therapeutic or diagnostic substance or technique, or the use of any manual or mechanical procedure for artificial insemination, testing for pregnancy or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above.

#### **§ 10315. Respiratory Therapy**

*Respiratory Therapy* means the treatment and the management of pulmonary diseases with medications and machines provided to patients whose condition or illness is that of breathing.

**§ 10316. Clinical Dietitian or Nutritionist**

*Dietetics and Nutrition Practice* means the integration and application of scientific principles derived from the study of food, nutrition, biochemistry, metabolism, nutrigenomics, physiology, food management, and from behavioral and social sciences in achieving and maintaining health throughout the life span and in providing nutrition care services, including medical nutrition therapy; assessing and evaluating the nutritional needs of individuals and groups, and determining resources and constraints in the practice setting, including ordering nutrition-related laboratory tests to check and track nutrition status and monitor effectiveness of dietary plans and orders; establishing priorities, goals and objectives that meet nutritional needs and are consistent with available resources and constraints; providing nutrition counseling in health and disease; developing implementing, and managing nutrition care systems; evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services; and ordering therapeutic diets, for the prevention, management, and treatment of disease. This includes, but is not limited to, nutrition assessment; nutrition diagnosis; nutrition intervention, including the ordering of patient diets, nutritional supplements; monitoring and evaluation of nutrition care plans; nutrition support, including the ordering of enteral and parental nutrition, medical food; dietary and nutritional counseling and education regarding food, nutrient and prescription drug interactions; and the development and administration of nutrition care standards and systems. The practice of dietetics and nutrition does not include the medical differential diagnosis of the health status of an individual.

**§ 10317. Nursing Home Administrator**

*Nursing Home Administrator* means the leadership requirement to manage a home nursing institution.

**§ 10401. RULES GOVERNING SPECIFIC PROFESSIONS**

**§ 10402. Acupuncture and Oriental Medicine.**

(a) Use of Sterilized Disposable Needles. Any practitioner of acupuncture and oriental medicine licensed under the provisions of this chapter shall use only sterilized disposable needles. The acupuncture and oriental medicine representative on the Guam Board of Allied Health Examiners shall personally or through a designated employee or agent of the Board periodically inspect each acupuncture clinic with the assistance of the Department of Public Health and Social Services and report his findings to the Board.

(b) License Requirement. No person shall engage in the practice of acupuncture and oriental medicine in Guam, either gratuitously or for pay or shall offer to practice, or shall hold themselves out to the public, advertise, declare, represent or in any way proclaim to practice acupuncture or use any titles, words, letters, signs, devices, techniques, maneuvers or modalities that could represent to the public that such person is authorized to engage in the practice of acupuncture and oriental medicine, either publicly or privately, without a valid and current license from the territory.

**§ 10403. Audiology and Licensed Hearing Aid Dealers [RESERVED]**

**§ 10404. Chiropractic [RESERVED]**

**§ 10405. Clinical Psychologist [RESERVED]**

**§ 10406. Licensed Psychology Associate**

(a) Licensed psychology associate. To qualify as a licensed psychology associate, the applicant must:

(1) hold a doctorate or master's degree in clinical psychology or related field such as educational psychology, school psychology, or counseling psychology from a regionally accredited institution of higher education;

(2) provide documentation demonstrating completion of a practicum, consisting of a minimum of four hundred hours, and an internship, consisting of a minimum of six hundred hours, or equivalent structured experience totaling 1000 hours within the applicant's graduate degree program, conducted under the supervision of a licensed clinical psychologist, licensed psychiatrist, other licensed mental health professional including licensed professional counselor, licensed mental health counselor, or marriage and family therapist;

(3) demonstrate graduate level coursework in each of the following areas:

**(A) Psychological Foundations:**

(i) the biological bases of behavior;

(ii) the acquired or learned bases of behavior, including learning, thinking, memory, motivation, and emotion;

(iii) the social, cultural, and systemic bases of behavior; and

(iv) the individual or unique bases of behavior, including personality theory, human development, and abnormal behavior.

**(B) Research and Statistics:**

(i) the methodology used to investigate questions and acquire knowledge in the practice of psychology; and

(ii) research design and methodology, statistics, critical thinking, and scientific inquiry.

**(C) Applied Psychology:**

(i) the history, theory, and application of psychological principles; and

(ii) the application of psychological theories to individuals, families, and groups.



(D) Assessment:

(i) intellectual, personality, cognitive, physical, and emotional abilities, skills, interests, and aptitudes; and

(ii) psychosocial, including behavioral, adaptive, and cultural assessment.

(E) Interventions:

(i) the application of therapeutic techniques;

(ii) behavior management; and

(iii) consultation.

(F) Scientific and Professional, Legal, and Ethical Issues.

(4) Degree Requirements for licensed psychology associate. For purposes of this rule, applicants must demonstrate proof of the graduate level coursework required in these rules by identifying which courses or training listed on their transcripts satisfy the required areas of study. Applicants may be required to provide the Board with an official course catalogue or description from their university or training program to verify whether a course meets the requirements of this rule.

(5) Supervision Requirements. A licensed psychology associate may only practice under the supervision of a licensed clinical psychologist or licensed psychiatrist and may not practice independently.

**§ 10407. Supervision by Clinical Psychologists; Licensed Professional Counselors; Licensed Mental Health Counselors; and Marriage and Family Therapists**

(a) *Clinical supervision* means the supervision of persons who are acquiring and completing clinical experience in psychology, counseling, or therapy, in accordance with Guam law. Clinical supervision is that aspect of instructional supervision which draws upon data from direct firsthand observation of actual teaching, or other professional events, and involves face-to-face and other associated interactions between the observer(s) and the person(s) observed in the course of analyzing the observed professional behaviors and activities and seeking to define and/or develop next steps toward improved performance. This includes, but is not limited to, case consultation, the assessment and diagnosis of presenting problems, development and implementation of treatment plans, and the evaluation of the course of treatment.

(b) The following rules apply to all supervisory relationships:

(1) The licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide mental health and substance related disorder services of any kind.

(2) Licensees shall ensure that their supervisees have legal authority to provide mental health and substance related disorder services.

(3) Licensees may delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive mental health and substance related disorder services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees shall provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of mental health and substance related disorder services being provided.

(7) Licensees shall utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. No more than fifty percent of the supervision may take place through remote or electronic means. Licensees may exceed fifty percent remote or electronic supervision if supervision is provided through synchronous audiovisual means.

(8) Licensees must be competent to perform any mental health and substance related disorder services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(c) Supervision in a school setting. The following rules apply to all supervisory relationships involving mental health services as well as all interns and other individuals working toward licensure in a school setting.

(1) Supervision within the public schools may only be provided by a licensed clinical psychologist, licensed professional counselor, licensed marriage and family therapist, or licensed mental health counselor who has a minimum of five (5) years of experience providing psychological or counseling services. To qualify, a licensee must be

able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(2) Supervisors must sign educational documents completed for students by the supervisee, including student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(3) Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

(A) any contracts or service agreements between the public school district and university school psychology training program;

(B) any contracts or service agreements between the public school district and the supervisee;

(C) the supervisee's professional liability insurance coverage, if any;

(D) any training logs required by the school psychology training program;  
and

(E) the supervisee's licensure status or legal authority to provide psychological services.

(4) Supervisors must ensure that each individual completing any portion of the internship required for licensure, is provided with a written agreement that includes a clear statement of the expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits, and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(5) Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(d) Clinical Supervision Via Telehealth. Clinical supervision provided for the purpose of acquiring 3000 hours of post-master's experience required for licensure, can be met through the process of telehealth communication between the clinical supervisor and the counselor licensee applicant, also referred to as the counselor supervisee. The following statutory requirements must be met:

(1) **Clinical Supervisor Qualification.** The clinical supervisor must be a licensed psychiatrist, clinical psychologist, licensed mental health counselor, or marriage and family therapist physically located in Guam who has held a Guam license for a minimum of five (5) years of direct experience in clinical work requiring diagnosis and treatment planning.

(2) While the clinical supervisor and the counselor supervisee do not have to be employed in the same facility, agency, or clinic, the clinical supervisor and supervisee must meet regularly to fulfill the requirements of both direct and indirect supervision. The 3000 hours of post-master's experience, supervision hours consisting of both direct and indirect supervision must be appropriately documented and certified by the clinical supervisor.

**§ 10408. Licensed Professional Counselor [RESERVED]**

**§ 10409. Licensed Mental Health Counselor [RESERVED]**

**§ 10410. Marriage and Family Therapy [RESERVED]**

**§ 10411. Occupational Therapy [RESERVED]**

**§ 10412. Physical Therapy**

(a) A physical therapist shall provide the referring practitioner, if any, with information from the patient assessment, diagnosis, and plan of care. Within one week after a patient is initially evaluated, the physical therapist shall provide this information to the referring practitioner and the patient in writing and in the patient's record.

(b) A physical therapist shall maintain the confidentiality of patient records.

(c) A physical therapist shall obtain a patient's informed consent in writing prior to examination, prior to the delivery of any modality or form of treatment, and shall document the consent with respect to specific treatment to be performed or delivered in the patient's record.

(d) A physical therapist shall respect a patient's right to make decisions regarding examination and the recommended plan of care including the patient's decision regarding consent, modification of the plan of care, or refusal of examination or treatment. To assist the patient in making these decisions, the physical therapist shall:

(1) Communicate to the patient:

(A) Examination findings,

(B) Evaluation of the findings, and

(C) Diagnosis and prognosis,

(2) Collaborate with the patient to establish the goals of treatment and the plan of care, and

(3) Inform the patient that the patient is free to select another physical therapy provider.

(e) **Dry Needling.** A physical therapist offering to provide or providing dry needling intervention shall provide documented proof of compliance with the qualifications listed in this Article to the Board within 30 days of completion of the course content in this Article or within 30 days of initial licensure.

(f) A physical therapist licensed to practice in Guam may only perform dry needling, also known as intramuscular stimulation, under the following conditions:

(1) Prior to completion of the minimum didactic course work specific to dry needling or intramuscular manual therapy, successful completion of a total of 50 hours of instruction in the following areas:

(A) the musculoskeletal and neuromuscular system;

(B) the anatomical basis of pain mechanisms, chronic pain and referred pain;

(C) myofascial trigger point theory; and

(D) universal precautions.

(2) Completion of at least 30 hours of didactic course work specific to dry needling or intramuscular manual therapy or stimulation. This requirement may be fulfilled by the didactic pre-study required for the intramuscular manual therapy practicum course.

(3) Successful completion of at least 54 practicum hours in intramuscular manual therapy course content approved by one or more of the following entities:

(A) Commission On Accreditation In Physical Therapy Education;

(B) American Physical Therapy Association;

(C) State Chapters of The American Physical Therapy Association;

(D) Specialty Groups of The American Physical Therapy Association; or

(E) The Federation of State Boards of Physical Therapy.

(4) Course content shall also include the following components of education and training:

(A) intramuscular manual therapy technique;

(B) intramuscular manual therapy indications and contraindications;

(C) documentation of intramuscular manual therapy;

(D) management of adverse effects;

(E) practical psychomotor competency; and

(F) the Occupational Safety and Health Administrations Bloodborne Pathogens standard.

(5) The course content required in this Article shall include passing of both a written examination and practical examination before completion of the course content. Practice application course content and examinations shall be performed only in person.

(6) Postgraduate classes qualifying for completion of the mandated 54 hours of intramuscular manual therapy shall be in one or more modules, with the initial module being no fewer than 27 hours. Therapists shall complete at least 54 hours in no more than 12 months. Physical therapists who completed the initial module prior to the adoption of these rules shall complete the remainder of the 54 hours no later than 12 months from the effective date of these rules.

(7) Completion of at least 200 patient treatment sessions under general supervision recognized by the American Physical Therapy Association or designated by the Federation of State Boards of Physical Therapy.

(8) Successful completion of a competency examination approved by the American Physical Therapy Association or the Federation of State Boards of Physical Therapy. The Board will accept competency examinations administered as part of the intramuscular manual therapy practicum course work.

(g) Each licensee is responsible for maintaining records of the completion of the requirements of this subsection (a) and shall be prepared to produce those records upon request.

(h) A newly-licensed physical therapist shall not practice dry needling or intramuscular stimulation or manual therapy for at least one year from the date of initial licensure unless the practitioner can demonstrate compliance with subsection (a) through his or her prelicensure educational coursework.

(i) Dry needling or intramuscular stimulation or manual therapy may only be performed by a licensed physical therapist and may *not* be delegated to a physical therapist assistant or support personnel.

(j) A licensed physical therapist shall not advertise, describe to patients or the public, or otherwise represent that dry needling is acupuncture, nor shall he or she represent that he or she practices or is authorized to practice acupuncture unless separately licensed to practice Acupuncture by the Board.

#### **§ 10413. Speech-Language Pathologist**

(a) Supervision with respect to the field of speech-language pathology means as follows:

(1) *Direct (initial) supervision* shall mean supervision whereby a licensed Speech-language Pathologist diagnoses the condition to be treated, disseminates the therapy information to the SLPA-B, and remains on the premises while the procedures are being performed by an SLPA-B. The supervising SLP will also follow the ASHA guidelines for training. The SLPA-B must demonstrate proficiency in order to allow for indirect supervision.

(2) *Indirect supervision* shall mean supervision whereby a licensed SLP authorizes the procedures that are being carried out, but need not be present on the premises when the authorized procedures are being performed by a SLPA-M. The licensee must be available on island by telecommunications.

(3) The supervising licensed speech-language pathologist of a SLPA-B or SLPA-M shall not supervise more than five individuals at one time. The licensed SLP sponsor will assume all responsibilities and will meet all sponsorship requirements for such individuals as set forth from time to time by the Board.

**§ 10414. Speech-Language Pathology Assistant [RESERVED]**

**§ 10415. Respiratory Therapy [RESERVED]**

**§ 10416. Veterinary Medicine**

(a) **Prohibition Against Treatment of Humans.** A veterinarian shall not provide care and treatment of humans including prescribing and/or dispensing prescription medication for personal use by the veterinarian and/or another human. A veterinarian may render first aid or emergency care to a human if such action is without expectation of compensation in response to an emergency or disaster situation.

(b) **Responsibility for Acceptance of Medical Care.** The decision to accept an animal as a patient is at the sole discretion of a veterinarian. The veterinarian is responsible for determining the diagnosis and course of treatment for an animal that has been accepted as a patient and for advising the client as to the diagnosis and treatment to be provided.

(1) For purposes of establishing a veterinarian-client-patient relationship a veterinarian can obtain sufficient knowledge of an animal by making medically appropriate and timely visits to the premises on which the animal is kept only if the animal is a member of a herd.

(2) A veterinarian must inform a client when:

(A) the client has specifically requested that the veterinarian diagnose and/or treat the client's animal; and

(B) the veterinarian reasonably believes there is a likelihood or possibility that another veterinarian may perform some or all of the diagnosis and/or treatment of the patient.

(3) Once a veterinarian-client-patient relationship has been established, a veterinarian may discontinue treatment:

(A) at the request of the client;

(B) after the veterinarian substantially completes the treatment or diagnostics prescribed;

(C) upon referral to another veterinarian; or

(D) after notice to the client providing a reasonable period for the client to secure the services of another veterinarian.

(c) **Issuance of Official Health Documents.** Licensed veterinarians in Guam shall not issue any official health documents for an animal without having personally examined the animal and know, of their own knowledge by actual inspection and appropriate tests, that said animal meets the requirements for the issuance of the official health document. A veterinarian is deemed to have issued and to have knowledge of any official health documents issued in the veterinarian's name, written by veterinarian's employee, or maintained in veterinarian's patient or client files. A veterinarian shall be responsible for the security and proper use of all official certificates, forms, records, and reports, and shall take reasonable care to prevent the misuse thereof. A veterinarian shall immediately report to the Board the loss, theft or deliberate or accidental misuse of any such certificate, form, record, or report.

(d) **Observance of Confidentiality.** A veterinarian shall not violate the confidential relationship between the veterinarian and a client. Except as provided in these rules, a veterinarian shall not disclose any information concerning the relationship between the veterinarian and the client or the veterinarian's care for an animal except:

- (1) on written or oral authorization or other form of waiver executed by the client;
- (2) for law enforcement purposes or on receipt by the veterinarian of an appropriate court order or subpoena;
- (3) as necessary to substantiate and collect on a debt incurred by a client for veterinary services; or
- (4) as part of a good faith effort to determine ownership of the animal.

(e) A veterinarian may, without authorization by the client, disclose information contained in a rabies certificate or any information regarding reportable communicable diseases to a governmental entity only for purposes related to the protection of public health and safety.

(f) **Reporting animal abuse and fighting.** A veterinarian is required to report suspected animal abuse and animal fighting incidents that come to their attention through the provision of medical services to an animal to the Guam Police Department within five (5) days of learning of the abuse or animal fighting incidents. Failure to do so may result in loss of licensure. Any veterinarian making a report of suspected animal abuse or fighting shall be immune from discipline by reason of making the report, unless the report was made in bad faith.

(g) **Veterinarian Patient Record Keeping.** Individual records shall be maintained at the veterinarian's place of business, shall be complete, contemporaneous, and legible and shall include, but are not limited to:

- (1) name, address, and phone number of the client;
- (2) identification of patient, including name, species, breed, age, sex, and description;
- (3) patient history;



- (4) dates of visits;
- (5) any immunization records;
- (6) weight if required for diagnosis or treatment. Weight may be estimated if actual weight is difficult to obtain;
- (7) temperature if required for diagnosis or treatment except when treating a herd, flock, or a species, or an individual animal that is difficult to obtain a temperature;
- (8) any laboratory analysis;
- (9) any diagnostic images or written summary of results if unable to save image;
- (10) differential diagnosis and/or treatment, if applicable;
- (11) names, dosages, concentration, and routes of administration of each drug prescribed, administered and/or dispensed. If a drug is approved by the United States Food and Drug Administration (FDA) in only one concentration and the veterinarian is administering the FDA-approved drug at the FDA-approved concentration, the veterinarian may omit recording the concentration of the drug administered;
- (12) other details necessary to substantiate or document the examination, diagnosis, and treatment provided, and/or surgical procedure performed;
- (13) signed acknowledgments relating to alternate therapies, e.g., chiropractic and other forms of musculoskeletal manipulation; acupuncture; holistic medicine; and homeopathy);
- (14) the identity of the veterinarian who performed or supervised the procedure recorded;
- (15) any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction;
- (16) the date and substance of any referral recommendations, with reference to the response of the client;
- (17) the date and substance of any consultation concerning a case with a specialist or other more qualified veterinarian; and
- (18) copies of any official health documents issued for the animal.

**(h) Maintenance of Patient Records.**

- (1) Patient records shall be current and readily available for a minimum of five years from the date of last treatment by the veterinarian.

(2) A veterinarian may destroy medical records that relate to any civil, criminal, or administrative proceeding only if the veterinarian knows the proceeding has been finally resolved.

(3) Veterinarians shall retain patient records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(4) Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals.

(5) If the veterinarian discontinues his or her practice, the veterinarian may transfer ownership of records to another licensed veterinarian or group of veterinarians only if the veterinarian provides notice to the client and the veterinarian who assumes ownership of the records shall maintain the records consistent with this chapter.

**(i) Prohibition on Veterinary Liens for Nonpayment of Fees.**

(1) A veterinarian who has provided services for the medical treatment or Boarding of any animal considered a household pet such as a dog, cat, bird, rodent, rabbit, fish, snake, lizard, or turtle, that is traditionally kept for pleasure rather than for commercial purposes, may not refuse to return the animal to the owner merely because the owner is unwilling or unable to pay for the services rendered. The veterinarian's remedy for nonpayment for services rendered is in the courts before a judicial officer, never in holding an animal hostage.

(2) The release of the animal under these circumstances does not constitute a waiver by the licensee of the fee claimed.

(3) This rule does not apply to agricultural animals used for commercial purposes in the nature of horses, cattle, caribou, goats, sheep, pigs, ducks, and chickens.

(j) Supervision of unlicensed employees. A veterinarian shall determine when general supervision where the licensed veterinarian is available by telephone or video-communication, or direct and immediate supervision where an unlicensed employee is in the physical presence of a licensed veterinarian is appropriate, except where such actions of the unlicensed employee may otherwise be prohibited by law. A veterinarian shall consider the level of training and experience of the unlicensed employee, when determining the level of supervision and duties of unlicensed employee.

(k) A veterinarian is subject to discipline if he or she improperly delegates care and/or treatment duties to an unlicensed employee or fails to properly supervise the unlicensed employee performing delegated duties.

(l) An unlicensed employee of a veterinarian is authorized to perform the following procedures, but only under direct supervision in the immediate presence of a licensed veterinarian:

(1) suture to close existing skin incisions and skin lacerations;

(2) induce anesthesia;

(3) draw blood;

(4) take samples for the purpose of testing and diagnosis and;

(5) perform other tasks in veterinary medicine, not otherwise prohibited by other subsections of this section or other laws, as assigned by the supervising veterinarian and according to a protocol established by the supervising veterinarian.

(m) An unlicensed employee *shall not* perform the following health care services:

(1) surgery;

(2) invasive dental procedures;

(3) diagnosis and prognosis of animal diseases and/or conditions;

(4) prescribing drugs and appliances; or

(5) initiation of treatment without prior instruction by a veterinarian, except in an emergency without expectation of compensation.

(n) Euthanasia may be performed by a non-veterinarian only as authorized by law, *provided*, that a licensed veterinarian shall be available on island at all times, and if not on the premises then by telecommunication.

(o) An unlicensed employee may administer a rabies vaccine only under the direct supervision of a veterinarian, and only after the veterinarian has properly established a veterinarian-client-patient relationship.

(p) The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the vaccinating veterinarian.

(q) Exception for Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to an unlicensed employee by means of telephone, electronic mail or messaging, radio, or facsimile communication. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a veterinarian to accept an animal treated under this rule as a patient under these circumstances.

(r) Exception for Care of Hospitalized Animals. An unlicensed employee may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal, so long as the veterinarian has examined the animal(s) and a valid veterinarian-client-patient relationship exists.

(s) Abandoned Animals. Whenever an animal is delivered to a veterinarian pursuant to a written or oral agreement entered into after the effective date of this section, and the owner of the animal does not pick up the animal within 14 calendar days after the day the animal was initially due to be picked up, the animal shall be deemed to be abandoned. A veterinarian into whose

custody the animal was placed for care shall first try for a period of not less than 10 days to find a new owner for the animal or turn the animal over to a public animal control agency or shelter, provided that the shelter or rescue group has been contacted and has agreed to take the animal.

(1) If an animal so abandoned was left with a veterinarian, and a new owner cannot be found pursuant to this subsection, the veterinarian may euthanize the animal.

(2) Nothing in this section shall be construed to require an animal care facility or a veterinarian to euthanize an abandoned animal upon the expiration of the 10-day period described in this subdivision.

(3) The veterinarian shall place a notice posted in a conspicuous, or in conspicuous type in a written receipt given, to warn a person depositing an animal of the provisions of this section.

#### **§ 10417. Clinical Dietitian or Nutritionist [RESERVED]**

#### **§ 10418. Nursing Home Administrator [RESERVED]**

### **§ 10501. APPLICATIONS FOR LICENSURE**

#### **§ 10502. General Qualifications for Licensure**

(a) All steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation and required fees be filed simultaneously.

(b) The Board may request additional information directly from any source; however, it remains the applicant's responsibility to submit the documentation or cause to be submitted the documentation necessary to complete the application.

(c) Fees remitted to the Board are nonrefundable.

(d) Applicants shall inform the Board of any change in name or address. An applicant whose name has changed shall submit a certified copy of court order or other document evidencing the name change to the Board.

(e) Personal résumés will not be accepted in lieu of any part of the application and will not be reviewed.

#### **§ 10503. Application Review and Approval**

(a) Applications for licensure will be accepted throughout the year. A complete application consists of the original application, fees, and all supporting documentation.

(b) Incomplete applications – The Board retains complete discretion to determine the completeness of an application.

(c) A license will be issued only after all requirements have been met and upon approval by the Board.

(d) An application shall be deemed abandoned if the application has not been completed by the applicant on or before the 30th day from receipt of the deficiency notification. Otherwise, if an applicant fails to provide all required or requested documentation within one (1) year of submitting the original application, the applicant must submit a new application along with applicable fees.

(e) The Board reserves the right to rescind licenses issued in error. A license issued under mistake of law by the Board are considered ultra vires and void ab initio. A licensee issued a license issued in error other than mistake of law shall have the right to remedy factual or documentary deficiencies in the application under the law and rules applicable at the time of issuance of the license issued in error.

#### **§ 10504. Requirements Applicable to All Applicants for Licensure**

(a) All persons applying to become licensed by the Board shall provide the Board and attest to the veracity and authenticity of the following information and documentation under oath or declaration under penalty of perjury:

(1) his or her full name and all aliases or other names ever used, current address, social security number, and date and place of birth;

(2) a 2 x 2" passport style photograph taken within the preceding ninety (90) days.

(3) list of all jurisdictions, United States or foreign, in which the applicant is licensed or has ever applied for licensure to practice an allied health profession or is authorized or has applied for authorization to practice an allied health profession;

(4) list of all jurisdictions, United States or foreign, in which the applicant has been denied licensure or authorization to practice an allied health profession or has voluntarily surrendered a license or an authorization to practice an allied health profession;

(5) list of all sanctions, judgments, awards, settlements, or convictions against the applicant in any jurisdiction, United States or foreign, that would constitute grounds for disciplinary action under the Allied Health Practice Act or the Board's rules and regulations;

(6) detailed educational history, including places, institutions, dates of attendance, and degree conferred or coursework toward a degree completed, beginning with secondary schooling, and including all college, pre-professional, professional and professional postgraduate education;

(7) evidence of professional education, training, and experience, as required by the applicant's area of discipline;

(8) detailed chronological life history, including places and dates of residence, employment and military service, United States or foreign;

(9) detailed employment history since college including the name, address, and contact information of the employer, and name of immediate supervisor;

(10) three (3) letters of recommendation from persons who have known the applicant at least three years, one of which must be a letter provided by the applicant's immediate supervisor of his or her most recent employer, or by a practice associate if the applicant is in private practice; and

(11) police clearance from the Guam Police Department if the applicant has resided on Guam for more than one (1) year; if the applicant has resided on Guam for less than one (1) year, police clearances from the applicant's most recent places of residence for the five years next preceding the date of application.

(b) It is the applicant's responsibility to request that required undergraduate and graduate degree transcripts, as well as examination and test scores administered by professional associations and institutions, be sent directly from the institution to the Board. Transcripts and examination or tests scores received from or delivered by the applicant shall not be considered. Transcripts from educational institutions must show the degree conferred and carry the official seal of the institution.

(c) For an applicant whose academic degree is not from an institution of higher learning accredited by a professional accrediting body in the United States or by another accrediting body recognized by the Board the burden is on the applicant to furnish satisfactory evidence that the course of instruction is equivalent to the course of instruction given by an accredited school.

(d) An applicant shall disclose the circumstances surrounding any of the following:

(1) conviction of any criminal law violation of any country, state, territory, province, or municipality, except minor traffic violations.

(2) the denial of an application for licensure by any state, province, or country.

(3) the discipline, loss, or restriction of license privileges by any state, province, or country.

(3) the discipline, loss, or sanction of privileges or membership in any professional society or association.

(4) any civil suit or settlement, including settlements made on behalf of the applicant, in which the applicant was a party including, without limitation, actions involving malpractice or claim of professional liability, breach of contract, antitrust activity, or other civil action that reflects upon the applicant's fitness to practice an allied health profession.

(e) If an applicant holds or has ever held a license to practice a profession licensed by the professional licensing Board in any other state, territory, province, or country, the applicant shall cause to be submitted proof from each licensing Board that demonstrates the applicant holds a license and whether it is in good standing presently or was at the time it became inactive.

(f) Whenever supervision is required as a condition of licensure, but the supervisory relationship is dependent upon employment, licensure may be granted subject to the submission of the supervisor form or other proof of the supervisory relationship to the Board no later than three (3) working days after the employment has begun. If any changes occur which affect the

supervisor relationship, the changes must be reported to the Board within three (3) working days. In no event is an applicant for licensure authorized to practice before the supervisor form or other proof of the supervisory relationship is submitted to the Board.

#### **§ 10505. Additional Requirements for Specific Professions.**

In addition to the foregoing applicants for licensure shall provide:

(a) Audiologists. Audiologists must, at the time of initial application, present evidence of certification by American Speech, Language and Hearing Association ("ASHA") or its successor. Failure to maintain ASHA certification shall result in the automatic suspension of the audiologist's license.

(b) Occupational Therapists and Occupational Therapist Assistants. Occupational Therapists (OTs) and Occupational Therapist Assistants (OTAs) must, at the time of initial application, present evidence of certification by the National Board for Certification in Occupational Therapy (NBCOT) or its successor. Failure to maintain certification by the NBCOT or its successor shall result in the automatic suspension of the OT's or OTA's license.

(c) Physical Therapists and Physical Therapy Assistants. Physical Therapists and Physical Therapy Assistants must, at the time of initial application, provide proof of membership or eligibility for membership in the American Physical Therapy Association (APTA) or its successor.

(d) Speech-Language Pathology Assistants – Supervisor Form. The SLPA-B or SLPA-M and supervisor must complete and submit the Supervisor Form provided by the Board. If any changes occur within the renewal year that affects both supervisor requirement (primary and secondary), the Supervisor Form must be revised and submitted before the SLPA-B or SLPA-M can practice. Primary Supervisor for SLP Assistants means the Guam licensed SLP who will be responsible for all worksite SLPA-B or -M activities. The Secondary Supervisor will assume the Primary Supervisor responsibilities in case the Primary Supervisor is unavailable or off-island. Guam law does not currently recognize or authorize remote or off-island supervision.

(e) Speech-Language Pathology Clinical Fellowship Year. The SLP who has completed their academic course work and is beginning their nine-to-twelve-month clinical fellowship year shall submit to the Board the name of the Guam licensed SLP who shall be responsible for supervising their clinical fellowship year. If the clinical fellowship year extends past twelve months, the SLP shall submit an updated supervisory form. An SLP whose Clinical Fellowship Year (CFY" has been denied by ASHA must apply for licensure under SLPA-M (Master's).

#### **§ 10506. Licensure By Endorsement**

The Board may issue a license by endorsement to any person who, at the time of application, holds a license in good standing in a profession subject to the jurisdiction of the Board from another jurisdiction of the United States, *provided* that the requirements for the applicant's original licensure are equivalent to those required by Guam law and to the standards set forth and approved by the Board. It is the applicant's responsibility to provide proof satisfactory to the Board that the requirements for licensure upon which the applicant's license was granted were equivalent to those currently required for original licensure in Guam.

#### **§ 10507. Substance Abuse Testing and Monitoring of Applicants**

(a) The Board may require an applicant for a license, who has a criminal conviction or disciplinary action by a professional licensing Board in another jurisdiction for substance abuse offenses within 5 years prior to the date of the application, to undergo random substance abuse testing and monitoring as a condition of licensure.

(b) If the Board requires an applicant to undergo substance abuse testing and monitoring under this section, the cost shall be borne by the applicant.

(c) The Board shall make reasonable efforts to ensure testing will be done in a manner to accomplish the goals of the testing while minimizing the applicant's cost.

(d) The Board may grant a probationary license to an applicant who agrees in writing to substance abuse testing and monitoring under this section.

(e) The Board shall state in writing the length of time an applicant shall be under probation and subject to substance abuse testing and monitoring.

(f) The Board shall not place an applicant under probation for substance abuse testing and monitoring for more than five years from the date the Board issues the applicant's probationary license.

(g) The Board may revoke the probationary license of any applicant who agrees to substance abuse testing and monitoring if the applicant fails to pass any test or provide required monitoring documentation.

(h) A Board order revoking a license under subsection (g) of this section is final and unappealable.

(i) An applicant whose probationary license has been revoked under this section may reapply for a license not sooner than one year from the date the license was revoked under subsection (g) of this section.

#### **§ 10508. Temporary License**

The chair of the Board may issue a temporary license to practice an allied health profession in Guam pending consideration of an application for licensure by examination or endorsement by the full Board to an applicant who is licensed in good standing in another jurisdiction of the United States, *provided* that any temporary license shall expire the day after the notice of results of the first examination given after the license is issued, or the first meeting of the Board in the case of applications for licensure by endorsement. No temporary license may be issued to any applicant who has previously failed an examination given in Guam or to an applicant who has previously been denied a temporary license for cause. In no event shall a temporary license be authorized for more than 60 days except upon written determination by the chair that consideration by the Board is impossible or impracticable. A temporary license issued by the chair may be summarily revoked by majority vote of the Board.



#### **§ 10509. Inactive License**

(a) An allied health professional who holds a current (renewed) license in good standing may, upon request and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice an allied health profession in Guam.

(b) An inactive license may be reactivated upon submission of the required application, which includes evidence of continuing practice in another jurisdiction of the United States for no less than three (3) of the preceding five (5) years and payment of the current renewal fee.

#### **§ 10510. Change of Address or Name**

(a) Change of Address – Any person holding a license who has had a change of address shall file in writing with the Board a current mailing address, giving both old and new address. Such requests should be received via electronic mail or in the Board's administrative office no later than 30 days after such change has occurred and must reference the individual's name, profession, and license number.

(b) Change of Name – Any person holding a license who has changed their name shall file a statement with the Board and state their current name and their new name, together with proof of legal name change, i.e., marriage certificate, divorce decree, or court order. Such requests should be received via electronic mail or in the Board's administrative office no later than 30 days after the name change has occurred and must reference the individual's profession and license number. If the licensee desires a new license or certificate reflecting their change of name, they shall also submit the required fee.

#### **§ 10601. PRESCRIPTIVE AUTHORITY**

##### **§ 10602. Eligibility for Prescriptive Authority for Clinical Psychologists or Other Allied Health professionals.**

A licensed clinical psychologist or other allied health professional authorized by law to prescribe, administer, and dispense drugs and medications shall be eligible for prescriptive authority, *provided* the licensee submits to the Board satisfactory evidence of the following:

(a) Proof of completion of a nationally and professional recognized curriculum in the area of neuroscience, pharmacology, psychopharmacology, physiology, pathophysiology, appropriate and relevant physical and laboratory assessments, and clinical pharmacotherapeutics. Official transcripts shall be sent directly to the Board from the educational institution.

(b) Proof of successfully passing a certifying examination in psychopharmacology developed by a nationally recognized body within the United States and recognized by the Board.

##### **§ 10603. Termination of Collaborative Practice Agreement**

An allied health professional who is required by law or rule to have a Collaborative Practice Agreement with a physician shall immediately inform the Board, the Guam Board of Medical Examiners, and the Guam Board of Examiners for Pharmacy in writing of the termination or change of status.

#### **§ 10604. Prescription Pads**

An allied health professional shall use prescription pads that are imprinted and display his or her name, professional address, telephone number, cell phone number, DEA number, and Guam Controlled Substances Registration Number.

#### **§ 10605. Revocation of Prescriptive Authority**

(a) The Board may revoke an Allied Health professional's prescriptive authority for any violation of the Allied Health Practice Act, its rules, and regulations, or for exceeding their authority under their CPA.

(b) Revocation, expiration, or termination of a DEA Certificate or a Guam Controlled Substances Registration Certificate automatically terminates prescriptive authority.

#### **§ 10606. Renewal of Prescriptive Authority**

An allied health professional shall renew his or her Prescriptive Authority every two years at the same time he or she renews his or her license.

#### **§ 10701. RENEWAL OF LICENSE**

(a) Licenses expire biennially on December 31st of even numbered years and may be renewed upon payment of a renewal fee and proof of completion of continuing education requirements as stated in these rules and regulations. The Board staff shall, no later than September 1st of each even-numbered year, mail or email a notice of renewal along with a renewal form to the licensee's latest email address on file with the Board. Failure of the Board staff to send renewal notices and forms does not excuse the licensee from failing to file the forms, documentation, and fees required to renew their license. A new certificate or other evidence of current licensure may be mailed to all persons completing renewal requirements as stated herein.

(b) An individual licensed on or after October 1 of the renewal year is not required to renew or provide proof of continuing education until the following renewal term.

(c) In addition to payment of required fees and proof of continuing education, additional documentation is required of the following Allied Health professionals:

(1) *Audiologists* must, at the time of license renewal, present evidence of current certification by American Speech, Language and Hearing Association ("ASHA") or its successor. Failure to maintain ASHA certification shall result in the automatic suspension of the audiologist's license.

(2) *Occupational Therapists (OTs) and Occupational Therapist Assistants (OTAs)* must, at the time of license renewal, present evidence of current certification by the National Board for Certification in Occupational Therapy (NBCOT) or its successor. Failure to maintain certification by the NBCOT or its successor shall result in the automatic suspension of the OT's or OTA's license.

(3) *Physical Therapists and Physical Therapy Assistants* must, at the time of license renewal, provide proof of membership or eligibility for membership in the American Physical Therapy Association (APTA) or its successor. Failure to maintain current

membership or eligibility for membership in the APTA or its successor shall result in the automatic suspension of the Physical Therapists or Physical Therapy Assistants license.

*(4) Speech-Language Pathologists and Speech Language Pathology Assistants.*

(A) Speech-Language Pathologists must, at the time of license renewal, present evidence of current certification by American Speech, Language and Hearing Association ("ASHA") or its successor. Failure to maintain ASHA certification shall result in the automatic suspension of the Speech-Language Pathologist's license.

(B) The SLPA-B or SLPA-M and supervisor will complete and submit a current Supervisor Form provided or otherwise approved by the Board upon renewal, and no later than three (3) working days upon any supervisory changes within a license renewal year. If any changes occur within the renewal year that affects both supervisor requirement (primary or secondary) the Supervisor Form must be revised and submitted before the SLP-A B or SLPA-M can practice.

(C) Exceptions to Licensure - All SLP's who are beginning their 9-12-month ASHA Clinical Fellowship Year (CFY) are exempted from licensure. CFY candidates shall submit a completed GBAHE Clinical Fellowship Year Supervisory Form, signed by the Guam-licensed SLP who will be supervising the CFY candidate according ASHA requirements. When the CFY year has been successfully completed, the candidate must then apply for licensure before they may be authorized to practice. If the SLP CFY candidate does not successfully complete ASHA's CFY requirements, the individual must apply for licensure under the SLP-Assistant -Master level license before they are permitted to practice.

(5) *Clinical Dietitians* must, at time of license renewal, provide evidence of current registration by the Commission on Dietetic Registration, the credentialing agency of the Academy of Nutrition and Dietetics.

(d) Continuing education credit hour requirements may be prorated for licenses issued less than two (2) years prior to the renewal period.

(e) A licensee who is unable to complete the requirements minimum hours of continuing education during a two (2) year period shall be ineligible for renewal of his or her license, unless in the judgment of the Board the licensee demonstrates good cause and obtains a waiver.

(f) Renewal fees shall be waived upon submission of proof that a licensee has been called to active duty outside of Guam with any branch of the United States armed services, not to exceed four (4) years or the duration of a national emergency, whichever is longer.

**§ 10801. REINSTATEMENT OF EXPIRED LICENSE**

(a) Expired licenses may be renewed within six (6) months of the date of expiration upon meeting the following conditions:

(1) Payment of all past due fees;

(2) Payment of the late renewal fee(s); and

(3) Documentation of satisfaction of the continuing education requirements for the period of time the license was expired.

(b) A license that is expired beyond six (6) months requires the submission of a new application for a license, including supporting documentation.

#### **§ 10901. CONTINUING EDUCATION**

(a) Minimum continuing education requirements. In order to qualify for renewal of a license, a minimum of thirty (30) credit hours of continuing education must be earned during each two (2) year licensure period, at least twenty (20) of which must be directly related to the licensee's specific area of practice, except as follows:

(1) For Clinical Psychologist, Licensed Professional Counselor, Licensed Mental Health Counselor, and Marriage and Family Therapist, forty (40) contact (credit) hours directly related to the practice of Clinical Psychology, Professional Counseling, Mental Health Counseling, or Marriage and Family Therapy within each two (2) year licensure period;

(2) For Speech-Language Pathology:

(A) For Speech-Language Pathologists, a minimum of thirty (30) credit hours, a minimum of twenty (20) of which must be directly related to the practice of speech language pathology.

(B) For Bachelor's Level Speech-Language Pathology Assistants (SLPA-B), a minimum of fifteen (15) hours must be directly related to speech language pathology.

(C) For Master's Level Speech-Language Pathology Assistants (SLPA-M), a minimum of twenty (20) hours continuing education hours, fifteen (15) of which must be directly related to speech language pathology and five (5) of which may be indirectly related to speech-language pathology.

(3) For Clinical Psychologists authorized to prescribe a minimum of twenty (20) credit hours in psychopharmacology *in addition to* the minimum forty (40) continuing education credit hours within each two (2) year licensure period.

(b) Professional Ethics. At least two (2) of the directly related, contact, or clock hours must pertain to professional ethics, with the exception of Clinical Psychologist, Licensed Professional Counselor, Licensed Mental Health Counselor, and Marriage and Family Therapist, which shall require a minimum six (6) hours of professional ethics within each two-year licensure period.

(c) Clock hour defined. A clock hour, credit hour, or contact hour is defined as fifty-five (55) minutes spent in a continuing education activity. CEUs shall be reported in terms of credit hours.

(d) Prorated continuing education credit hours requirement. Individuals licensed on or after October 1 of the renewal year are not required to provide proof of continuing education until the following renewal term. Otherwise, the continuing education requirement for licensees whose license was issued less than two (2) years prior to the renewal period shall be prorated as follows:

(1) For licensees required to obtain a minimum of thirty (30) hours of CE per renewal period, 1.25 credit hours per month since the license was issued.

(2) For licensees required to obtain a minimum of forty (40) hours of CE per renewal period, 1.7 credit hours per month.

(3) For licensees required to obtain a minimum of fifty (50) hours of CE per renewal period, 2.0 credit hours per month.

(e) Carry-Over. Credit hours acquired in excess of the licensee's reporting period's requirement may be carried forward from one reporting period to the next, provided that a licensee may carry forward no more than one-half (1/2) of the required credit hours, only one of which, if earned in professional ethics, may be counted toward satisfying the two (2) hours professional ethics requirement. Hours in excess of one-half (1/2) of the minimum requirements per reporting period may not be carried forward.

#### **§ 10902. Acceptable Continuing Education**

(a) Acceptable continuing education may include:

(1) Attendance at conferences or live webinars sponsored by national, state, regional, or local professional associations recognized by the Board that are directly related to the practice of the licensee's profession for no more than one (1) credit hour for each hour of conference or continuing educational activity may be accepted. Proof of attendance at the conference or live webinar and credit hours claimed is required.

(2) Online continuing education activities hosted or sponsored by a professional association recognized by the Board that require a test may be calculated at one (1) credit hour for every hour attended. Proof of attendance at the conference or event and credit hours claimed is required.

(3) Cross-disciplinary offerings from healthcare, law, or the behavioral sciences not otherwise directly related to the licensee's profession, discipline, and scope of practice provided they are demonstrably related to the provision of treatment or patient services, up to ten (10) hours.

(4) In-service training provided by the licensee's employer limited to five (5) credit hours. The employer must issue a certificate or evidence of attendance to each licensee stating subject matter, dates, times, and number of credits.

(5) Credit for college or university coursework within the scope of practice of the licensee is acceptable, with 1 semester credit equaling 15 CE and 1 quarter credit hour equaling 10 CE. Official transcripts stating the grade and credit hours must be submitted directly from the educational institution to the Board.

(6) **Preapproved self-study.** Self-study offered or approved by a national or international professional organization or association recognized by the Board and that is directly and verifiably related to the allied health practitioner's profession. Self-study activities are defined as educational materials (e.g., audio, video, and web-based materials, study kits, modules, and publications) used for individual study. Academic correspondence courses are not considered self-study activities. Only activities preapproved by Board-recognized professional organizations or associations or from professional organization or association-approved CE providers will be accepted for self-study credit. The following are categories of preapproved, self-study programs for which CE may be awarded: audio-based (e.g., CDs, Podcasts); Computer-based (e.g., CD-ROM or non-internet based); Printed (e.g., booklets, articles in professional journals that include or incorporate a test or quiz); Video based (e.g., DVDs); and Web-based (e.g., Internet or online learning sponsored by professional associations or organizations that include a test or quiz). To receive education credit for self-study materials, the licensee must meet all CE provider requirements, including passing an examination.

(b) **Teaching or Lecturing.** Licensees who teach academic courses or deliver lectures on subjects directly related to their profession or to professional ethics in general, whether to other licensed professionals in their profession, or to members of the general public, may be given one credit hour spent in preparation per hour teaching or lecturing, limited to a total of no more than five (5) credit hours each for non-professional audience, ten (10) credit hours each for professional audience in a two (2) year renewal period. Licensees who seek credit for teaching or lecturing shall submit, with the required certification of attendance form, the course syllabus, lecture outline, or statement describing the subject matter and handout materials. If the program does not cover a readily recognized topic applicable to the licensee's profession, the licensee must attach a statement of how the course relates to his or her profession or area of practice. Once credit has been given for teaching a course or delivering a lecture, no further credit shall be given for a subsequent delivery of the same material to a different audience.

(c) **Authoring a professional paper or article** published in a recognized professional journal within the licensee's profession, field, or discipline, limited to no more than ten (10) credit hours per published paper or article.

(d) The following shall not be approved:

(1) activities that may be characterized as dealing primarily with personal self-improvement unrelated to professional competence or professional ethics;

(2) activities primarily intended to sell services or equipment;

(3) repeat live, video, audio, or other electronically communicated courses for which the licensee has already obtained continuing education credit in the same or prior reporting years; and

(4) Activities required by the licensee's employer intended to meet accreditation or other basic staff training (e.g., hygiene, departmental rules, and regulations).

(e) The term "directly related" refers to subject matter within the licensee's defined scope of practice.

(f) The term “indirectly related” refers to health care and health professions generally, but are subjects not necessarily within the licensee’s defined scope of practice.

(g) The Board retains sole discretion to audit claimed continuing education credits and to require licensees to provide receipts, proof of attendance, certifications, or other evidence of participation for credit hours claimed.

#### **§ 101001. FEES**

(a) The Guam Board of Allied Health Examiners’ fees are as follows:

	<b>Initial Application</b>	<b>Biennial Renewal</b>
Acupuncture and Oriental Medicine.....	\$350.00	\$250.00
Audiology.....	\$250.00	\$200.00
Chiropractic .....	\$350.00	\$250.00
Clinical Psychology.....	\$350.00	\$250.00
Psychology Associate .....	\$200.00	\$150.00
Licensed Professional Counselor.....	\$250.00	\$200.00
Licensed Professional Counselor Intern.....	\$200.00	\$150.00
Licensed Mental Health Counselor.....	\$300.00	\$250.00
Licensed Mental Health Counselor Intern.....	\$200.00	\$150.00
Marriage and Family Therapist.....	\$300.00	\$250.00
Marriage and Family Therapist Intern.....	\$200.00	\$150.00
Occupational Therapy.....	\$250.00	\$200.00
Occupational Therapy Assistant.....	\$200.00	\$100.00
Physical Therapy.....	\$300.00	\$250.00
Physical Therapy Assistant.....	\$200.00	\$100.00
Speech-Language Pathologist.....	\$300.00	\$250.00
Speech-Language Assistant.....	\$200.00	\$150.00
Respiratory Therapist.....	\$250.00	\$200.00
Certified Respiratory Therapist.....	\$200.00	\$100.00
Veterinary Medicine.....	\$350.00	\$250.00
Nursing Home Administrator.....	\$250.00	\$200.00
Nutritionist.....	\$300.00	\$250.00
Clinical Dietician.....	\$200.00	\$100.00
Euthanasia Technician (annual).....	\$150.00	\$100.00
<b>Examinations When Required by Law or Rule.....</b>	<b>\$250.00</b>	<b>\$250.00</b>
<b>Application for Prescriptive Authority .....</b>	<b>\$250.00</b>	<b>\$250.00</b>
<b>Late Renewal Penalty</b>		
Late up to one year.....		\$100.00
Late one year and a day to two years.....		\$200.00
Late two years and a day to three years.....		\$300.00

Late three years and a day to four years.....	\$400.00
Name Change Certificate Request.....	\$100.00
Replacement (Lost) Identification Card.....	\$100.00
Reinstatement of Suspended License.....	\$300.00
Petition for Reinstatement of Expired License.....	\$500.00
Petition for Reinstatement of Revoked License.....	\$500.00
Verification of Guam License (Certificate of Good Standing) .....	\$50.00
Inactive License .....	one-half (1/2) the renewal fee
Returned Check Fee .....	\$40.00

(b) All fees paid to the Board are not refundable.

(c) A license issued by the Board but for which a check is returned, e.g., insufficient funds, account closed, or payment stopped, is invalid. A license will be considered automatically suspended and the licensee in violation of Board rules until the Board receives and processes the renewal fee and any returned check or related fee.

(d) Electronic copies of public records delivered via email or uploaded to an Internet document storage location shall be free. Copies of documents provided on electronic media such as CD ROM or thumb drive or other portable media provided by the agency, if available, shall be available at cost allowed by law, *see* 5 GCA § 10304, payable in advance. Because of the risk of computer viruses, malware, and the like, outside (non-agency) electronic media offered by the person requesting the records will not be accepted.

(e) Duplicates of hard (paper) copies of public records more than ten (10) pages single-sided shall be made available at cost allowed by law, *see* 5 GCA § 10203, payable in advance.

(f) Certified copies of public records shall be made available at costs allowed by law, *see* 5 GCA § 10202, payable in advance.

## **§ 101101. DENIAL OF INITIAL LICENSE APPLICATION OR REFUSAL TO RENEW**

### **§ 101102. Denial of Initial Application or Refusal to Renew – Statement of Issues**

An individual whose application for a license, privilege, or right has been denied or renewal refused shall be given written notice (“*Statement of Issues*”) of the denial or refusal. The *Statement of Issues* shall specify the reason(s) for the denial and shall include the statutes and regulations on which the denial is based. The applicant or licensee (Respondent) must show compliance with, or satisfaction of, the law or regulation by producing proof at the hearing, and in addition, any matters



which have come to the attention of the Board, and which would authorize a denial of the application for or renewal of the license, privilege, or right. Unless made by a member of the Board acting in his or her official capacity, or by an employee, attorney, or legal representative of the Board, the *Statement of Issues* shall be verified by sworn declaration before a person authorized by law to swear witnesses or by unsworn declaration made in conformance with § 4308 of Title 6, Guam Code Annotated. The verification may be on information and belief.

#### **§ 101103. Service**

Service of the *Statement of Issues* shall be by certified mail, return receipt requested, addressed to the address submitted in the application for licensure or renewal of license, or by leaving a copy of the statement of issues and accompanying papers at his usual place of residence, or at his place of business, with some person of suitable age and discretion residing or working therein. If the applicant is off-island and service has not been perfected by other means then, after a reasonable time not to exceed more than thirty (30) days past mailing of the certified mail, if the applicant has not been served service shall be by first class mail addressed to the address submitted in the application for licensure or renewal of license. Service shall be presumed perfected five business days after mailing. It is the applicant or licensee's responsibility to notify the Board of any changes in address or contact information.

#### **§ 101104. Response and Request for Hearing**

An applicant whose application has been denied or whose request for renewal has been refused and who desires to contest the denial or refusal shall file a response to the statement of issues and may request a hearing within fifteen (15) days of service. Failure to request a hearing will constitute a waiver of the right to a hearing.

#### **§ 101105. Practice Pending Final Determination**

An applicant whose initial application for licensure has been denied is not authorized to practice. Unless otherwise stated in the statement of issues, an applicant seeking renewal of an existing license may continue to practice pending the final determination of the Board.

#### **§ 101106. Hearing Procedures**

The hearing, if requested, shall be governed by the procedures governing hearing procedures for disciplinary complaints as provided in these rules.

#### **§ 101201. COMPLAINT, INVESTIGATION, AND DISCIPLINARY PROCESS**

The Guam Board of Allied Health Examiners is authorized to revoke, suspend, condition, or limit in any manner any license, for any violation of the Allied Health Practice Act; these Rules, and the Code of Professional Conduct/Ethics applicable to the licensee's profession.

#### **§ 101202. Complaint Procedure**

(a) Proceedings to revoke, suspend, condition, or limit in any manner any license, may be initiated by the Board when it has reason to believe a licensee has committed a violation of the Allied Health Practice Act or the Board's administrative rules and regulations, or by any person upon the filing of a complaint.

(b) When the complaint is initiated by any person other than the Board, the complaint must contain:

(1) The name, mailing and physical address, telephone numbers, email address, and other contact information where the complainant may be reached.

(2) A statement as to whether the complainant has retained legal counsel, and if so, the name and contact information of the attorney.

(3) The name of the licensed allied health care provider complained against, if known; otherwise, the name of the hospital, clinic, or other health care entity where the acts or omissions complained of occurred; and, if known, address, telephone number(s), and email address(es) of the allied health practitioner or exempt government employee against whom the complaint has been filed.

(4) A plain and concise statement of the facts including dates that demonstrate why the complainant believes an allied health practitioner has committed malpractice; or violated the Guam Allied Health Practice Act, or any other Guam law or federal law, or rule promulgated by the Board. Citation to specific laws or rules is not required.

(5) The name and, if known, address, telephone number, and email address of any person who may have knowledge of the facts in any way relating to the complaint.

(6) A statement as to whether the complaining party (i) has filed or intends to file any complaint, civil litigation, or demand for arbitration against the allied health practitioner; (ii) has filed or intends to file criminal charges against the allied health practitioner in Guam or any other jurisdiction; and (iii) has filed or intends to file a complaint before any other licensing authority in Guam or any other jurisdiction have been filed against the licensee.

(7) The desired outcome or remedy, if known.

(8) The signature of the complainant verified either by sworn declaration before a person authorized by law to swear witnesses, or by unsworn declaration made under penalty of perjury in conformance with § 4308 of Title 6, Guam Code Annotated. As a general rule, absent special circumstances, anonymous complaints will not be investigated.

(9) If available, copies of any documents, including medical records, that may support the allegations in the complaint or may otherwise be relevant to the investigation.

(c) The complainant shall supplement the information in the preceding subsection when it changes, or when additional information or documentation become available.

### **§ 101203. Investigation and Disciplinary Process**

Consistent with the Allied Health Practice Act, the Administrative Adjudication Law, and these rules, and depending upon the nature of the complaint, the availability of resources, and the individualized needs of the investigation, the process is as follows:

(a) A complaint form shall be made available to anyone who wishes to file a complaint against an allied health practitioner. The complaint should contain as much detail and documentary evidence that is available at the time of filing the complaint. Use of a specific board approved complaint form is not required to initiate an investigation.

(b) The Board or its staff shall promptly acknowledge all complaints upon receipt by phone or email no later than three (3) working days from receipt. Complainants should be promptly informed of all material developments in the investigation and prosecution of a complaint, including settlement negotiations with a licensee, and shall be promptly informed no later than three (3) working days of the Board's actions, decisions, and final disposition of any investigation, and shall be informed when judicial review of the Board's final decision is sought.

(c) A unique case number is assigned, and initial review of the complaint made to determine whether the Board has jurisdiction, that is, whether the complaint involves a person licensed by the Board and therefore subject to the Board's jurisdiction or involves someone who is doing something or presenting himself or herself to the public as authorized to do something that requires a license by the Board. Legal counsel may be consulted to determine whether the complaint involves matters that are within Board's jurisdiction.

(d) In the event the complaint is against a Board member, a member of the Board member's family by blood or marriage, the employer or an employee of the Board member, or concerns a matter that might otherwise be grounds for disqualification, the Board member shall (i) immediately disclose the disqualifying facts; (ii) be walled off from the investigation, and the member prohibited access to any records or communications pertaining thereto; and (iii) shall not discuss or communicate with any other Board member regarding the complaint except as may be required by the investigation.

(e) If a complaint is filed by any individual against a licensee or employee of the Board, or if the Board determines from another source that an investigation into the alleged conduct of a licensed allied health practitioner or employee may be necessary, the matter shall be assigned to an independent investigator; in the absence of an independent retained or volunteer investigator a Board member may be appointed to serve as investigator.

(f) The Board is advised of the filing of the complaint and its general subject matter at the next available opportunity; however, the identities of the complainant and the licensees are generally not to be revealed in a public setting before an investigation is completed and a recommendation is ready to be presented to the Board. This is for the protection of the privacy interests of the individual making the complaint, the privacy interests and due process rights of the allied health practitioner, and to protect the integrity of investigative process.

(g) If an individual is not licensed by the Board, the matter is reviewed by the Board chair or other designated Board member to determine whether the individual is alleged to be practicing a profession that requires a license. If so, a notice to cease-and-desist is prepared and served upon the individual. If the person continues in the unauthorized practice of a profession after being served a cease-and-desist notice, the Guam Police Department, the Office of the Attorney General, or the Board's legal counsel may become involved.

(h) If the matter concerns the delivery of professional services, the Board shall obtain a signed consent for release of records from the complainant to procure records and other documents from all relevant sources.

(i) When the Board does not have an independent dedicated investigator available, a Board member may be called upon to serve as investigators. The chair shall appoint a Board member, or can appoint herself or himself. The investigator or board member shall consult with legal counsel and shall interview the complainant, witnesses, and the licensee or applicant. Relevant evidence is collected. The referral to the investigator, board member, or attorney shall be made at the earliest opportunity. When a Board member serves in an investigative capacity the Board member may assist prosecution counsel but shall *not* serve in an adjudicative capacity in the event formal proceedings are initiated.

(j) The licensee is provided a copy of the complaint or a description of the nature of the complaint and is requested to respond to the complaint in writing. The licensee may be required to speak with the investigator or investigating Board member and legal counsel. A licensee's failure to cooperate with an investigation is a disciplinable offense. The fact that a parallel or related criminal investigation or prosecution may be pending is not a legal basis for refusing to cooperate with an investigation by the Board. If a licensee invokes their right not to incriminate themselves, that fact may be noted and considered by the Board at the adjudicative stage of the proceedings.

(k) The investigator or investigating Board member and legal counsel for the Board make a preliminary evaluation of the complaint, and may discuss whether settlement is an option, or whether additional evidence or the assistance of an expert or consultant is necessary. Legal counsel may assume responsibility for the direction of the investigation at any time.

(l) Because each case is unique, there are no set deadlines as to when specific aspects of an investigation must be completed. Nevertheless, as a general rule, and depending upon the availability of resources, 60–90 days from the date a complaint is received by the Board, records and documentary evidence collected, interviews with witnesses conducted, and an initial analysis of the complaint is made, is considered a workable goal.

(m) Many times, either because of Board member disqualification or conflict, or because the Board lacks specific expertise in a particular profession, field, or discipline, expert consultants and witnesses may be necessary. The Board then retains volunteer or contractual guidance from qualified consultants who have expertise in a particular profession, field, or discipline. Because of the delays inherent in complying with Guam's procurement laws, when the need for outside consultants or experts becomes necessary, the procurement process may sometimes add an additional 90 days or more to an investigation.

(n) After the investigator or investigating Board member and legal counsel have reviewed the available evidence, they decide whether to recommend dismissal of the complaint including the reasons for dismissal; whether informal resolution or settlement is a viable consideration; whether further investigation is warranted; or whether formal charges or an "accusation" against the allied health practitioner should be considered.

(o) If settlement appears viable, the investigator or investigating Board member assists legal counsel in drafting and negotiating settlement documents, to be presented to the Board for

its consideration. If settlement does not appear likely or negotiations fail, the investigator or investigating Board member assists counsel in preparing the accusation or statement of issues and assists in the prosecution of the accusation in the case of a licensee, or statement of issues in the case of an applicant for licensure.

(p) Because of overlapping and oftentimes contradictory concerns of the Open Government Law, patient confidentiality, and the licensee's interests in his or her privacy and reputation, to the extent complaints must be discussed in public, they are discussed only in broad strokes. Specific details and analysis of the evidence are prepared for presentation through legal counsel in the form of a proposed accusation, statement of issues, or settlement for the Board's review and approval.

(q) With the exception of the Board's investigator, investigating Board member, the Board's legal counsel or their own counsel, authorities such as the police, or other investigative bodies such as a hospital considering the allied health professional's privileges, complainants are usually asked not to discuss their complaint publicly or with any other person before the matter is ready to be presented to the full Board. This serves to preserve the separation of functions required by the law between a Board member's investigative and prosecutorial role, and to protect against the risk of contamination of the rest of the Board in their role as adjudicators of the merits of a complaint.

(r) Cooperation with the Board's investigator and its legal counsel, including voluntary compliance with requests not to publicly discuss a pending investigation, is critical; failure to cooperate may not only jeopardize an investigation and prosecution, but it may also result in the involuntary dismissal of the complaint by the assigned hearing officer or the courts.

(s) Individuals who file a complaint against an allied health practitioner should understand that the Board and its legal counsel do not and cannot represent them or serve as their advocate, that their duty is to protect the public, not any one individual.

(t) If informal resolution of a complaint appears to be a viable resolution of a complaint, the Board's legal counsel and the allied health practitioner or their legal counsel draft a settlement to address the factual allegations, the alleged violations of law or rules, and the proposed discipline, settlement, or compromise. Guam law authorizes the Board to meet in informal conference in executive session with a licensee who seeks or agrees to such a conference. *See*, 10 GCA § 12821(e).

(u) The complainant shall be consulted with respect to the terms of any informal resolution and settlement agreement prior to its presentation to the Board. In the event the complainant disagrees with its terms they shall be permitted to address the Board prior to the Board's final decision to accept or reject it. Disciplinary action taken against a licensee resulting from informal conference, agreed to in writing by the Board and the licensee, is binding and a matter of public record. Deliberations concerning license revocation and suspension shall be conducted in public.

(u) If informal resolution is unsuccessful, legal counsel shall draft the charging instrument called an "accusation" or, in the case of an applicant for licensure, a "statement of issues." Like a complaint in a civil lawsuit, an accusation identifies the alleged facts to be proved, the law and

rules that are alleged to have been violated, and the relief sought, e.g., revocation, suspension, probation, licensure with conditions, or other discipline including fines and costs.

(v) The Board shall consider, approve, disapprove, or modify the accusation or statement of issues in a public meeting. At the same time, if it has not already done so, the Board secures a hearing officer from the Attorney General's Office or through the procurement process.

(w) The licensee or applicant is served with the accusation or statement of issues, provided the opportunity to respond, to file a notice of defense, and to demand a hearing. The licensee or applicant has the right to counsel at his or her own expense, and to a public hearing, which may be held either before the Board with a hearing officer or by a hearing officer alone.

(x) By law, the hearing officer is required to be a lawyer. If the hearing is conducted by a hearing officer, after hearing testimony and reviewing the evidence the hearing officer prepares a proposed decision, to be discussed and voted on by the Board at a properly noticed meeting of the Board in public. Under no circumstances may any Board member discuss a matter with any other member outside a properly noticed public Board meeting.

(y) The licensee or applicant and the Board's counsel are given an opportunity to object to the proposed decision in whole or in part. The Board may accept, reject, or modify the proposed decision, or if it determines further evidence is necessary, send the case back to the hearing officer, or it may hear further evidence itself.

(z) The Board makes a final decision, to include the denial of an application for licensure, or in the case of a licensee, the imposition of discipline, which can range from private or public reprimand or letter of concern to suspension with or without conditions, including fines and penalties, and revocation.

(aa) Depending upon the Board's final decision, the licensed allied health practitioner or applicant for licensure may seek judicial review before the superior court as provided by law; and if dissatisfied with the ruling of the superior court, the licensee or applicant for licensure or the Board may appeal the decision of the Superior Court to the Supreme Court of Guam.

#### **§ 101204. Informal Disposition Prior to Initiating Formal Action**

(a) If it is determined that a complaint or other information received by the Board constitutes a violation of the Allied Health Practice Act or these rules, the investigator or investigating board member, in consultation with legal counsel, may without prejudice to initiating formal action, communicate with the licensee, complainant, and third parties, to amicably resolve or informally settle the complaint including but not limited to drafting settlement agreements and releases between the licensee, the Board, and other parties setting forth the terms of the settlement in writing for the Board's consideration. Informal dispositions of disciplinary complaints once accepted by the Board are matters of public record.

(b) Informal Conference. The Board is authorized by Guam law, at its discretion, to meet in informal conference in executive session outside the presence of the public with an accused licensee who seeks or agrees to such a conference. In no event may any proceeding to revoke or suspend a license be conducted in executive session but shall be conducted in an open public

hearing. The holding of an informal conference does not preclude an open hearing if the Board determines such is necessary or otherwise appropriate in the public interest.

(c) Any disciplinary action agreed to in writing by the Board and the licensee is binding and is a matter of public record.

(d) If an informal settlement of any alleged violations of the statutes or rules enforceable by the Board cannot be reached, the Board may proceed to take formal action to determine whether probable cause exists for the issuance of a summons and accusation by the Board.

#### **§ 101205. Deferred Action – Impaired Practitioner**

(a) The Board may defer action with respect to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the Board, agreeing not to practice the licensee's profession and to enter an approved treatment, rehabilitation, and monitoring program. This section shall not apply to a licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a felonious act or an offense relating to a controlled substance in a court of law of the United States or any other state, territory, or country, or to a conviction related to sexual misconduct.

(b) Failure to enter such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the licensee from the provisions of this section, and the Board may activate or reactivate any prior investigation and disciplinary proceeding. Upon completion of the rehabilitation program in accordance with the agreement signed by the Board, the licensee may apply for permission to resume the practice of the licensee's profession upon such conditions as the Board determines necessary.

#### **§ 101206. Accusation, Statement of Issues, and Notice of Defense**

(a) Preparation. If the investigator or investigating Board member, together with legal counsel for the Board, determine that probable cause exists for the filing of an accusation or statement of issues, counsel for the Board shall prepare the document.

(b) Contents. The accusation or statement of issues is a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent licensee or applicant is charged, and the statutes, rules, and regulations that the respondent is alleged to have violated.

(c) Verification. Unless made by a member of the Board acting in his or her official capacity, or by an employee, attorney, or legal representative of the Board, the law requires that accusations shall be verified by sworn declaration before a person authorized by law to swear witnesses or by unsworn declaration made in conformance with § 4308 of Title 6, Guam Code Annotated. The verification may be on information and belief.

(d) Service. The accusation or statement of issues must be served personally or by registered mail addressed to respondent at the latest address on file with the Board or by leaving a copy of the accusation or statement of issues and notice of defense form and accompanying papers at respondent's address on file with the Board, or usual residence or place of business with a person of suitable age and discretion residing or working therein.

(e) Notice of Defense. The respondent shall within fifteen (15) days of service of the accusation or statement of issues file with the Board and serve counsel for the Board its notice of defense, admitting or denying the allegations and charges set forth therein. Failure to file a notice of defense within the time permitted by this rule without good cause shall be construed as a waiver of the right to a hearing and as an admission that the factual averments contained in the complaint are true.

**§ 101207. Emergency Action – Summary Suspension / Automatic Suspension**

(a) Summary Suspension. The Board is authorized to summarily suspend the license of a licensee without a hearing if:

(1) The Board finds that there is probable cause to believe that the licensee has violated a statute or rule that the Board is empowered to enforce, and that continued practice by the licensee would create imminent and serious risk of harm to others;

(2) the licensee fails to obtain a Board ordered evaluation; or

(3) the licensee is convicted in a court of competent jurisdiction of any felony, or any misdemeanor relating in any way to the licensee's fitness or competence to practice.

(b) Electronic Communication – Emergency Meeting. As provided by 10 GCA § 12803(k), the Board is authorized to meet and take emergency action by electronic means, i.e., by telephone or videoconference, to enforce the Allied Health Practice Act, or the Board's rules and regulations and to protect the health and welfare of the public, if the chair alone, or another officer and two (2) Board members believe the situation precludes another form of meeting. The chair, or another officer and two (2) Board members, may meet with the Board's attorney(s), staff, and other necessary person including witnesses. The decision to hold an emergency meeting and the reasons therefore shall be recorded and the decisions made therein immediately delivered to all Board members. Emergency meetings of the Board, in person, or by telephone or videoconferencing platform, shall be recorded and the recording attached to the order of summary suspension, and shall be made available to the public unless there is a lawful basis for withholding it or parts thereof from the respondent or the public.

(c) The suspension shall remain in effect until the Board issues a stay of suspension or a final order in the matter after a hearing, or as otherwise may be agreed between the Board and licensee.

(d) A licensee affected by a summary suspension shall be provided the opportunity to request a prompt adjudicative proceeding.

(1) The notice of defense form for requesting an adjudicative proceeding shall include the option of requesting a prompt adjudicative proceeding.

(2) A respondent affected by a summary action may request a prompt adjudicative proceeding, may elect a regularly scheduled adjudicative proceeding instead of a prompt adjudicative proceeding, or may waive the opportunity for adjudicative proceeding.

(3) Any request for a prompt adjudicative proceeding must be filed within fourteen (14) days of the service of the summary suspension.



(4) If requested by the respondent, a prompt adjudicative proceeding shall begin no later than twenty-one (21) days after receipt of the request or as otherwise may be agreed between the licensee and the Board.

(5) Regardless of whether a prompt adjudicative proceeding is requested, the matter should be resolved as quickly as feasible in accordance with all other applicable rules.

**(e) Automatic Suspension.**

(1) Unless the Board orders otherwise, a license issued by the Board shall be suspended automatically if:

(A) A guardian of a licensee is appointed by court order;

(B) the licensee is committed by court order; or

(C) the licensee is determined to be mentally incompetent, mentally ill, chemically dependent or a person dangerous to the public by a court of competent jurisdiction within or without this jurisdiction.

(2) A license that is automatically suspended remains suspended until the licensee is restored to capacity by court order. Thereafter the licensee may petition the Board for reinstatement. The Board may terminate the suspension after a hearing or upon agreement between the Board and the licensee.

**§ 101208. Hearing Procedures Generally**

(a) **Notice of Hearing.** The Board shall deliver or mail a notice of hearing to the licensee at the last address on file with the Board at least ten (10) days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense. The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before the Guam Board of Allied Health Examiners at (here insert place of hearing) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_, upon the charges made in the accusation or the statement of issues served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other things by applying to (here insert appropriate office of agency).

(b) **Hearing Open to Public.** Unless otherwise authorized by law, and except when necessary to protect the privacy of patients, clients, victims, and the confidences of minors, the hearing is open to the public.

(c) **Counsel.** A party may be represented by legal counsel at his or her own expense.

(d) Quorum. A quorum for purposes of these rules consists of a majority of the current members of the Board.

(e) Subpoena Authority. The Board is empowered by law to issue subpoenas to bring before it any person, and to issue subpoenas duces tecum to compel the production of documents and other tangible evidence, and to take testimony either orally or by deposition, or both, in the same manner as prescribed in civil cases in the courts of Guam. Any member of the Board, investigating officer, hearing officer, or administrative law judge shall have the power to administer oaths to witnesses at any investigation, inquiry, or hearing which the Board is authorized to conduct.

#### **§ 101209. Hearing Officer**

(a) Hearing Officer. In all formal disciplinary hearings or contested cases, the Board shall appoint an attorney to serve as hearing officer who shall preside at the hearing and rule on questions of evidence and procedure. The hearing officer has the authority to:

(1) establish a date, time, and place for the hearing, and to continue or adjourn the hearing from time to time;

(2) maintain order including, when necessary, the power to eject from the proceedings or otherwise condition the attendance of any person who may be causing a disruption that interfere with the orderly progress of the proceedings;

(3) make a record of the proceedings;

(4) establish reasonable time limits for the conduct of the proceedings;

(5) rule on the admissibility of evidence;

(6) hold a prehearing conference to clarify and where possible, resolve or narrow the matters in dispute; establish the order of presentation; allow and establish time limits for the exchange of exhibits and names of witnesses; and for other purposes;

(7) issue subpoenas and subpoenas duces tecum, subject to the prepayment by the requesting party of reasonable costs of issuance of the subpoenas as may be set from time to time by the Judiciary of Guam; and

(8) enter any order on any other matter which will effectuate the conduct of the hearing and promote the administration of justice.

(b) A case may be heard by the Board with a hearing officer or, in the discretion of the Board, by the hearing officer alone. When the Board hears the case with a hearing officer, the hearing officer shall preside, rule on the admission and exclusion of evidence, and advise the Board on matters of law; the Board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the hearing officer. When the hearing officer hears a case alone, he shall exercise all powers relating to the conduct of the hearing.

(c) If a contested case is heard before the Board, the hearing officer who presided at the hearing shall be present during the consideration of the case and if requested, shall assist, and advise the Board. Where a contested case is heard before the Board, any member who did not hear

the evidence in person may not participate in the decision unless the Board member certifies that he or she has reviewed the audio or video recording of the missed proceedings and has examined whatever documents and other things have been admitted into evidence.

#### **§ 101210. Discovery**

(a) **Depositions of Witnesses Who are Unable or Who Cannot be Compelled to Attend Formal Hearing.** Any party that desires to take a deposition of a witness who is unable or who cannot be compelled to attend a formal hearing shall comply with the procedures set forth at 5 GCA § 9218.

(b) **Other Discovery by Agreement.** Upon written application to the hearing officer, and *only by mutual agreement*, the parties may obtain discovery from one another or third parties regarding any matter not privileged that is relevant to the subject matter of an accusation or statement of issues, whether it relates to the charge of the Board or the defense of the licensee.

(c) The hearing officer may impose such terms and conditions upon discovery as are just to protect a person from annoyance, embarrassment, oppression or undue burden or expense, including ordering the prepayment of costs and expenses as a condition of allowing discovery.

#### **§ 101211. Disqualification of Hearing Officer or Board Member**

(a) A hearing officer or Board member shall voluntarily disqualify himself and withdraw from any case in which a person with knowledge of the facts could reasonably believe the hearing officer or Board member cannot accord a fair and impartial hearing or consideration. Where the matter under consideration concerns a Board member, and the Board member declines to recuse or disqualify themselves the Board shall determine whether the Board member is disqualified if it hears the case with the hearing officer, otherwise the hearing officer shall determine the issue. If the disqualification would prevent the existence of a quorum qualified to act in a particular case, the Board may ask the governor for an interim replacement of that member to consider that particular case.

(b) Factually unsupported allegations of impartiality or a party's unilateral perceptions of bias are insufficient. Because the "appearance of impropriety" standard applicable to judges is legally insufficient to disqualify a Board member or hearing officer in administrative proceedings, proof of actual bias is required. Where a Board member or hearing officer has a pecuniary interest in the outcome of the proceedings, is related to the licensee, applicant, complainant or witness by blood or marriage within the fourth degree of consanguinity, employs, is employed by, or seeks employment with a licensee or applicant, disqualification shall be presumed. Other grounds for disqualification shall be determined on a case-by-case basis.

(c) Any party may request the disqualification of a hearing officer or Board member by filing an affidavit and suggestion of disqualification at the earliest practical opportunity after acquiring actual or constructive knowledge of the basis for disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded together with the underlying factual basis for the assertion. In the absence of proof of actual bias or prejudice demonstrated during the course of the proceedings, the failure to timely file an affidavit and suggestion of disqualification shall be deemed a waiver of such grounds as error in any appeal.

## **§ 101212. Conduct of Hearings**

(a) Opening Statement. Each side may make a short opening statement.

(b) Presentation of Evidence. The Investigative Committee for the Board shall present its evidence, followed by the respondent, followed by rebuttal by the Investigative Committee.

(c) Witnesses. Witnesses will generally be called and examined in the following order:

- (1) Direct examination;
- (2) Cross examination;
- (3) Examination by the Board or Hearing Officer;
- (4) Re-direct examination;
- (5) Re-cross examination;
- (6) Re-examination by the Board or Hearing Officer.

(d) Rules of Evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence should be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Irrelevant and unduly repetitious evidence should be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in civil actions.

(e) Evidence: Notice of Defense Not Filed. If the respondent fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that he is entitled to the Board action sought, the agency may act without taking evidence. Nothing herein shall be construed to deprive the respondent of the right to make any showing by way of mitigation.

(f) Burden of Proof. In disciplinary matters cases or other proceedings initiated by an Accusation the burden of proof shall be on the Board. In matters initiated by a statement of issues, including the denial of or refusal to renew a license or any other non-disciplinary matter wherein the applicant or licensee is seeking relief, the burden of proof shall be on the applicant or person seeking action by the Board.

(g) Rules of Privilege. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, except that documentary evidence and testimony which is otherwise admissible in a contested case shall not be rendered inadmissible because of any claim of privilege between licensee and client. All testimony regarding the medical or psychological condition of individuals and all patient or client records produced during the course of the contested case are confidential and may not be released to persons who are not parties or participants in the contested case.

(h) Closing Argument. Each side may make a short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.

(i) Record of Proceedings. Oral proceedings shall be recorded either by mechanized means or by a qualified court reporter. The record of oral proceedings must be maintained a minimum of seven (7) years from the date of entry of the final order.

**§ 101213. Pre- and Post-Hearing Stipulation, Settlement, and Consent Order**

Subject to final approval by the Board, informal dispositions of any matter may be made at any time by stipulation, agreed settlement, consent order or by any other method agreed upon by the parties. When approved by the Board, the final stipulation, agreed settlement, or consent order shall be reduced to writing, signed by the parties and the Board chair, and made a part of the licensee's file. Informal dispositions are considered to be public record.

**§ 101214. Hearing Officer's Proposed Decision or Report and Recommendation**

(a) Upon completion of a hearing tried before a hearing officer alone, the hearing officer shall prepare a proposed decision or report and recommendation in such form that it may be adopted as the decision of the Board. The decision should contain a statement of facts found by the hearing officer, a recitation of the application of the facts found to the applicable statutes, rules, regulations, policies, and procedures, and a proposed recommendation as to the merits of the matters presented for review including recommended discipline if appropriate.

(b) To the extent possible, the hearing officer's proposed decision should be submitted to the Board within thirty (30) calendar days after the hearing is concluded. The proposed decision shall be communicated by the Board to the respondent or respondent's attorney in person or by first class mail. The proposed decision is a public record.

(c) The hearing officer is authorized to request one or both sides to prepare for the hearing officer's consideration a proposed decision including findings of fact, a determination of the issues presented, and the proposed penalty, if any.

(d) The Board shall not decide any case heard in the first instance by a hearing officer without affording the parties the opportunity to present either oral or written argument before the Board. Additional oral evidence may be presented before the Board only by agreement of the parties or for good cause shown. If additional oral evidence is introduced before the Board a Board member may not vote unless he or she heard the additional oral evidence either in person or by reviewing the audio or video record of the proceedings.

(e) The Board may adopt the proposed decision in its entirety or may reduce the proposed penalty and adopt the balance of the proposed decision.

(f) The Board may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer, he shall prepare a proposed decision or report and recommendation upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing.

#### **§ 101215. Final Order of the Board**

(a) Final Order. A quorum for purposes of rendering a final decision and order pursuant to this rule consists of majority of the current members of the Board. The Board shall issue a final order within sixty (60) days of the date of receipt of the hearing officer's proposed decision. If the Board does not enter a separate written final decision and order within the time frame stated above, unless otherwise extended by agreement of the parties in writing, the proposed decision of the hearing officer shall be deemed the final order of the Board by operation of law.

(b) The Board may affirm in whole or in part, reject or modify the hearing officer's recommendation; *provided*, however, the Board may reject or modify a recommendation of the hearing officer that supports the position of the respondent only if it is clearly established that the hearing officer's findings, inferences, conclusions, or decisions are:

- (1) in violation of a constitutional, statutory, or regulatory provision;
- (2) in excess of the statutory authority;
- (3) in violation of Board rule;
- (4) made upon unlawful procedure;
- (5) affected by other error of law;
- (6) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (7) unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(c) The respondent or respondent's attorney and each attorney of record shall be delivered a copy of the final order in person or by first class mail.

(d) The time limits set forth in this rule may be waived or extended by written agreement of the parties.

#### **§ 101216. Imposition of Discipline**

(a) Upon a finding that the respondent has violated any of the enumerated provisions of the Allied Health Practice Act, or any rule and regulation promulgated by the Board, including the Standards of Professional Conduct & Ethics applicable to the licensee, the Board may impose any or all of the disciplinary penalties authorized by law including refusing to renew a license or certificate, suspension or revocation, imposition of a private or public censure, probation, and levy of administrative fines of not more than Ten Thousand Dollars (\$10,000.00) for each violation. Each day's violation is a separate offense.

- (1) Advisory Censure and Chastisement – This is a written action issued to the licensee for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(2) **Formal Reprimand** – This is a written action issued to a licensee for one time and less severe violations. It is a formal disciplinary action.

(3) **Probation** – This is a formal disciplinary action which places a licensee under scrutiny for a fixed period. The action may be combined with conditions which must be met before probation will be lifted and/or which restrict the licensee's activities during the probationary period.

(4) **Licensure Suspension** – This is a formal disciplinary action which suspends a licensee's right to practice for a fixed period. It contemplates the conditional re-entry of the licensee into practice under the licensure previously issued.

(5) **Licensure Revocation** – This is the most severe form of disciplinary action which removes a licensee from the practice of his or her profession and terminates the license.

(6) **Conditions** – These include any actions deemed appropriate by the Board to be required of a disciplined licensee during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license, and may include but are not limited to restrictions on the right to practice, requiring the licensee to attend continuing education courses, or demonstrate licensee competency through a written or practical examination, or to work under the supervision of another licensee to be determined by the Board.

(7) **Civil Penalty or Fine** – Administrative fines not to exceed Ten Thousand Dollars (\$10,000.00) for each separate violation as authorized by 10 GCA § 12812(b)(7).

(8) **Monetary redress to another party.**

(9) **Satisfactory completion of an educational, training, or other programs related to the licensee's discipline and ethics.**

(10) **Satisfactory completion of a treatment or rehabilitation program for substance related and addictive disorders, behavioral disorder, or mental health problem, including post-treatment testing, monitoring, and reporting to the Board.**

(A) If the Board requires a licensee to undergo substance abuse testing and monitoring under this section, the cost shall be borne by the licensee.

(B) The Board shall make reasonable efforts to ensure testing will be done in a manner to accomplish the goals of the testing while minimizing the licensee's cost.

(C) A licensee who agrees to undergo substance abuse testing and monitoring to settle a disciplinary action by the Board shall agree to the terms of the testing and monitoring in writing as part of the agreed order with the Board.

(D) The Board, upon the recommendation of the Board's Enforcement Committee, may revoke the license of a licensee who agrees to substance abuse

testing and monitoring if the licensee fails to pass any test or provide monitoring documentation as required by the agreed order with the Board.

(E) A Board order revoking a license under subsection (D) of this section is final and unappealable.

(F) A licensee whose license has been revoked under this section may reapply for a license not sooner than one year from the date the license was revoked under subsection (e) of this section.

(11) Payment of disciplinary costs, including the costs of investigation, the Board's attorneys' fees, hearing officer fees, court reporter and transcription services, and court costs if necessary to enforce or defend an order of the Board.

(b) Consideration of Factors in Mitigation or Aggravation. In determining whether a license should be revoked or suspended, and whether execution of the order should be stayed, and upon what conditions; and whether to levy an administrative fine; or impose a public or private censure; the Board shall consider all relevant factors, including, but are not limited to the following:

- (1) the severity of the offense;
- (2) the danger to the public;
- (3) the number of repetitions of the offense or violation;
- (4) the length of time since the date of violation;
- (5) the number of complaints filed against the respondent;
- (6) the length of time the respondent has practiced;
- (7) the actual damage to the complainant or the public;
- (8) the pendency or results of related administrative or judicial proceedings;
- (9) the deterrent effect of the penalty imposed;
- (10) the effect of the penalty upon the respondent's livelihood;
- (11) any efforts or rehabilitation; and
- (12) any other mitigating or aggravating circumstances.

(c) Once ordered, probation, suspension, revocation, assessment of a civil penalty or fine, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee or certificate holder petitions, pursuant to these rules, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties or fines assessed have been paid.



**§ 101217. Effective Date of Decision**

The decision shall become effective thirty (30) days after it is delivered in person or mailed to respondent or respondent's attorney unless a request for reconsideration is made before the Board, or the Board orders that the decision shall become effective sooner, or a stay of execution is granted. A stay of execution may be included in the decision, or if not included therein may be granted by the Board at any time before the decision becomes effective.

**§ 101218. Stay of Execution**

The Board may, in its discretion, stay the execution of its order to censure, place on probation, fine, revoke or suspend a license or certification. The stay may be conditioned on any provision the Board deems appropriate under the circumstances of any particular case. The filing of a request for reconsideration or notice of appeal does not itself stay enforcement of the Board's decision.

**§ 101219. Reconsideration and Judicial Review**

(a) A respondent in a disciplinary or other contested case proceeding who is aggrieved by a final order of the Board may within 30 days after entry of the order file a request for rehearing. If the Board does not grant the request by the next regularly scheduled Board meeting following 30 days from filing of the request the request for reconsideration shall be deemed denied by operation of law. While encouraged, the filing of a request for reconsideration is not a prerequisite to judicial review.

(b) The case may be reconsidered by the Board on all the pertinent parts of the record and such additional evidence and arguments as may be permitted or may be assigned to a hearing officer. A request for reconsideration assigned to a hearing officer shall be subject to the procedure provided in 5 GCA § 9230. If additional oral evidence is introduced before the Board, a Board member may not vote unless he or she has heard the evidence in person or by audio or video recording.

(c) Judicial review is available by filing a petition in the Superior Court for a writ of mandate as provided by Guam law. A petition for writ of mandate must be filed within thirty (30) days after the last day on which reconsideration can be ordered.

**§ 101220. Record of Proceedings**

(a) Within thirty (30) days after request therefor, and upon payment of the expenses of preparation and certification by the petition, including projected costs of the preparation of transcripts of the proceedings, the Board shall prepare and deliver to the petitioner the complete record of the proceedings or such parts of the record as are designated by the petitioner. The complete record includes:

- (1) the pleadings;
- (2) all notices and orders issued by the Board;
- (3) any proposed decisions by the hearing officer;
- (4) the final decision of the Board;

- (5) a transcript of all proceedings;
- (6) the exhibits admitted or rejected;
- (7) the written evidence; and
- (8) any other papers in the case.

(b) Where petitioner, within ten (10) days after the last day on which reconsideration can be ordered, requests the Board to prepare all or any part of the record, the time within which a petition for writ of mandate may be filed in the Superior Court may be extended until five (5) days after its delivery to him.

#### **§ 101221. Reinstatement**

(a) **Petition for Reinstatement.** Reinstatement is a matter of discretion, not of right. A person whose license has been revoked may petition the Board for reinstatement or reduction of penalty after a period of not less than one (1) year has elapsed from the effective date of the decision or from the date of denial of a similar petition, except in the case of a person convicted of a crime of moral turpitude in which case five (5) years must have elapsed since the conviction, and the person's civil rights have been restored.

(b) **Basis for Reinstatement.** In the petition for reinstatement, the applicant should state why the license or certification should be reinstated and should specifically set forth any changed circumstances which would justify reinstatement. Absent a demonstrable showing of changed circumstances a petition for reinstatement or reduction of penalty which is merely cumulative or duplicative of previous petitions shall be summarily denied. An applicant for reinstatement must include in the petition evidence that the current requirements for licensure and certification have been met.

(c) **Board Action.** Upon receipt of a petition for reinstatement the Board may in its discretion grant an applicant a hearing on reinstatement. The Board shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the Board. The Board shall decide the petition, and the decision shall include the reasons therefor.

(d) **Burden of Proof.** In any petition for reinstatement, the applicant shall have the burden of establishing to the reasonable satisfaction of the Board that the applicant is entitled to the specific relief requested.

(e) **Terms and Conditions.** In the event an application for reinstatement is granted, the Board may impose such probationary terms and conditions as are necessary in its judgment for the protection of the public.

#### **§ 101301. CODES OF PROFESSIONAL CONDUCT & ETHICS / DISCIPLINE**

(a) All licensees, registrants, and certificate holders shall comply with the following Codes of Professional Conduct:

(1) **OCCUPATIONAL THERAPY.** In the case of Occupational Therapists and Occupational Therapist Assistants licensed by the Board as provided in Articles 7 and 14

of Chapter 12, Title 10, the Code of Professional Conduct shall be the American Occupational Therapy Association (AOTA) Occupational Therapy Code of Ethics (2015), as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Occupational Therapists and Occupational Therapist Assistants and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the AOTA Occupational Therapy Code of Ethics (2015) and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

(2) **ACUPUNCTURE AND ORIENTAL MEDICINE.** The Code of Professional Conduct for persons licensed to practice Acupuncture and Oriental Medicine shall be the National Certification Commission for Acupuncture and Oriental Medicine Code of Ethics as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for the Practice of Acupuncture and Oriental Medicine and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the National Certification Commission for Acupuncture and Oriental Medicine Code of Ethics and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

(3) **AUDIOLOGY.** The Code of Professional Conduct for Audiologists licensed by the Board shall be the Code of Ethics published by the American Speech-Language-Hearing Association (2016), as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Audiologist and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for the Practice of Audiology and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

(4) **CHIROPRACTIC.** The Code of Professional Conduct for Chiropractors licensed by the Board shall be the American Chiropractic Association Code of Ethics as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Chiropractors and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for Chiropractors and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

(5) **CLINICAL PSYCHOLOGY.** The Codes of Professional Conduct for Clinical Psychologists licensed by the Board shall be the Association of State and Provincial Psychology Boards (ASPPB) Code of Conduct (2018) *and* the American Psychological Association (APA) Ethical Principles of Psychologists and Code of Conduct (2017) as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Codes of Professional Conduct for Clinical Psychologists and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Codes of Professional Conduct for

Clinical Psychologist and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(6) LICENSED PROFESSIONAL COUNSELING.** The Code of Professional Conduct for Licensed Professional Counselors licensed by the Board shall be the American Counseling Association Code of Ethics as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Licensed Professional Counselors and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for Licensed Professional Counselors and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(7) LICENSED MENTAL HEALTH COUNSELING.** The Code of Professional Conduct for Licensed Mental Health Counselors licensed by the Board shall be the American Mental Health Counselors Association (AMHCA) Code of Ethics (Oct. 2015), as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Licensed Mental Health Counselors and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for Licensed Mental Health Counselors and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(8) MARRIAGE AND FAMILY THERAPY.** The Code of Professional Conduct for Marriage and Family Therapists licensed by the Board shall be the American Association of Marriage and Family Therapy (AAMFT) Code of Ethics as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Marriage and Family Therapists and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for Marriage and Family Therapists and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(9) PHYSICAL THERAPY.** The Code of Professional Conduct for Physical Therapists licensed by the Board shall be the American Physical Therapy Association (APTA) Code of Ethics for the Physical Therapist; and the APTA Guide for Professional Conduct, as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. The Code of Professional Conduct for Physical Therapist Assistants licensed by the Board shall be the APTA Guide for Conduct of the Physical Therapist Assistant (PTA); and the APTA Standards of Ethical Conduct for the Physical Therapist Assistant, as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Physical Therapists and Physical Therapist Assistant, and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for Physical Therapists and Physical Therapist Assistant, and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(10) SPEECH-LANGUAGE PATHOLOGY.** The Code of Professional Conduct for Speech-Language Pathologists and Speech-Language Pathology Assistants licensed by the Board shall be the American Speech-Language-Hearing Association (ASHA) Code of Ethics (2016) as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Speech-Language Pathologists and Speech-Language Pathology Assistants and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(11) VETERINARY MEDICINE.** The Code of Professional Conduct for Veterinarians licensed by the Board shall be the American Veterinary Medical Association Principles of Veterinary Medical Ethics (PVME) as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Veterinarians and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for Veterinarians and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(12) RESPIRATORY THERAPY.** The Code of Professional Conduct for Respiratory Therapists licensed by the Board shall be the American Association for Respiratory Care (AARC) Code of Ethics as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Respiratory Therapy and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the American Association for Respiratory Care Code of Ethics and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(13) NUTRITION AND DIETETICS.** The Code of Professional Conduct for Nutritionists and Clinical Dietitians licensed by the Board shall be the Academy of Nutrition and Dietetics Code of Ethics as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Nutritionists and Clinical Dietitians and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for Nutritionists and Clinical Dietitians and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

**(14) NURSING HOME ADMINISTRATORS.** The Code of Professional Conduct for Nursing Home Administrators licensed by the Board shall be the American College of Health Care Administrators (ACHCA) Code of Ethics and the National Association for Home Care & Hospice (NAHC) Code of Ethics as adopted as of the effective dates of these rules, and any revisions made hereafter thereto. These Rules shall be known as the Code of Professional Conduct for Nursing Home Administrators and by reference thereto shall have the full force and effect of a regulation of the Board. In the event of a conflict between the Code of Professional Conduct for Nursing Home

Administrators and any statute enacted by the Guam Legislature or any rule promulgated by this Board the more recent in time statute or rule shall control.

(b) Every licensed allied health professional and every applicant for licensure is responsible for being familiar with and complying with the Code of Professional Conduct and Ethics of that individual's profession.

#### **§ 101302. Affirmative Responsibilities – Treatment Plans**

Treatment plans. Licensees of all professions licensed by the Board shall create specific written treatment plans that include, at a minimum, agreed upon goals of the treatment, the techniques to be used, and the tentative duration of the treatment for any therapy or counseling that they provide.

(a) Licensees shall explain the treatment plan to all recipients of the therapy or counseling before commencing the services.

(b) Licensees may alter and document the alteration in the treatment plan when clinically indicated.

(c) Licensees shall confer with and obtain consent from the patient, client, or other recipient(s) of services concerning significant alterations in the treatment plan.

#### **§ 101303. Unethical Conduct / Grounds for Discipline.**

Unethical conduct includes but is not limited to the following:

(a) Knowingly publishing or circulating untrue, fraudulent, misleading, or deceptive advertising.

(b) Addiction to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to incapacitate the licensee from the performance of their professional obligations and duties.

(c) Failure to inform a client fully about the limits of confidentiality in a given situation, the purposes for which information is obtained, and how it may be used.

(d) Denial or refusal to honor a patient or client's reasonable request for access to any records concerning the patient or client. When providing patients or clients with access to records, the licensee shall take due care to protect the confidences of others contained in those records.

(e) Failure to obtain informed consent of patients or clients before taping, recording, or permitting third party observation of their activities or records.

(f) Failure to clarify the nature and directions of a licensee's loyalties and responsibilities and keep all parties informed of their commitments when a conflict of interest exists between a patient or client and the licensee's employing institution.

(g) Failure to fully inform the consumer, patient, client, or student as to the purpose and nature of an evaluation, research, treatment, educational or training procedure, and freely



acknowledging that patients', clients', students, or participants in research have freedom of choice with regard to participation.

(h) Failure to terminate a clinical or consulting relationship when it is reasonably clear that the relationship is not benefiting the consumer, patient, or client. Licensees who find that their services are being used by employers in a way that is not beneficial to the participants or to employees who may be affected have the responsibility to make their observations known to the responsible persons and to propose modification or termination of the engagement.

(i) Failure to make every effort to avoid dual relationships with patients or clients and/or relationships which might impair independent professional judgment or increase the risk of client exploitation.

(j) Failure to assist patient or clients in finding needed services by making appropriate referrals in those instances where payment of the usual fee would be a hardship.

(k) Failure to terminate service to patients or clients and professional relationships with them when such service and relationships are no longer required. The licensee who anticipates the termination or interruption of service to patients or clients shall notify patients or clients promptly and seek the transfer, referral, or continuation of service in relation to the patients' or clients' needs and preferences.

(l) Setting fees that are unreasonable and not commensurate with the service performed.

(m) Engaging in the division of fees or agreeing to split or divide the fee received for professional services with any person for bringing or referring a patient or client.

#### **§ 101304. Imbalance of Power**

(a) Licensees of all professions governed by the Board recognize the actual or perceived power or undue influence they hold over current as well as former patients and clients. Licensees are presumed to have power and influence over former patients or clients.

(b) Licensees do not engage in sexual relationships nor engage in improper sexual conduct with, employ, enter into business with, or otherwise exploit any current or former patient or client over whom they have actual or perceived power or undue influence created through a therapeutic relationship.

#### **§ 101305. Improper Sexual Conduct.**

(a) "Improper Sexual Conduct" means sexual advances, requests for sexual favors, or other verbal or physical conduct or contact of a sexual nature that has the purpose or effect of creating an intimidating, hostile, or offensive environment and that occurs within a professional or employment relationship. The determination of whether conduct or comments rise to the level of improper sexual conduct must be made based upon the totality of the circumstances, from the viewpoint of the patient, client, colleague, co-worker, or employee. Improper Sexual Conduct does not include simple teasing, offhand comments, or isolated incidents that are not serious in nature.

(b) "Improper Sexual Conduct" or "Conduct of a Sexual Nature" are deliberate or repeated comments, gestures, or physical acts of a sexual nature, including but not limited to any of the following:

(1) Behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexually demeaning;

(2) Making inappropriate comments about an individual's body;

(3) Making sexually demeaning comments to an individual;

(4) Making comments about an individual's potential sexual performance, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction in a documented therapeutic or counseling relationship;

(5) Requesting details of a patient or client's sexual history when not clinically indicated for the type of consultation;

(6) Requesting a date from a patient or client;

(7) Initiating conversation regarding the sexual problems, preferences, or fantasies of either party; and

(8) Kissing of a sexual nature.

(c) A dating relationship is a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature but does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The existence of such a relationship shall be determined based on consideration of:

(1) The length of the relationship;

(2) The nature of the relationship; and

(3) The frequency and type of interaction between the persons involved in the relationship.

(d) A licensee shall not engage in sexual harassment, sexual impropriety, sexual activities, or conduct of a sexual nature with individuals (other than a spouse or other individual with whom a prior consensual relationship exists) over whom they exercise professional authority or power, including persons receiving services, assistants, students, or research participants.

(e) A licensee may not engage in a dating relationship with a current client or former client over whom the licensee has influence due to therapeutic relationship; current students or trainees of the licensee; or a supervisee over whom the licensee has administrative or clinical responsibility.

(f) Licensees do not accept individuals as patients or clients with whom they have engaged in sexual relationships.

#### **§ 101306. Mandatory Release of Patient/Client Records.**



(a) Upon request from a patient or client or the patient or client's authorized representative, licensees shall provide a complete copy of the client's records maintained by the licensee.

(b) Requests for records shall be honored in a timely manner, but in no event more than three business days of receipt of the patient or client's written request.

(c) The person requesting the records shall be responsible for the payment of a reasonable fee to the licensee for copying and mailing of the records.

(d) A licensee may not withhold the release of patient or client records for nonpayment of a professional fee. The release of patient or client records under these circumstances does not constitute a waiver by the licensee of the fee claimed.

#### **§ 101307. Mandatory/Compulsory Reporting**

(a) Any person who has reason to believe an allied health professional is, or may be, medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to engage safely in the practice of the licensee's profession shall be permitted to report to the Board in writing any information they may have without fear of recrimination or retaliation.

(b) The following are *required* by Guam law to report to the Board promptly and in writing any information that indicates an allied health professional is, or may be, incompetent, guilty of unprofessional conduct, or mentally or physically unable to engage safely in the practice of the licensee's profession:

(1) all professionals licensed under the Act;

(2) all licensed health care providers;

(3) all public and private hospitals and other health care institutions in Guam, including but not limited to hospitals, clinics, managed care organizations, etc.;

(4) all government agencies with services of any kind involving health care and related activities;

(5) all law enforcement agencies in Guam;

(6) all courts in Guam; and

(7) all peer review bodies in Guam.

(c) A licensee's voluntary resignation from their place of employment in an organization shall be promptly reported to the Board by the organization and the licensee if that action occurs while the licensee is under formal or informal investigation by the organization or a committee thereof for any reason related to possible incompetence, nonprofessional conduct, or mental or physical impairment.

(d) Malpractice insurance carriers and affected licensees are *required* to file with the Board a report of each final judgment, settlement, or award against insured licensees. Licensees not covered by malpractice insurance carriers shall be required to file the same information with the

Board regarding themselves. All such reports shall be made to the Board promptly, i.e., within thirty (30) days of each final judgment, settlement, or award.

(e) Upon receiving reports concerning a licensee, or on its own motion, the Board shall be permitted to investigate any evidence that appears to show a licensee is, or may be, medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to engage safely in the practice of an allied health profession.

(f) To assure compliance with compulsory reporting requirements, a licensed allied health professional may be subject to civil penalties for demonstrated failure to report up to Ten Thousand Dollars (\$10,000.00) per instance.

(g) The Board shall promptly acknowledge all reports received under this Section. Persons or entities reporting under this Section shall also be promptly informed of the Board's final disposition of the matter reported.

#### **§ 101308. Reporting of Minor Incidents**

(a) The Guam Board of Allied Health Examiners believes that the protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Allied Health Practice Act or Board rule and regulation. This is particularly true when there are mechanisms in place in the allied health professional's practice setting to identify errors, detect patterns of practice, and take corrective action to remediate deficits in a licensee's judgment, knowledge, training, or skill. This rule is intended to provide guidance to licensees, peer review committees and others in determining whether a licensee has engaged in conduct that indicates the licensee's continued practice would pose a risk of harm to patients or others and should be reported to the Board.

(b) A minor incident is defined by the Board as conduct by an allied health professional that may be a violation of the Allied Health Practice Act or a Board rule but does not indicate the licensee's continued practice poses a risk of harm to a patient or another person.

(c) An allied health professional involved in a minor incident need not be reported to the Board *unless* the conduct indicates the licensee:

(1) ignored a substantial risk that exposed a patient or other person to significant physical, emotional, or financial harm or the potential for such harm;

(2) lacked a conscientious approach to or accountability for his/her practice;

(3) lacked the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or

(4) has engaged in a pattern of repeated incidents that demonstrate the licensee's continued practice would pose a risk of harm to patients or others.

(d) Other factors that may be considered in determining whether a minor incident should be reported to the Board are:

(1) the significance of the Allied Health professional's conduct in the particular practice setting; and

(2) the presence of contributing or mitigating circumstances, including systems issues or factors beyond the licensee's control, in relation to the licensee's conduct.

(e) When evaluating whether multiple incidents constitute grounds for reporting it is the responsibility of the Allied Health professional's manager, supervisor, or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the licensee's continued practice poses a risk and should be reported.

(f) Regardless of the time frame or number of minor incidents, if a manager or supervisor of a licensee believes the minor incidents indicate a pattern of practice that poses a risk of harm that cannot be remediated, the licensee should be reported to the Board.

#### **§ 101401. ADVERTISING**

(a) Policy Statement. The lack of sophistication on the part of many of the public concerning professional services, the importance of the interests affected by the choice of a licensee and the foreseeable consequences of unrestricted advertising by licensees which is recognized to pose special possibilities for deception, require that special care be taken by licensees to avoid misleading the public. Licensees must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by licensees is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.

(b) Advertising Content. The following acts or omissions in the context of advertisement by any licensee or certificate holder shall constitute unethical conduct, and subject the licensee or certificate holder to disciplinary action:

(1) Claims that the services performed, personnel employed, or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee or certificate holder is better than another when superiority of services, personnel, or equipment cannot be substantiated.

(2) The misleading use of an unearned degree.

(3) Promotion of professional services which the licensee knows or should know are beyond the licensee's ability to perform.

(4) Techniques of communication which intimidate or exert undue pressure or undue influence over a prospective client.

(5) Any appeals to an individual's anxiety in an excessive or unfair manner.

(6) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.

(7) The communication of personal identifiable facts, data, or information about a client without first obtaining client consent.

(8) Any misrepresentation of a material fact.

(9) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.

(10) Misrepresentation of credentials, training, experience, or ability.

(c) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television, or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.

(d) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.

(e) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.

#### **§ 101501. SEVERABILITY AND EFFECTIVE DATE**

(a) If any of these Rules and Regulations of the Guam Board of Allied Health Examiners, or any sentence, paragraph, phrase, or word thereof is construed by a court to be invalid for any reason, it is the intention of the Board that the remainder shall continue in full force and effect; that is, it is the intention of the Board that each rule and/or any portion thereof, is severable.

(b) The effective date of these rules shall be 90 days following their submission to the Secretary of the Guam Legislature or as may otherwise be provided by law.