

Texas State Board of Examiners of Psychologists

Newsletter Vol. 29, No. 1

Can I Report a Patient Who is an Unsafe Driver?

Have you ever encountered a scenario similar to the following? An elderly patient is referred to you for an evaluation with concerns about dementia. After conducting the necessary evaluations, you diagnose the patient with dementia and become concerned about his ability to drive safely. Assuming you have shared your findings and concerns with the patient about his ability to safely operate a motor vehicle, what additional steps can you take to ensure the patient does not endanger himself or the public with unsafe driving practices?

First and foremost, licensees need to remember that while patient confidentiality is not absolute, Texas law allows for few exceptions. Tex. Health & Safety Code Ann. §611.002 makes confidential all communications between a patient and licensee, as well as records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by the licensee. Although Tex. Health & Safety Code Ann. §§611.004 and 611.006 set forth various exceptions to the confidentiality of mental health records, they do not expressly authorize licensees to divulge confidential information with regard to potentially unsafe driving. Unlike physicians in Texas who enjoy an exception to patient confidentiality when reporting unsafe drivers (see Tex. Health & Safety Code Ann. §12.096), licensees of this agency have no such exception upon which to rely.

A word of caution: while the Texas Department of Public Safety does allow individuals to submit anonymous reports on

potentially unsafe drivers, this allowance for anonymity does not operate as an exception to the laws governing confidentiality. Stated another way, filing an anonymous report constitutes a breach of confidentiality.

Thus, a licensee should not report a patient suspected of unsafe driving practices based upon confidential information, unless the patient or his duly authorized representative has authorized the licensee to do so. Licensees are however free to discuss self-reporting with the patient, and provide any resources or referrals they feel appropriate. Additionally, licensees may discuss the patient's situation with any individual for whom they have a signed release from the patient, and provide that individual with any resources or referrals permissible under the scope of the release. Licensees should remember to document their discussions with patients and third-parties, as well as the resources or referrals provided.

The Texas Department of Public Safety provides a brief explanation of the process for reporting potentially unsafe drivers on its website at <http://www.txdps.state.tx.us/DriverLicense/MedicalRevocation.htm>. Please note that all reports, including anonymous reports, are subject to the Public Information Act. Furthermore, while reports do not have to be submitted on agency forms, the official DPS form for reporting potentially unsafe drivers, DPS form DL-76 *Examination/Investigation Request*, can be downloaded from the agency's website at <http://www.txdps.state.tx.us/internetforms/default.aspx>.

Lastly, while licensees should avoid giving legal advice, it may prove beneficial to recommend the patient consult with an attorney. An attorney may be able to assist the patient with preparing a Power of Attorney, Medical Power of Attorney, HIPAA Release, Designation of Guardian, etc., which could in turn assist the parties in navigating the often delicate discussions surrounding the loss of driving privileges. Patients without an attorney should seek a reference from their friends, colleagues, or a lawyer referral service. In addition to the lawyer referral services provided by the various local bar associations, the State Bar of Texas provides referrals through the Lawyer Referral Information Service at 800-252-9690.

This article is not meant to constitute legal advice or be read as a comprehensive analysis of all the laws governing a licensee faced with a patient who is a potentially unsafe driver. Failure to reference a particular law in this article does not relieve licensees of their duty to comply with such law. It is the responsibility of the reader to determine the applicability of the law to their unique circumstances.

Effectively Communicating Through Comments on Proposed Rules

The rulemaking process utilized by the Board is set out in Chapter 2001, Subchapter B of the Administrative Procedure Act. This process entails publishing proposed rules for a set period of time in the Texas Register and taking public comments prior to adopting any rule change. In an effort to enhance public awareness of this process and provide guidance on the effective use of comments in the rulemaking process, the Board would encourage those wishing to make comments to review the following information.

There are three methods for submitting comments on proposed rules, the two primary methods being written letters and emails, and the third less common method being personally appearing before the Board. The reader will note that with regard to written comments, this article refers only to letters, but the recommendations set forth herein apply to emails as well.

As a stakeholder or member of the public, a letter is an easy way for you to let the Board know your views on proposed rules, encourage them to vote your way, and let them know that you will be following an issue through the rulemaking process. Personally-written letters allow you an opportunity to present your position to the Board without interruption. With that in mind, you will want to keep the letter short and to the point, with just enough facts and figures to further enhance your statement. Never lie or make a statement you cannot back up with evidence. Always let the Board know how a proposed rule change will affect you personally, as well as the profession as a whole. If you are a licensee or own or operate a business involved in the delivery of psychological services, do not hesitate to mention that. Taking these steps will enhance your message and ensure your concerns are taken seriously.

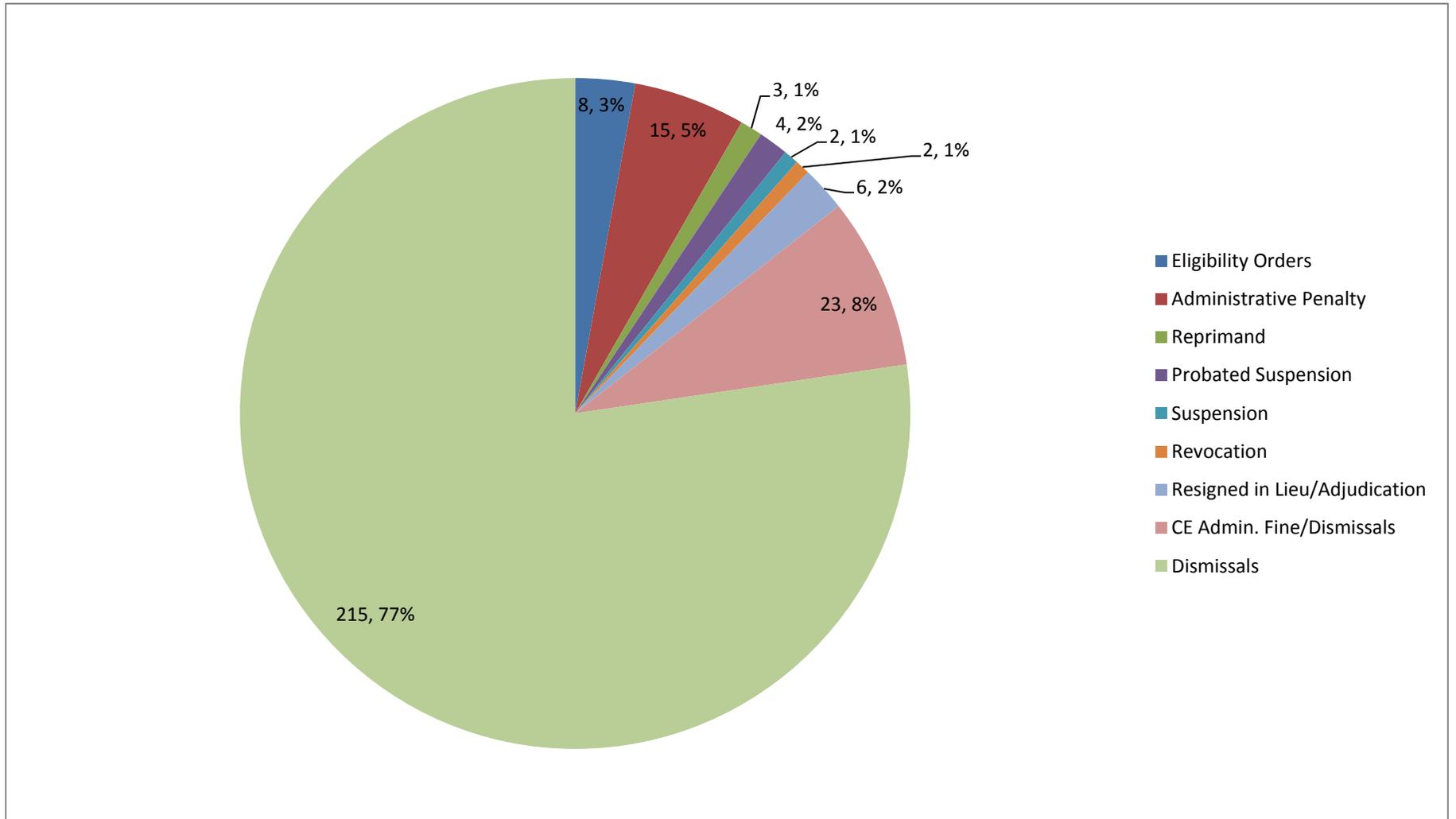
You should also make every effort to be brief, specific, and courteous when submitting comments. Letters containing comments should not exceed one page, and the purpose of your comments should be stated clearly in the first paragraph. If your comments pertain to a specific section of a proposed rule, rather than the rule as a whole, identify that particular section accordingly. To make sure your comments are as productive as possible, always be courteous, even if you disagree with the proposed rule change or its rationale. Never

threaten or use abusive language. This only hurts your cause.

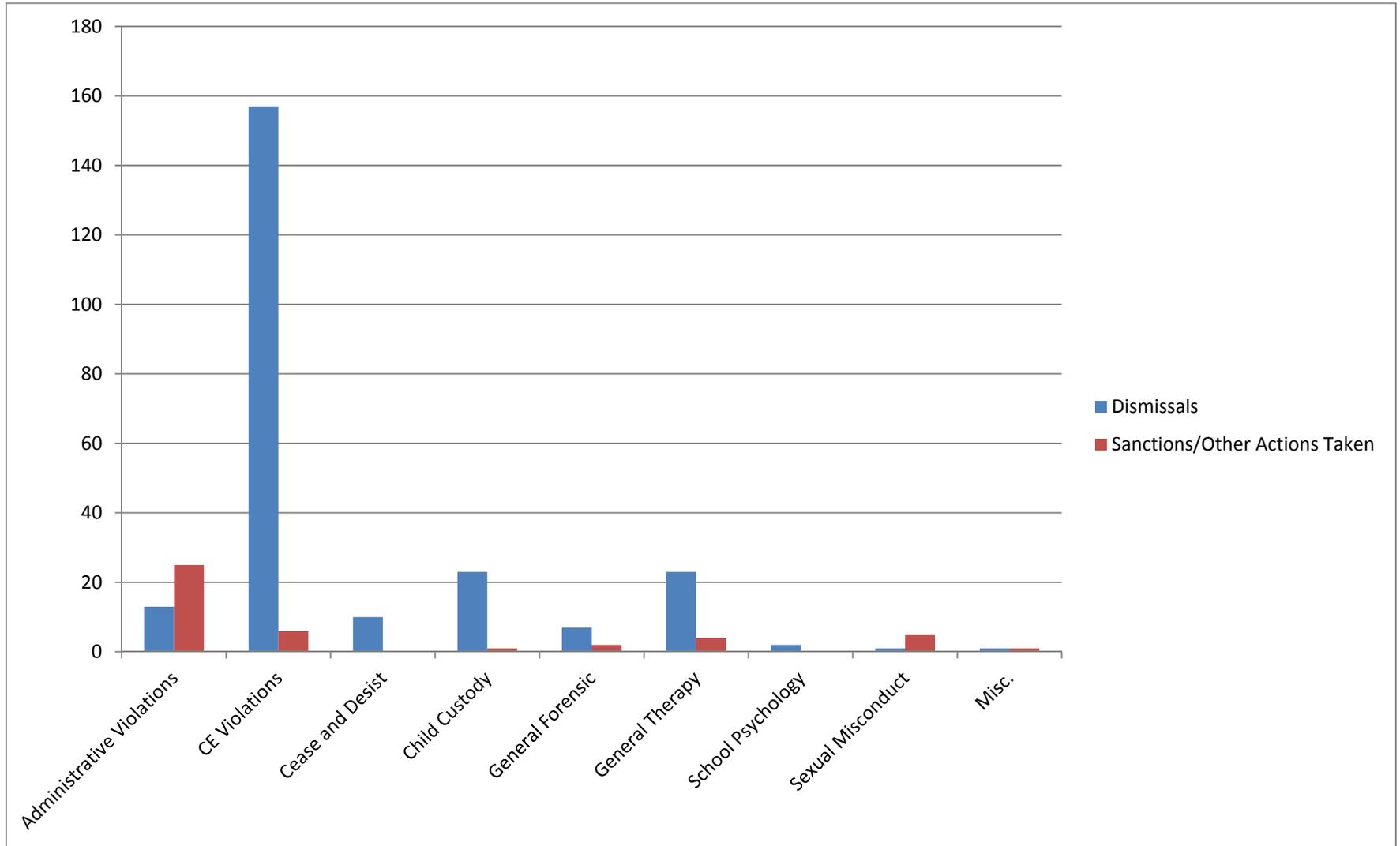
When delivering comments in-person before the Board, you will want to follow many of these same suggestions. You will also want to dress professionally to convey the seriousness of your visit, arrive to the meeting in a timely manner, refrain from any disruptive behavior during the meeting, and pay careful attention to your allotted time when speaking. The Board is typically required to cover a multitude of issues during a meeting, thus disruptions will not be tolerated and time limits will be strictly enforced. Additionally, when providing comments in-person, you will not receive any response from the Board, but may be asked questions by individual Board members. You should also bring ample materials (i.e. 13 copies) to share with the Board members if these materials bolster your point and serve as valuable reference materials. You are encouraged to submit any such materials at least 14 days prior to the scheduled meeting to give the Board members adequate opportunity for review.

One of the foundational principles in Texas government is that each citizen is entitled to provide input on any changes proposed in law. To further this long standing and important tradition, the Board encourages its stakeholders and the public to participate in the rulemaking process by submitting comments to proposed rule changes. You can review any proposed rule changes in the Texas Register, which may be accessed through the Texas Secretary of State's website. Subscription information and access to the Texas Register can be found at www.sos.state.tx.us/texreg/subinfo.shtml.

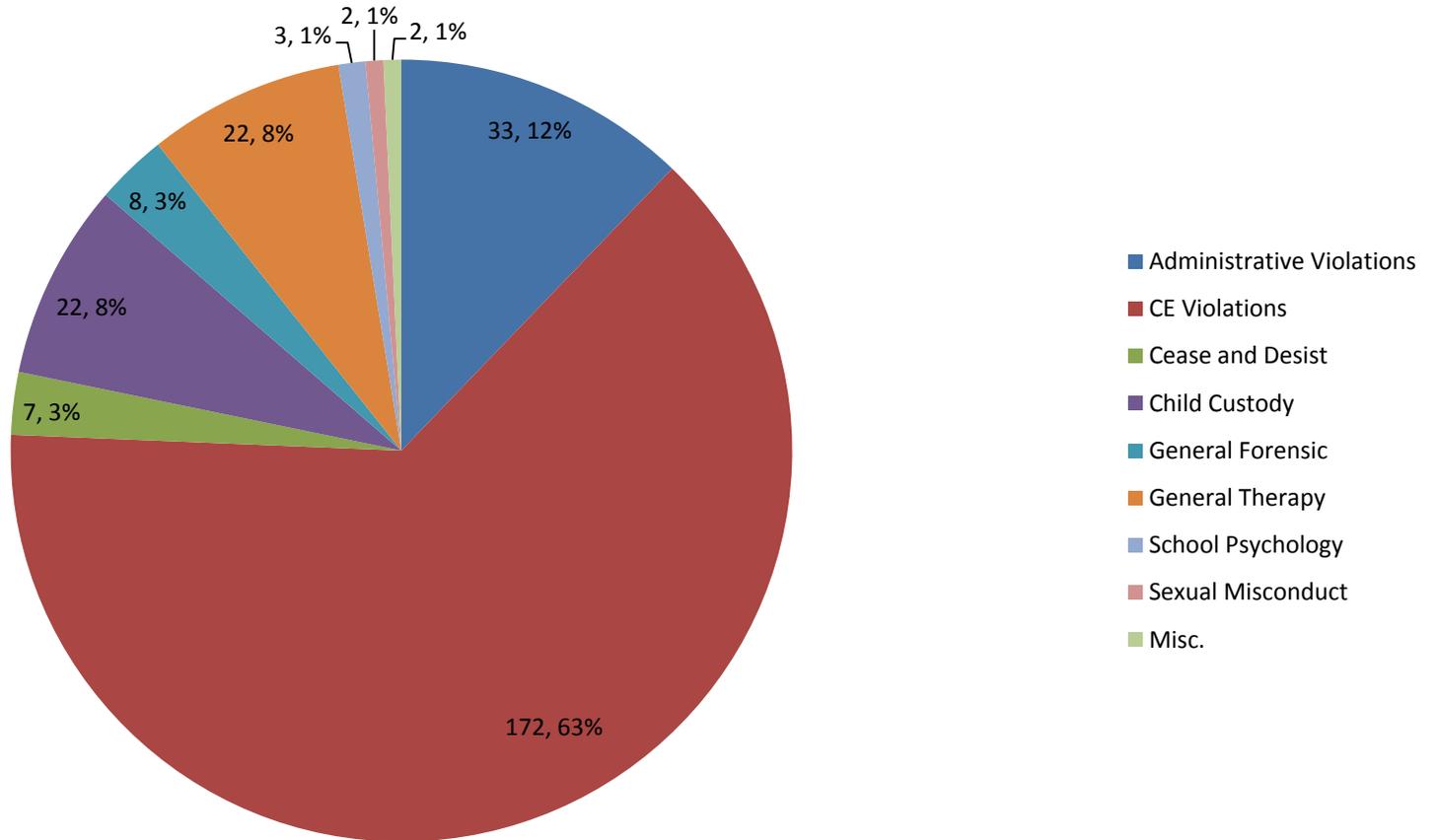
DISCIPLINARY ACTIONS TAKEN IN FY2015



DISMISSALS VS. SANCTIONS – FY2015



COMPLAINTS RECEIVED IN FY2015



**TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS DISCIPLINARY SANCTIONS RATIFIED AT THE
May 21, 2015 BOARD MEETING**

NAME	CITY	NATURE/INFRACTION	DISCIPLINARY ACTION	DATE
Baldwin, Laurie Elizabeth, Ph.D.	Bellaire	Failure to disclose an arrest; providing false information on a renewal.	Administrative penalty and additional professional development.	05/21/15
Blanchard, Timothy O., M.A.	Bryan	Failure to disclose an arrest.	Administrative penalty and additional professional development.	05/21/15
Busick, Carole Ann, Ph.D.	Houston	Use of outdated tests and lack of compliance with all state laws and rules.	License suspended (with contingent probation), practice monitor, administrative penalty, and additional professional development.	05/21/15
Grimmett, Michael A., M.S.	Wortham	Failure to disclose an arrest; providing false information on a renewal.	Administrative penalty and additional professional development.	05/21/15
Litton, David Scott, Ph.D.	Austin	Personal problems.	Administrative penalty and additional professional development.	05/21/15
Perlichek, Piper Denise, M.A.	Mason	Failure to disclose an arrest; providing false information on a renewal.	Administrative penalty and additional professional development.	05/21/15
Wooding, Kathleen Swoboda	Austin	Failure to disclose an arrest.	Administrative penalty and additional professional development.	05/21/15

**TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS DISCIPLINARY SANCTIONS RATIFIED AT THE
AUGUST 20, 2015 BOARD MEETING**

NAME	CITY	NATURE/INFRACTION	DISCIPLINARY ACTION	DATE
Finch, Joe Milton, Psy.D.	Lavon	Improper supervision.	Administrative penalty and additional professional development.	08/20/15
Herr, Lynn Rae, Ph.D.	Arlington	Improper supervision.	Administrative penalty and additional professional development.	08/20/15
Hitchcock, Maurice A., Ed.D.	Altadena, CA	Failure to disclose an arrest; providing false information on a renewal.	Administrative penalty and additional professional development.	08/20/15
Jackson, Catherine Benedecit, Psy.D.	Arlington	Improper supervision.	Administrative penalty and additional professional development.	08/20/15
Stille, Kelly L., Psy.D.	Colleyville	Fabricated test results.	License suspended (with contingent probation), practice monitor, administrative penalty, and additional professional development.	08/20/15
Vuong, Lieu Nguyen, Ph.D.	Allen	Improper supervision.	Administrative penalty and additional professional development.	08/20/15

**TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS DISCIPLINARY SANCTIONS RATIFIED AT THE
NOVEMBER 19, 2015 BOARD MEETING**

NAME	CITY	NATURE/INFRACTION	DISCIPLINARY ACTION	DATE
Aguirre-Craddock, Adriana, M.A.	Laredo	Failure to disclose an arrest.	Administrative penalty and additional professional development.	11/20/15
Ferrell, Jack G., Ph.D.	San Antonio	Failure to disclose an adverse legal proceeding.	Administrative penalty and additional professional development.	11/20/15
Heffernan, Michael, Ph.D.	Fulton	Failure to disclose an arrest.	Administrative penalty and additional professional development.	11/20/15
Mancuso, Lisa Mary, Ph.D.	Houston	Improperly terminated client.	Reprimand, administrative penalty, and additional professional development	11/20/15
Reichert, Madeleine Ruth, DMH	San Antonio	Provided therapy and forensic services in the same case.	Reprimand, administrative penalty, and additional professional development	11/20/15
Schaber, Pamela McDonald	Austin	Failure to disclose an arrest.	Administrative penalty and additional professional development.	11/20/15