
EVALUATOR MANUAL TRANSMITTAL SHEET

<p><u>Distribution:</u></p> <p><input type="checkbox"/> All Child Care Evaluator Manual Holders</p> <p><input type="checkbox"/> All Residential Care Evaluator Manual Holders</p> <p><input checked="" type="checkbox"/> All Evaluator Manual Holders</p>	<p><u>Transmittal No.</u> 06RM-02</p> <hr/> <p><u>Date Issued</u> March 2006</p>
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Subject:

REFERENCE MATERIAL – ENFORCEMENT ACTIONS

Reason For Change:

Section 1-0790 – Corrective Action Associated with Audit Findings

Section 1-1130 – Preparation of the Statement of Facts Package

Section 1-1160 – Settlements, Stipulations, Probation

Filing Instructions:

REMOVE – pages 49, 83, 84, 93, 94 and 95

INSERT – pages 49, 83, 84, 93, 94, 94.1 and 95

Approved:

Original signed by

3/6/06

 THOMAS STAHL, Chief
 Policy Development Bureau
 Community Care Licensing Division

 Date

Contact Person: Bob Caldwell

Phone Number: 916-324-4307

1-0790 CORRECTIVE ACTION ASSOCIATED WITH AUDIT FINDINGS 1-0790

At the conclusion of each audit finding, specific actions are outlined advising the licensee how to correct the particular noncompliance.

The Audit Section facilitates the recovery of all client funds as identified in the audit findings. Reimbursement made by licensees or surety bond companies is required to be in the form of a cashier's check made payable in the name of the affected client or in the name of a responsible person or authorized representative on behalf of the affected client.

All client restitution checks are sent to the address listed below:

Department of Social Services
Community Care Licensing Division
744 P Street, MS 19-49
Sacramento, CA 95814
Attention: Audit Manager

If a licensee fails to make the restitution required per the audit findings, the Audit Section will submit a claim against the licensee's surety bond.

The Audit Section maintains records to track the return of all funds recovered on behalf of facility clients. Once all audit findings have been corrected and recovered funds distributed, an internal memo is sent notifying involved Licensing personnel that the audit is closed.

1-1000 ADMINISTRATIVE ACTIONS OR OTHER LEGAL ACTIONS 1-1000

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

Administrative action simply refers to the steps necessary to present a case in an Administrative Hearing. Such hearings may lead to the revocation of a license or the denial of an initial license. Hearings can also be used to resolve whether employees or other persons should be excluded from facilities. The Licensing Program Analyst plays an essential role in the process as the Licensing Program Analyst has firsthand knowledge of the facility operation. The Licensing Program Analyst's knowledge and documentation will greatly enhance the pool of information needed for successfully presenting a case. The violations, which usually justify a recommendation for administrative action, are included in the case assessment indicators found in Section 1-0110.

The role of the Legal Division is to provide legal support and consultation to the Regional Office/county staff, the Statewide Program Office, the Assistant Program Administrator or Program Administrator and the Deputy Director. The Legal Division represents the Department in administrative actions.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130**Witnesses**

The witness list is perhaps the most important section of a Statement of Facts. There may be multiple violations in a facility, but without witnesses to testify about the violations, it will be impossible in most cases for the Legal Division to prepare pleadings or to win the case at the hearing. The Licensing Program Analyst should always be listed as a witness. If the Bureau of Investigations is involved, include the name of the investigator and supervisor.

It is important to provide complete identifying information on all witnesses such as date of birth, driver's license numbers, current work and residence addresses and phone numbers and names of next of kin; if possible. Unless the violations occurred immediately before the Statement of Facts, it is important to make an effort to verify or update the witnesses' information address, telephone numbers, etc.). The case should reach the Legal Division with up-to-date contact information for witnesses.

If the Licensing Program Analyst has some special information about a witness that would be helpful to the assigned Licensing Attorney, that information should be noted in the Comments Section for that witness. For example, the Licensing Program Analyst might indicate that a witness is hostile and probably unwilling to testify for the State, or that a witness may be too young or too disabled to serve as a witness. It is better to list the witness with these reservations noted than to omit the witness because there are problems. The Licensing Attorney assigned to the case is best able to determine the ability and willingness of witnesses to testify.

Other Forms Included in the Statement of Facts Package**County Licensing Administrative Action Personnel Flagging Attachment**

Fill out the **County Licensing Administrative Action Personnel Flagging Attachment** form, LIC 9011A, with all known information requested in the form, for any of the following: the licensee(s) or applicant(s), the excluded person, and/or the administrator against whom administrative action is being taken **in a county licensed facility**.

CDSS Licensing Administrative Action Personnel Flagging Attachment

Fill out the **CDSS Licensing Administrative Action Personnel Flagging Attachment** form, LIC 9011B, with all known information requested in the form, for any of the following: the licensee(s) or applicant(s), the excluded person, and/or the administrator against whom administrative action is being taken **in a state licensed facility**.

Complaint and Type A Violation Log

The LIC 9216 is a tool used to assist the Licensing Program Analyst, Local Unit Manager, County Program Manager and Regional Manager to assess the seriousness of the case. The LPA should complete the LIC 9216 prior to writing the case summary. (Please see Case Summary.) The LIC 9216 is also useful to the assigned attorney and legal analyst as a quick reference. For Statement of Facts requesting Temporary Suspension Orders that are based on one incident, it may not be necessary to complete the LIC 9216. However, it is "best practice" to always complete the form.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE**1-1130**

(Continued)

Fill out the Complaint and Type A Violation Log (LIC 9216) with information from the case file. Record all Type A violations cited and any resulting action taken such as an Informal Meeting, Noncompliance Conference, Compliance Conference, or Administrative Action. Also record any inconclusive complaints of physical or sexual abuse and any others relevant to the action. Consult with the Licensing Office's assigned legal consultant if there are any questions about whether or not to include specific inconclusive complaints.

Organizing the Statement of Facts Package

See discussion in Section 1-1020 of what documents and other items of evidence should be provided with the Statement of Facts. It may be appropriate to retain bulky items of evidence (e.g., the stick with which children were disciplined) in the Regional Office, County Licensing Office or Bureau of Investigation, providing a description and perhaps a photograph of the item with the Statement of Facts. Note this under Special Issues/Pertinent Information. Remove duplicate documents from attachments sent to Legal Division.

CASE FILE INDEX

This index is a guide for organizing the case file documents that accompany a Statement of Facts which includes the Statement of Facts (LIC 9029A), the Statement of Facts Preparation Checklist (LIC 9029B), the Complaint & Type A Violation Log (LIC 9216), the County Licensing Administrative Action Personnel Flagging Attachment form (LIC 9011A.) for facilities licensed by a county and the CDSS Licensing Administrative Action Personnel Flagging Attachment (LIC 9011B) for facilities licensed by the state. Documents should be separated into sections, using colored or preferably tabbed section dividers. Write the number and/or name of the section on the divider or tab. Because the documents that accompany a Statement of Facts vary widely, this index is a general guide to organizing materials by sections. The relevance and importance of documents, and the ease of locating documents in the file, should always be kept in mind.

Table of Contents

List the number and name of each section.

1. Attorney Consultation Documents

Include completed attorney consultation forms, memos and/or emails.

2. License(s) or Initial Application

In a license revocation case, include a copy of all licenses issued (current and expired or superseded), with the most recent on top, in this section. Be sure to include the most recent license, and that it reflects accurately the current capacity, restrictions, etc. In an application denial case, place the initial application form (LIC 200 or 283) here.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued)

1-1160

Settlement discussions are always handled by the Licensing Attorney assigned to the case. Once a case has been referred for administrative action, the local Licensing Office **may not** negotiate a settlement of the administrative action with the licensee.

Specific terms and conditions set out in a settlement agreement are referred to as a stipulation. Stipulations are entered into on behalf of the California Department of Social Services by the Deputy Director for Community Care Licensing Division. While the attorney has the responsibility to represent the Department in administrative actions, the attorney does not have the authority to enter into Stipulations without prior approval of the Deputy Director for Licensing or his/her designee (generally the Assistant Program Administrator or Program Administrator). The Stipulation is not final until signed by the Deputy Director for Licensing and adopted by the Department.

Once the pleading has been served, ALL settlement discussions with the respondent should only be done by the assigned attorney. All calls to the Region, County or Statewide Program Offices from the respondent regarding possible settlement or the legal case should be referred to the attorney. All calls from an attorney for the respondent must be referred to the attorney. The Region, County or Statewide Program Office should alert the assigned attorney to expect the call.

The calls that should be referred include all questions regarding hearing procedures and/or whether the respondent should file a notice of defense. Questions from respondents regarding the ongoing monitoring of the facility should continue to be handled by the local Licensing Office.

Either side in an administrative action may initiate settlement discussions. In some instances, the licensee may agree to withdraw his or her Notice of Defense. In that case, the revocation or denial is entered by default. In other cases, the licensee may agree that his or her license can be revoked, but negotiates to avoid admissions to certain allegations. In other cases, the licensee agrees to the revocation of his or her license, and the State agrees to “stay” or postpone the revocation for some period of time. During this period, the licensee is permitted to operate, provided that he or she complies with specific terms and conditions set out in the settlement agreement **stipulation**. The period during which the licensee may operate subject to these conditions is known as the period of **probation**.

Settlements can enable the local Licensing Office, through the Licensing Attorney’s negotiations with the licensee’s attorney, to impose conditions on the continued operation of a facility. The Licensing Office is responsible for monitoring the licensee during the period of probation to ensure that the licensee complies with the terms of probation.

The Licensing Office will make a visit within ninety (90) days of the effective date of the probation. **In addition, any facility on probation will be required to have an annual visit each year it remains on probation.** **Other visits** may be made if the situation requires more monitoring. The frequency of visits during the remainder of the probation will be determined by the Licensing Office in consultation with the Legal Division based on the performance of the licensee during the first year of the probation. Contact the Legal Division as soon as possible if violations of probation are found.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued)**1-1160**

If the licensee fails to comply with the terms of probation, the Licensing Office is responsible for referring the noncompliance for legal action. This referral is made in the same manner as an initial referral for license revocation. **If the licensee does not comply with the conditions set forth in the Stipulation, the Licensing Attorney usually needs to prove only the violations of the specified condition(s).** The stay of revocation is then set aside, and the revocation takes effect.

The Licensing Attorney will contact the Local Unit Manager, Regional Manager and Assistant Program Administrator or Program Administrator or delegate for input on a given settlement proposal. Any information or opinions regarding the settlement that is being proposed should be conveyed by the management team to the Licensing Attorney. These opinions will figure prominently in the final decision.

The Licensing Attorney will contact the Manager of the Administrator Certification Section whenever a settlement proposal involves exclusion of an administrator of an Adult Residential Facility, Group Home, or Residential Facility for the Elderly, administrator decertification or revocation of vendor or instructor certificate.

Cases involving any of the below listed items must be reviewed by a Deputy General Counsel. Without substantial justification, the Legal Division will not approve a settlement.

1. Exclusion of a spouse.
2. Exclusion of a minor or dependent child, grandchild or relative.
3. Exclusion of anyone who has molested or abused a person.
4. Surrenders.
5. Exclusion of a licensee from the operation of the facility or client contact.
6. Exclusion of a corporate officer, board member or other management person from the facility or client contact while they retain their business, professional or personal relationship with the facility.
7. Proposals that include duplicate licensees (e.g. Community Care Licensing Division and Department of Health Services licenses for the same facility).
8. Care beyond the regulations.
9. A proposal where there is not a reasonable chance that the licensee will successfully complete probation.
10. Any proposal that allows a sex molester to continue in operation - even if it means going to hearing and losing.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued)

1-1160

11. Settlements that permit a facility whose license has been temporary suspension ordered to continue in operation.
12. Revocations where the respondent can reapply in less than two years.
13. A Stipulation that is used as a way to avoid hearing preparation.

Family Child Care Home Settlements – Spouse

The following clarifies the policy related to settlement proposals when the Department has cause to exclude the family child care home licensee's spouse, but is willing to allow the licensee to maintain the license; and when the family child care home licensee's spouse has a denied criminal record exemption.

The Department will not entertain any probation term or condition in settlements (stipulations) where there is a condition that excludes the spouse of a family child care home licensee from his or her residence only during day care hours or at any time children are in care.

Settlement to Exclude Spouse

If the licensee can prove, through documentary evidence, that the licensee has filed for divorce (petition for dissolution of marriage), the spouse has been removed from the lease or has relinquished his/her property rights, and the spouse has moved from the facility and has established a legal residence elsewhere, a settlement that includes an exclusion of the spouse may be considered in order for the licensee to maintain a license, when all three of the above conditions are met.

In such settlements, the licensee will be required to comply with parent notification requirements associated with any exclusion.

Conditional Exemption-Spouse

When determining whether or not a settlement with a conditional exemption is feasible, assess the risk the person (spouse) with the denied exemption would present to children in care. If there is a risk, seek an administrative action to revoke the license. If it is determined that the presence of the person in the home does not pose a risk to children in care, a settlement with a conditional exemption may be considered.

Conditions on the exemption must include (but are not limited to): prohibitions against any involvement in the operation of the day care, any responsibility for care and supervision of children in care at any time, and being left alone with children in care.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued)**1-1160**

When the denied exemption decision was made by the Caregiver Background Check Bureau, the settlement decision must include a discussion between the Bureau and the Program.

When the denied exemption decision was made by the County Licensing Program, the settlement decision must be discussed with the county liaison and approved by the Child Care Program Office delegate.

1-1170 DECISION AND OTHER POST-HEARING ISSUES**1-1170**

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

After the hearing is over and all documents are submitted, the Administrative Law Judge writes a Proposed Decision and sends it to the Legal Division. In most cases, the proposed decision is received within 30 days of the close of the hearing.

The Legal Division will notify the local Licensing Office at the time a proposed Decision and Order is received from the Administrative Law Judge. The Licensing Office will determine whether the facility is still in operation, and if so, attempt to obtain a current facility roster. For facilities with clients in care, the Licensing Office will follow the planning and coordination procedures for developing a Facility Closure Plan.

When the Department decides to adopt the Proposed Decision, the Deputy Director of the Legal Division signs a Decision and Order to that effect. The Decision and Order is then served by the Legal Division, usually by mail, on the licensee and his or her attorney. The Decision and Order is effective no earlier than ten days from the date of signature. The Legal Division will notify the Licensing Office on the day the Decision and Order is signed. For facilities with clients in care, the Licensing Office will follow Facility Closure Plan procedures for notification and relocation as provided in Section 1-1190. The Statewide Program Office and the Licensing Office that referred the case will also receive a copy.

On the very rare occasion when there is an imperative and sound reason to reject or to change the Proposed Decision, the Legal Division may request a transcript, or record, of the hearing. The Community Care Licensing Division Deputy Director must approve this request for a transcript. When the record is received, it is scrutinized by an attorney who has not been previously involved with the case. That attorney may then write an alternate decision and recommend it to the Community Care Licensing Division Deputy Director and the Legal Division Deputy Director. Alternating a decision takes many months and greatly delays the adoption of a final decision. Fortunately, it is rarely necessary to use this procedure.