

FACTORS TO CONSIDER WHEN DECIDING WHETHER TO ADOPT OR NONADOPT A PROPOSED DECISION

A. Consider adopting an ALJ's proposed decision where:

1. The summary of the evidence supports the findings of fact, and the findings support the conclusions of law.
2. The law and standards of practice are interpreted correctly.
3. In those cases in which witness credibility is crucial to the decision (such as in sexual misconduct cases), the findings of fact include a determination based substantially on a witness' credibility, and the determination identifies specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
4. The penalty fits within the disciplinary guidelines or any deviation from those guidelines has been adequately explained.
5. If probation is granted, the terms and conditions of probation provide the necessary public protection.
6. The costs of proceeding with nonadoption far exceed the severity of the offense and the probability is high that respondent will be successful.

B. Consider nonadopting an ALJ's proposed decision where:

1. The proposed decision reflects the ALJ clearly abused his/her discretion.
2. The ALJ made an error in applying the relevant standard of practice for the issues in controversy at the hearing.
3. Witness credibility is crucial to the decision (such as in sexual misconduct cases), the findings of fact include a determination based substantially on a witness' credibility, but the determination does not identify specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
4. The ALJ made an error in interpreting the licensing law and/or regulations.
5. The ALJ made correct conclusions of law and properly applied the standards of practice but the penalty is substantially less than is appropriate to protect the public.