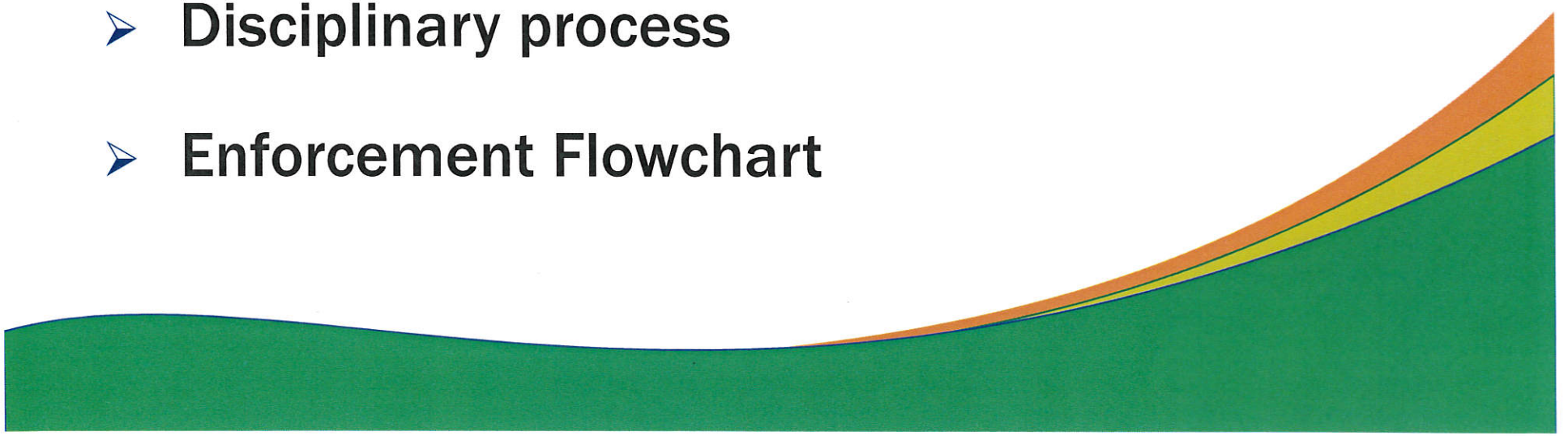
California Board of PSYCHOLOGY

# Enforcement Overview and Presentation

February 2016

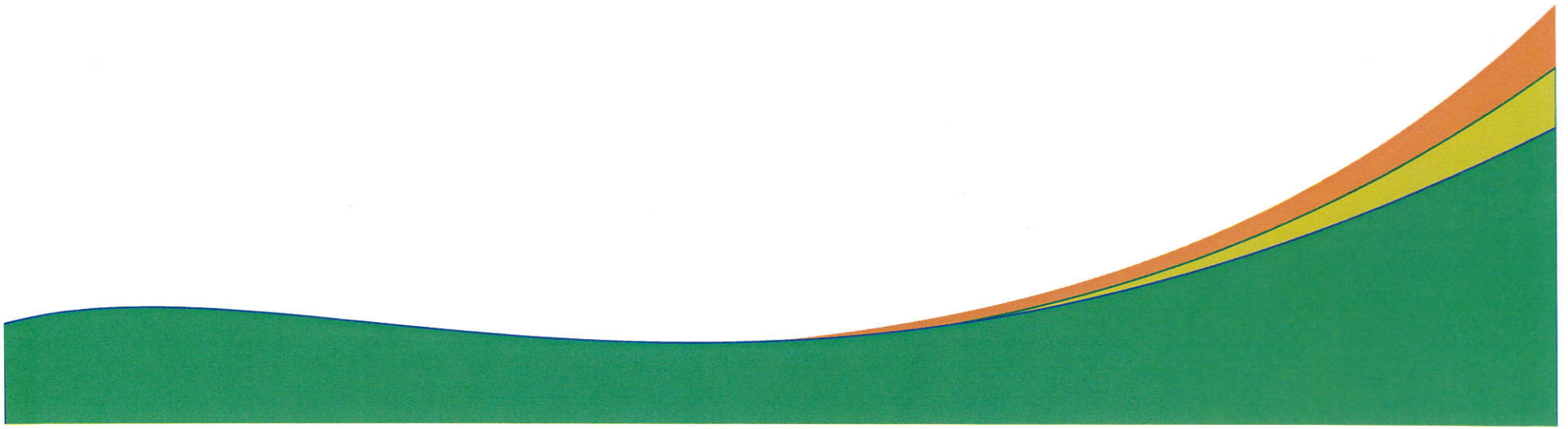
# Enforcement Overview

- Complaint process
- Expert reviews
- Investigation process
- Citation and Fines
- Disciplinary process
- Enforcement Flowchart



# Complaint Process

- **Who does the Board license/register?**
  - ✓ Psychologists
  - ✓ Registered psychologists
  - ✓ Psychological Assistants

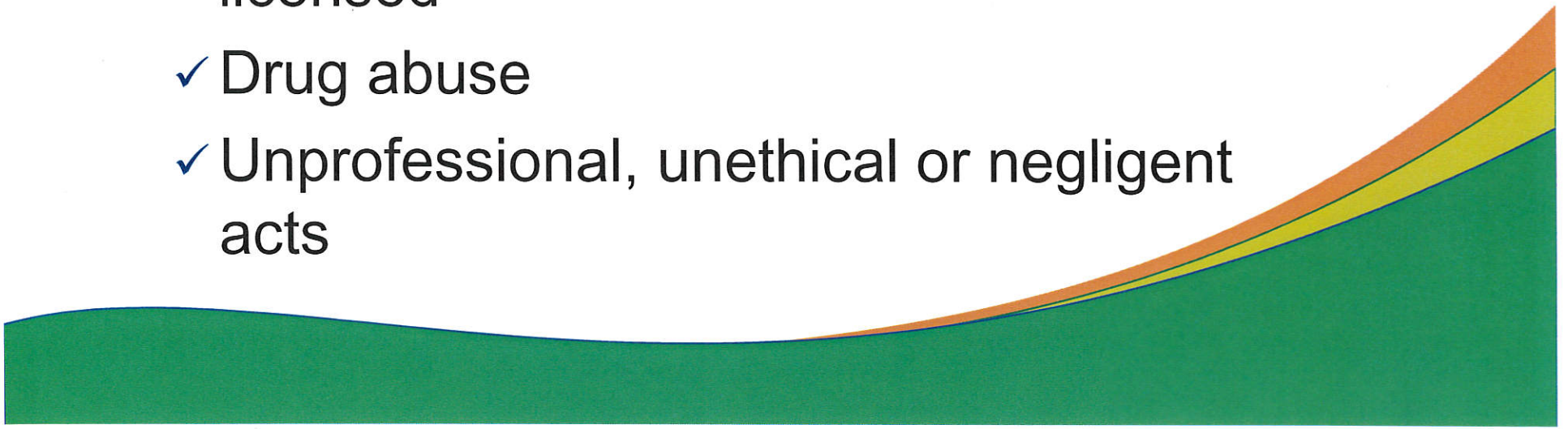


# Complaint Process

- **Who may file a complaint?**
  - ✓ Anyone

# Complaint Process

- **What are the most common types of complaints the Board receives?**
  - ✓ Sexual misconduct with a patient
  - ✓ Violating the patient's confidentiality
  - ✓ Providing services for which the individual has not been trained or licensed
  - ✓ Drug abuse
  - ✓ Unprofessional, unethical or negligent acts



# Complaint Process

- **What types of complaints are outside the Board's jurisdiction?**
  - ✓ Fee or billing disputes
  - ✓ Personality conflicts
  - ✓ Persons who are licensed by other Boards

# Complaint Process

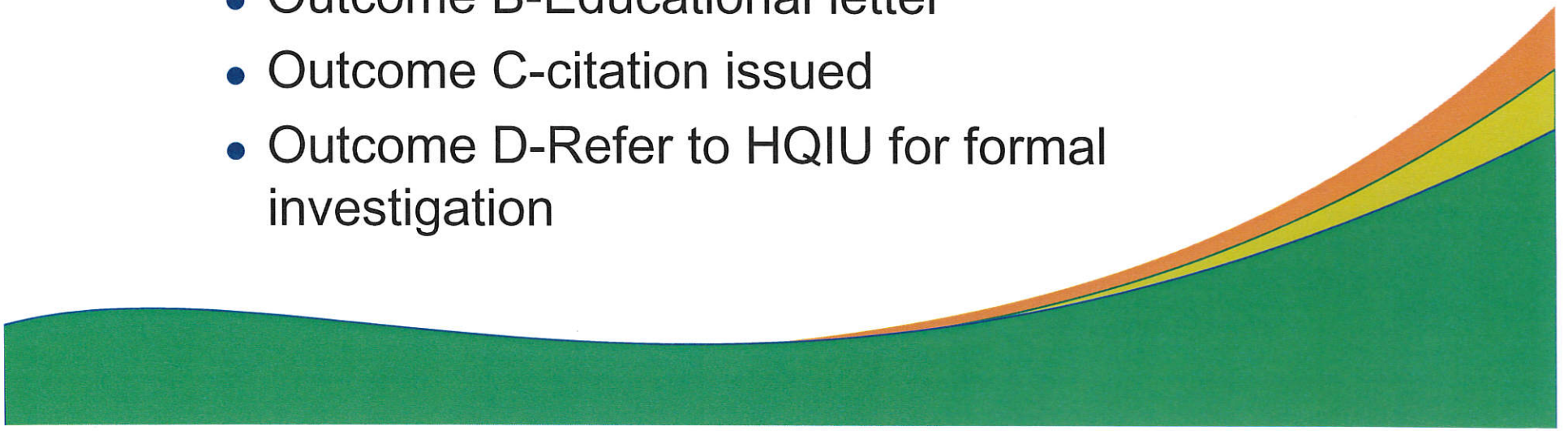
- **How are complaints filed?**
  - ✓ On-line
  - ✓ By mail

# Complaint Process

- **What happens when a complaint is filed?**
  - ✓ Complainant is notified with 10 days
  - ✓ Enforcement analyst assigned
  - ✓ Desk investigation initiated
- **Complaint Outcomes**
  - ✓ Refer to expert
  - ✓ Closed

# Expert Review

- **If a case is referred to an expert, what next?**
  - ✓ Expert opines on case within 30 days
  - ✓ Board staff reviews Expert's findings
  - ✓ Possible Outcomes
    - Outcome A-Closed
    - Outcome B-Educational letter
    - Outcome C-citation issued
    - Outcome D-Refer to HQIU for formal investigation



# Outcome A-Closed

- **Why is a case closed with no action?**
  - ✓ No violation found

# Outcome B-Educational Letter

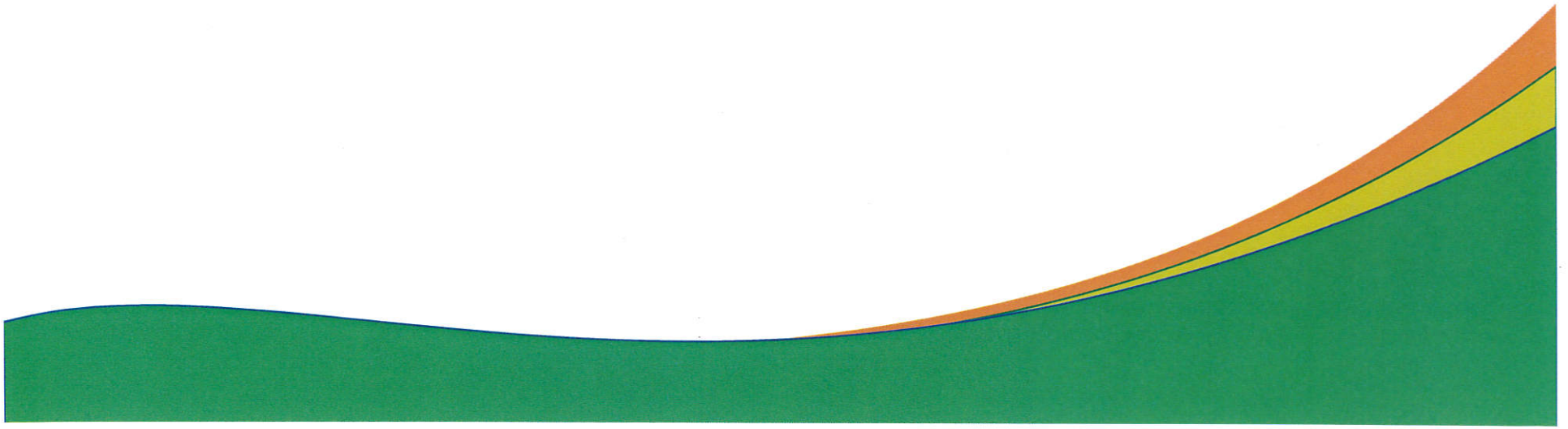
- **Why is an educational letter issued?**
  - ✓ Minor violations found
  - ✓ No patient harm

# Outcome C-Citation and Fine

- **Why is a citation issued?**
  - ✓ Minor violations are found
  - ✓ An Educational Letter has already been issued
  - ✓ Unlicensed practice is discovered

# Outcome D-Refer case to HQIU

- **Why would a case be referred to HQIU?**
  - ✓ If a serious violation is found by expert

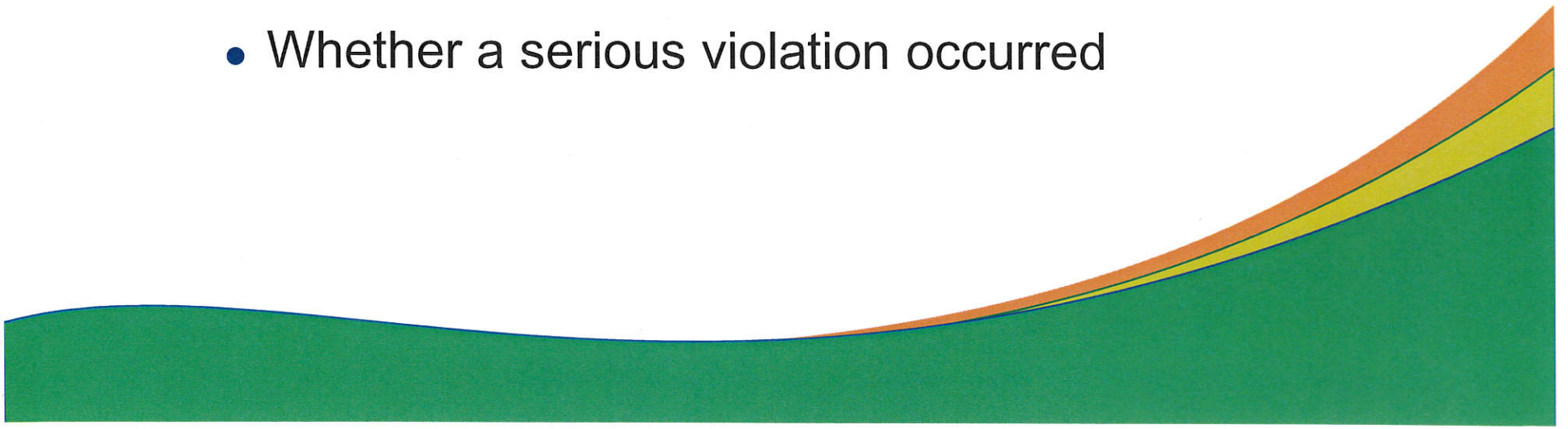


# Investigation Process

- **Two types of investigations**
  - ✓ Desk and Formal

# Investigation Process

- **Desk Investigations**
  - ✓ Performed by an Enforcement Analyst (EA) or Special Investigator (SI)
  - ✓ EA or SI determines if:
    - Complaint falls within Board's jurisdiction
    - Complaint involves care provided by licensee
    - Whether a minor violation occurred
    - Whether a serious violation occurred



# Investigation Process

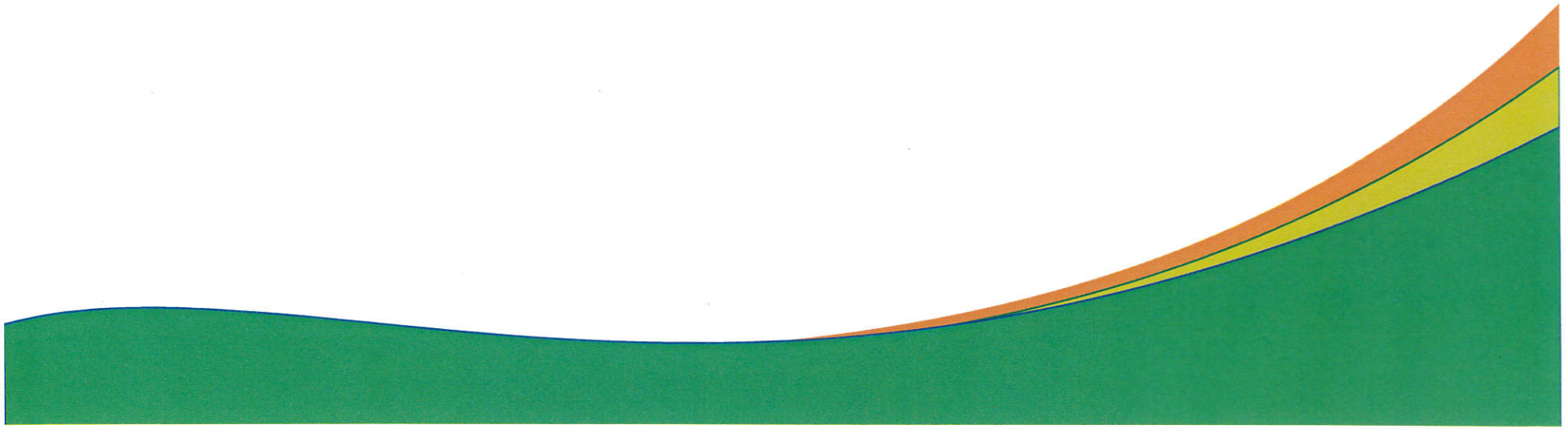
- **Formal Investigations**
  - ✓ Performed by peace officers
  - ✓ Upon completion of the investigation the case may be:
    - Closed
    - Referred to the Attorney General's Office
    - Referred to the local District Attorney's Office

# Citation and Fines

- Issued for minor violations that do not warrant formal disciplinary actions

# Disciplinary Process

- **What happens during the Discipline Process**
  - ✓ Attorney General determines if action should be initiated by filing an:
    - Accusation
    - Statement of Issues



# Disciplinary Process

- Administrative Hearing /Stipulated Settlement
- Board Vote

# Cali i PSYCHOLOGY ENFORCEMENT

## COMPLAINT DESK INVESTIGATION

Complaint is assigned to Enforcement Analyst/Special Investigator to determine:

- If immediate investigation is needed. If yes, refer complaint to appropriate district office.
- Whether the complaint is within the Board's jurisdiction. If not, refer to the appropriate agency.
- If more information is needed, the analyst requests this from the complainant.
- Whether the complaint involves care provided by the licensee. If so, patient records and a response are obtained and reviewed by a psychology expert.
- Whether a minor violation of the laws and regulations has occurred. If so, the psychologist is contacted and advised of the violation to achieve compliance, or the matter is referred for a citation and fine.
- Whether a serious violation (extreme departure) of the laws and regulations has occurred. If so, the complaint is referred for a formal investigation.

## INVESTIGATION

If following review by a psychology expert it is determined that a serious violation (extreme departure) of the laws and regulations has occurred, the case is referred to a Medical Board district office for investigation. Upon completion, the file may be:

- Closed, but retained for one year if no violation is confirmed.
- Closed but retained for five years because the complaint is found to have merit, but lacks sufficient evidence to take action.
- Referred to the Attorney General's Health Quality Enforcement Section to determine whether to initiate disciplinary action.
- Referred for other non-disciplinary action, or criminal action.

## CITATION & FINE

Minor violations of the laws and regulations may result in administrative citation and fine rather than formal disciplinary action. Minor violations include:

- Failure to provide patient records.
- Practicing with an expired license.
- Misleading advertisement.
- Failure to properly supervise a psychological assistant.

## ATTORNEY GENERAL

If the assigned Deputy determines the case meets the legal standard of clear and convincing evidence, the Deputy drafts formal charges (Accusation), and a hearing is scheduled. During the pre-hearing conference, a stipulated settlement of the charges/penalties may be accepted by both sides. If this occurs, a hearing is not needed. In some cases, the Board may direct the Deputy to file a petition to compel the licensee to submit to a competency examination or a psychological evaluation before the filing of an Accusation.

## BOARD VOTE

The stipulated settlement is reviewed by the Board of Psychology, who have the option to:

- Adopt the stipulated settlement;
- Reduce or increase the penalty. In this instance, if the requested changes are not accepted by the parties, the case will proceed to a hearing.

## CRIMINAL PROSECUTION

A completed investigation may be referred to a local district or city attorney for prosecution of suspected criminal violations.

## ADMINISTRATIVE HEARING

If the licensee contests the charges, the case is heard by an Administrative Law Judge (ALJ), who then drafts a proposed decision.

## BOARD VOTE

The proposed decision is reviewed by the Board of Psychology, who have the option to:

- Adopt the decision as proposed;
- Reduce the penalty and adopt the decision; or,
- Increase the penalty and adopt a decision. In this instance, the Board must read the entire record of the hearing prior to acting. The psychologist is given the opportunity to submit written arguments.

## APPEAL

Psychologist may petition for reconsideration of a decision for 30 days after it is adopted. Thereafter, psychologist may petition for reinstatement of a revoked license, reduction of terms of penalty, or termination of probation.

Various time periods apply before petitions can be filed with the Board. Final decisions may be appealed to the Superior Court, the District Court of Appeal, and to the California Supreme Court.

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