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## **BOARD MEETING NOTICE May 12-13, 2016**

Hilton Los Angeles/Universal City  
555 Universal Hollywood Dr.  
Universal City, CA 91608  
818-506-2500

*While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to technical difficulties or limitations on resources. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at the physical location.*

### **AGENDA Thursday, May 12, 2016 8:30 a.m.**

#### **FULL BOARD OPEN SESSION** - Call to Order and Establishment of Quorum

- I. Petition for Modification of Probation for Michele Klocke, LCSW 65294
- II. Petition for Modification of Probation for Jacqueline Vargas, IMF 83412
- III. Petition for Early Termination of Probation for Jenny Hall, LMFT 46803
- IV. Petition for Early Termination of Probation for Jennifer Weeks, LMFT 47271
- V. Petition for Reinstatement of Registration for Keith Lederhaus, ASW 34492
- VI. Public Comment for Items not on the Agenda
- VII. Suggestions for Future Agenda Items



Governor  
Edmund G. Brown Jr.  
State of California  
Business, Consumer Services  
and Housing Agency  
Department of  
Consumer Affairs

## **FULL BOARD CLOSED SESSION**

- VIII. Pursuant to Section 11126(c) (3) of the Government Code, the Board will meet in Closed Session for discussion and to take action on disciplinary matters, including the above Petitions, and any Other Matters. The Board will also, pursuant to Section (a) (1) of the Government Code, meet in Closed Session to evaluate the performance of the Executive Officer.

## **FULL BOARD OPEN SESSION**

- IX. Adjournment

**Friday, May 13, 2016  
8:30 a.m.**

## **FULL BOARD OPEN SESSION** - Call to Order and Establishment of Quorum

- X. Introductions\*
- XI. Approval of the February 25-26, 2015 Board Meeting Minutes
- XII. Approval of the March 2-4, 2016 Board Meeting Minutes
- XIII. Chair Report
- Board Member Activities
- XIV. Executive Officer's Report
- a. Budget Report
  - b. Operations Report
  - c. Personnel Report
  - d. Sunset Report Update
- XV. Strategic Plan Update
- XVI. Supervision Committee Update
- XVII. Examination Restructure Update
- XVIII. Policy and Advocacy Committee Recommendations
- a. Recommendation # 1 – Neutral, Assembly Bill 796 (Nazarian) Health Care Coverage: Autism and Pervasive Developmental Disorders - Neutral
  - b. Recommendation # 2 – Support, Assembly Bill 1001 (Maienschein) Child Abuse: Reporting: Foster Family Agencies
  - c. Recommendation # 3 – Support, Assembly Bill 1808 (Wood) Minors: Mental Health Services
  - d. Recommendation # 4 – Support, Assembly Bill 1863 (Wood) Medi-Cal: Federally Qualified Health Centers: Rural Health Centers

- e. Recommendation # 5 – Support, Assembly Bill 2083 (Chu) Interagency Child Death Review
  - f. Recommendation # 6 – Support, Assembly Bill 2191 (Salas) Board of Behavioral Sciences
  - g. Recommendation # 7 – Support, Assembly Bill 2199 (Campos) Sexual Offenses Against Minors: Persons in a Position of Authority
  - h. Recommendation # 8 – Support, Assembly Bill 2507 (Gordon) Telehealth: Access
  - i. Recommendation # 9 – Neutral, Assembly Bill 2606 (Grove) Crimes Against Children, Elders, Dependent Adults, and Persons with Disabilities
  - j. Recommendation # 10 – Oppose Unless Amended, Senate Bill 614 (Leno) Medi-Cal: Mental Health Services: Peer, Parent, Transition-Age, and Family Support Specialist Certification
  - k. Recommendation # 11 – Support, Senate Bill 1034 (Mitchell) Health Care Coverage: Autism
  - l. Recommendation # 12 – Support If Amended, Senate Bill 1101 (Wieckowski) Alcohol and Drug Counselors: Regulation
  - m. Recommendation # 13 – Neutral, Senate Bill 1155 (Morrell) Professions and Vocations: Licenses: Military
  - n. Recommendation # 14 – Oppose Unless Amended, Senate Bill 1334 (Stone) Health Practitioners: Human Trafficking
- XIX. Discussion and Possible Action Regarding Assembly Bill 1715 (Holden) Healing Arts: Behavior Analysis: Licensing
- XX. Discussion and Possible Action Regarding Senate Bill 1195 (Hill) Healing Arts: Professions and Vocations: Board Actions: Competitive Impact
- XXI. Status of Board Sponsored Legislation and Other Legislation Affecting the Board
- a. Assembly Bill 1917 (Oberholte) Educational Requirements for Marriage and Family Therapists and Professional Clinical Counselor Applicants
  - b. Senate Bill 1478 (Senate Business, Professions, and Economic Development Committee) Omnibus Bill
- XXII. Status of Board Rulemaking Proposals
- a. Standards of Practice for Telehealth: Add Title 16, CCR Section 1815.5
  - b. English as a Second Language: Additional Examination Time: Add Title 16, CCR Section 1805.2
- XXIII. Presentation Ethical Decision Making – Dianne R. Dobbs, DCA Legal Counsel
- XXIV. 2016 Board Elections
- XXV. Suggestions For Future Agenda Items
- XXVI. Public Comment for Items Not on the Agenda
- XXVII. Adjournment

*\*Introductions are voluntary for members of the public.*

*Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times and order of items are approximate and subject to change. Action may be taken on any item listed on the Agenda.*

*This agenda as well as board meeting minutes can be found on the Board of Behavioral Sciences website at [www.bbs.ca.gov](http://www.bbs.ca.gov).*

*NOTICE: The meeting is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*



**BOARD MEETING MINUTES - DRAFT**  
**February 25-26, 2015**

Department of Consumer Affairs  
Hearing Room  
1625 North Market Blvd., 1<sup>st</sup> Floor  
Sacramento, CA 95834

**Wednesday, February 25<sup>th</sup>**

**Members Present**

Christina Wong, Chair, LCSW Member  
Deborah Brown, Vice Chair, Public Member  
Samara Ashley, Public Member  
Dr. Leah Brew, LPCC Member  
Dr. Peter Chiu, Public Member  
Betty Connolly, LEP Member  
Patricia Lock-Dawson, Public Member  
Renee Lonner, LCSW Member  
Karen Pines, LMFT Member  
Dr. Christine Wietlisbach, Public Member

**Staff Present**

Kim Madsen, Executive Officer  
Steve Sodergren, Asst. Executive Officer  
Dianne Dobbs, Legal Counsel  
Christina Kitamura, Administrative Analyst

**Members Absent**

Dr. Scott Bowling, Public Member  
Sarita Kohli, LMFT Member

**Guests**

**FULL BOARD OPEN SESSION**

Christina Wong, Chair of the Board of Behavioral Sciences (Board), called the meeting to order at 8:40 a.m. Christina Kitamura called roll, and a quorum was established.

Administrative Law Judge Ann Elizabeth Sarli, presiding over the hearings, explained the hearing procedures.

1 **I. Petition for Modification of Probation for Suzanne Chiu, ASW 37316**

2 Judge Sarli opened the hearing at 8:46 a.m. Deputy Attorney General Kristina Jarvis  
3 presented the facts of the case on behalf of the Board of Behavioral Sciences.  
4 Suzanne Chiu was not represented by an attorney.  
5

6 Ms. Jarvis presented the background of Ms. Chiu's probation. Ms. Chiu was sworn in.  
7 Ms. Chiu presented her request for modification of probation and information to  
8 support the request. Ms. Chiu was questioned by Ms. Jarvis and Board Members.  
9 Ms. Jarvis presented a closing argument. Judge Sarli closed the hearing at  
10 approximately 9:33 a.m.  
11

12 **II. Petition for Early Termination of Probation for Scott Bobrow, IMF 73916**

13 Judge Sarli opened the hearing at 9:35 a.m. Deputy Attorney General Kristina Jarvis  
14 presented the facts of the case on behalf of the Board of Behavioral Sciences. Scott  
15 Bobrow was not represented by an attorney.  
16

17 Ms. Jarvis presented the background of Mr. Bobrow's probation. Mr. Bobrow was  
18 sworn in. Mr. Bobrow presented his request for early termination of probation and  
19 information to support the request. Mr. Bobrow was questioned by Ms. Jarvis and  
20 Board Members. Ms. Jarvis gave a closing argument. Judge Sarli closed the hearing  
21 at approximately 10:03 a.m.  
22

23 *Samara Ashley excused herself from the hearings at the conclusion of Scott Bobrow's*  
24 *petition hearing.*  
25

26 *The Board took a break at 10:03 a.m. and reconvened at 10:18 a.m.*  
27

28 **III. Petition for Early Termination of Probation for Lyle Keller, LCSW 21795**

29 Judge Sarli opened the hearing at 10:18 a.m. Deputy Attorney General Kristina Jarvis  
30 presented the facts of the case on behalf of the Board of Behavioral Sciences. Lyle  
31 Keller was not represented by an attorney.  
32

33 Ms. Jarvis presented the background of Mr. Keller's probation. Mr. Keller was sworn  
34 in. Mr. Keller presented his request for early termination of probation and information  
35 to support the request. Mr. Keller was questioned by Ms. Jarvis and Board Members.  
36 Ms. Jarvis gave a closing argument. Judge Sarli closed the hearing at approximately  
37 10:54 a.m.  
38

39 **IV. Petition for Early Termination of Probation for Douglas Meyer, LMFT 84089**

40 Judge Sarli opened the hearing at 10:55 a.m. Deputy Attorney General Kristina Jarvis  
41 presented the facts of the case on behalf of the Board of Behavioral Sciences.  
42 Douglas Meyer was not represented by an attorney.  
43

44 Ms. Jarvis presented an opening statement. Mr. Meyer was sworn in. Mr. Meyer  
45 provided an opening statement. Mr. Meyer presented his request for early termination

1 of probation and information to support the request. Mr. Meyer was questioned by Ms.  
2 Jarvis and Board Members.

3  
4 *The Board took a break at 11:30 a.m. and reconvened at 11:40 a.m.*

5  
6 Mr. Meyer called on a witness to testify on his behalf. The witness was questioned by  
7 Mr. Meyer. Ms. Jarvis gave a closing argument. Judge Sarli closed the hearing at  
8 approximately 11:49 a.m.

9  
10 **V. Petition for Early Termination of Probation for Jennifer Weeks, LMFT 47271**

11 Judge Sarli opened the hearing at 11:50 a.m. Deputy Attorney General Kristina Jarvis  
12 presented the facts of the case on behalf of the Board of Behavioral Sciences.  
13 Jennifer Weeks was not represented by an attorney.

14  
15 Ms. Jarvis presented an opening statement. Ms. Weeks was sworn in. Ms. Weeks  
16 provided an opening statement. Ms. Weeks presented her request for early  
17 termination of probation and information to support the request. Ms. Weeks was  
18 questioned by Ms. Jarvis and Board Members. Ms. Jarvis gave a closing argument.  
19 Judge Sarli closed the hearing at approximately 12:18 p.m.

20  
21 **VI. Public Comments**

22 There were no public comments.

23  
24 **VII. Suggestions for Future Agenda Items**

25 There were no suggestions.

26  
27 *The Board took a break at 12:18 p.m. and reconvened in closed session at 1:37 p.m.*  
28 *Samara Ashley returned to the meeting at the beginning of the closed session.*

29  
30  
31 **FULL BOARD CLOSED SESSION**

32  
33 **VIII. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in**  
34 **Closed Session for Discussion and to Take Action on Disciplinary Matters**

35  
36 **IX. Pursuant to Section 11126(a) of the Government Code, the Board Will Meet in**  
37 **Closed Session to Discuss the Method to Evaluate the Performance of the**  
38 **Board's Executive Officer.**

39  
40  
41 **FULL BOARD OPEN SESSION**

42  
43 **X. Adjournment**

44 The Board adjourned at approximately 4:25 p.m.

Thursday, February 26<sup>th</sup>

**Members Present**

Christina Wong, Chair, LCSW Member  
Deborah Brown, Vice Chair, Public Member  
Samara Ashley, Public Member  
Dr. Leah Brew, LPCC Member  
Dr. Peter Chiu, Public Member  
Betty Connolly, LEP Member  
Patricia Lock-Dawson, Public Member  
Renee Lonner, LCSW Member  
Karen Pines, LMFT Member (*arrived at 9:37 a.m.*)  
Dr. Christine Wietlisbach, Public Member

**Staff Present**

Kim Madsen, Executive Officer  
Steve Sodergren, Asst. Executive Officer  
Rosanne Helms, Legislative Analyst  
Dianne Dobbs, Legal Counsel  
Christina Kitamura, Administrative Analyst

**Members Absent**

Dr. Scott Bowling, Public Member  
Sarita Kohli, LMFT Member

**Guests**

See sign-in sheet

**FULL BOARD OPEN SESSION**

Christina Wong called the meeting to order at 8:40 a.m. Christina Kitamura called roll. A quorum was established.

**XI. Introductions**

Board Members, Board staff and attendees introduced themselves.

**XII. Chair Report**

*This item was taken out of order. Ms. Wong presented the Chair Report after agenda item XIV.*

Christina Wong gave a presentation in recognition of BBS staff. The Board awarded certificates to the BBS staff for "outstanding service to the BBS." The Board also awarded certificates to staff that devoted over 20 years of service to the BBS.

*Break at 9:45 a.m. and reconvened at approximately 10:17 a.m.*

**XIII. Approval of the November 19-20, 2014 Board Meeting Minutes**

***Patricia Lock-Dawson moved to accept the November 19-20, 2015 Board Meeting Minutes. Dr. Christine Wietlisbach seconded. The Board voted unanimously to pass the motion.***

Board vote:



- 1 Samara Ashley – aye
- 2 Dr. Leah Brew – aye
- 3 Deborah Brown – aye
- 4 Dr. Peter Chiu – aye
- 5 Betty Connolly – aye
- 6 Patricia Lock-Dawson – aye
- 7 Renee Lonner – aye
- 8 Dr. Christine Wietlisbach – aye
- 9 Christina Wong – aye
- 10 Karen Pines – not present

11

12 **XIV. Executive Officer’s Report**

13 **a. Budget Report**

- 14 • The 2014/2015 budget is \$9,139,000. As of December 31<sup>st</sup>, the Board spent
- 15 \$4,251,882 reflecting 47% of the total budget.
- 16 • As of December 31, 2014, the Board collected \$4,626,166 in revenue.
- 17 • The Board’s fund condition reflects 3.6 months in reserve.
- 18 • The Governor introduced his proposed budget for 2015-2016. The Board’s
- 19 budget will be just over \$9 million dollars. This includes two limited-term
- 20 positions and full-time position authority for two existing half-time positions.
- 21 The two limited-term positions will be dedicated to the examination restructure.
- 22

23 **b. Operations Report**

24 Statistics

25 Processing times were unavailable; however, operational statistics were provided.

26

27 Licensing Program

28 Processing dates as of February 22, 2015:

- 29 • MFT Intern applications received as of February 5, 2015.
- 30 • MFT Examination applications received as of November 5, 2014.
- 31 • LCSW applications received as of November 5, 2014.
- 32 • LCSW exam applications received as of November 5, 2014.
- 33 • ASW applications received as of February 12, 2015.
- 34 • LPCC Intern applications received as of January 26, 2015
- 35 • LPCC Examination applications received as of January 12, 2015.
- 36

37 Angela Kahn, American Association for Marriage and Family Therapy California

38 Division (AAMFT-CA), stated that some of its members are complaining that it is not

39 possible to reach a person on the phone at BBS, and they are not receiving responses

40 to emails.

41

1           Examination Program

2           A total of 3,731 examinations were administered in the first quarter. Nine examination  
3           development workshops were conducted from October through December.

4  
5           Administration Program

6           During the second quarter:

- 7           • 13,562 renewal applications were received and processed.
- 8           • The Board's cashier unit completed 2,933 renewal applications.
- 9           • 776 individuals renewed their license or registration online. The remaining  
10           renewals were processed by DCA's central cashiering unit.
- 11           • A total of 1,305 initial licenses were issued.

12  
13           Enforcement Program

14           The Enforcement Unit received 291 consumer complaints and 297 criminal  
15           convictions in the first quarter; 392 cases were closed and 46 cases were referred to  
16           the Office of Attorney General (AG) for formal discipline.

17  
18           Enforcement staff met or exceeded three established performance measures (PM)  
19           this quarter. PM 2, Complaint Intake, increased by 3 days due to a vacancy during  
20           this quarter. The Board's current PM4, Formal Discipline, is 527 days, which is  
21           under the DCA established the performance target for PM 4 at 540 days. This  
22           reduction is attributed to the increased staffing levels at the Attorney General's  
23           office.

24  
25           **c. Personnel Update**

26           New Employees

27           Effective November 4, 2014, Andrea Bertram-Mueller transferred to the Board as  
28           an Associate Governmental Program Analyst in the Enforcement Program's  
29           Criminal Conviction & Probation Unit.

30  
31           Effective December 2, 2014, Valarie Enloe transferred to the Board as a Management  
32           Services Technician in the Licensing Unit.

33  
34           Effective December 19, 2014, Portia Hillman was appointed to the Board as an  
35           Office Assistant in the Administration Unit.

36  
37           Effective January 19, 2015, Michael Mina was appointed to the Board as an Office  
38           Technician in the Enforcement Program's Criminal Conviction & Probation Unit.

39  
40           Departures

41           Effective December 31, 2014, Patricia Fay retired after her 25-year career in state  
42           service. She served as the Board's CE Audit Analyst and PCE Evaluation Analyst.

43  
44           Effective January 1, 2015, Marina O'Connor transferred to the Department of  
45           Consumer Affairs (DCA) Executive Office as a Research Analyst. She served as

1 the Board's Policy and Statistical Analyst and a Performance Measurement  
2 Specialist.

3  
4 Vacancies

5 Board staff has initiated the recruitment process for the following positions:

- 6 • Staff Services Analyst (SSA), Administration  
7 This recruitment is to fill the position in the Examination Unit vacated by Sandra  
8 Wright.
- 9 • Management Services Technician (MST), Licensing  
10 This recruitment is to fill the position vacated by Andrea Flores. The Licensing  
11 Manager is requesting to re-class this MST vacancy to an SSA to function as a  
12 Lead Analyst. This position will also plan and coordinate webinars and  
13 outreach activities related to the licensing process.
- 14 • Staff Services Analyst, Licensing  
15 This recruitment is to fill the position vacated by Patricia Fay. The Licensing  
16 Manager is revising the duties of this vacancy to align with the Board's current  
17 operational needs and revisions to the Board's CE program.
- 18 • Associate Governmental Program Analyst, Administration  
19 This recruitment is to fill the position vacated by Marina O'Connor.

20  
21 **XV. Office of Professional Examinations Services Presentation**

22 Amy Welch Gandy from DCA's Office of Professional Examinations Services (OPES)  
23 presented an overview of examination development.

24  
25 Ms. Welch Gandy also presented information regarding exam information sharing,  
26 specifically:

27 What is OK to share?

- 28 • How the testing process went;
- 29 • Information about the testing facility (room temperature, location, amenities);
- 30 • Length of time spent at the testing site.

31  
32 What is not OK to share?

- 33 • Specific content of test questions (names of vignette items, types of diagnoses,  
34 theories covered);
- 35 • How the candidate answered the test questions;
- 36 • Questions that may possibly be pretest questions.

37  
38 Board Members and stakeholders asked questions that were answered by Ms. Welch  
39 Gandy and Heidi Lincer-Hill, Chief of OPES.

1 **XVI. Discussion and Possible Action Regarding English as a Second Language**  
2 **Accommodation for Examination Candidates**

3 Marc Mason presented the background and information regarding accommodations  
4 for examinees who speak English as a second language (ESL). The Board does not  
5 currently offer ESL accommodations. A small number of Board licensees have  
6 requested ESL accommodations.

7  
8 Board records indicate that from at least 2000 up to July 1, 2011, candidates who  
9 requested an ESL accommodation were granted extra time to take the board  
10 examinations. However, ESL is not identified as a disability under the Americans with  
11 Disabilities Act (ADA).

12  
13 Prior to making the decision to end the ESL accommodation, OPES indicated that  
14 they reviewed the readability of the Board's examination as well as other ESL issues.  
15 OPES considered that prior to entering a bachelor's program or master's program,  
16 ESL candidates take the Test of English as a Foreign Language (TOEFL). Further,  
17 the candidate receives the master's degree in English. Based on this information, it is  
18 reasonable to conclude that a candidate should be proficient enough to take the  
19 examination in English.

20  
21 There are two possible accommodations that the Board could consider. The first is to  
22 translate the Board's exams into languages other than English. According to OPES  
23 when a licensing board, bureau, or committee under DCA is faced with the decision  
24 whether or not to adapt an examination, the following must be taken into  
25 consideration:

- 26
- 27 • If a language survey has been conducted and a target language group has been  
28 identified to have a substantial number (5%) of non- or limited English-speaking  
29 candidates, an examination may be adapted.
  - 30 • If English is an essential aspect of a profession, an examination will not be  
31 adapted.

32 A translated examination must adhere to the current standards and guidelines for  
33 testing. The cost to translate an examination ranges from \$25,000 up to \$75,000 per  
34 exam, per language. The Board currently develops 6 examinations; two different  
35 versions of each examination. The option to translate an examination would require a  
36 language survey.

37  
38 The second option is giving candidates extra time to take the exam. This is the option  
39 the Board has used in the past. If the Board did choose this option, criteria would  
40 need to be developed to determine who would be granted an ESL accommodation.  
41 The Board of Psychology has proposed regulations that require the following for an  
42 ESL accommodation of extra time:

- 43
- 44 • The candidate submits a signed request for an ESL accommodation of extra time  
under penalty of perjury that English is his or her second language.

- 1 • A TOEFL IBT certification score of 85 or below must be sent by Educational  
2 Testing Service directly to the Board. The TOEFL must have been taken within the  
3 two years directly prior to the application.  
4

5 The fee for taking the TOEFL IBT test is \$185.  
6

7 Dr. Peter Chiu expressed that he would like to move away from an accommodation  
8 process, and instead, extend the time-limit to all examinees.  
9

10 Ms. Madsen stated that the standard written exam is currently 4 hours, which allows  
11 for testing in the morning and in the afternoon. The testing vendor would have to  
12 extend its hours to accommodate the extended time-limit. It could also increase costs  
13 for the Board.  
14

15 Dr. Brew stated that the NBCC exam for LPCCs is offered in multiple languages, and  
16 it would not cost the Board anything. She requested that the Board consider this as  
17 an option for LPCCs.  
18

19 Ms. Lonner expressed concern for the non-ESL examinees who are slow readers who  
20 cannot complete the exam. However, a downfall to allowing extra time is that it allows  
21 cheaters more time to memorize the questions.  
22

23 Deborah Brown expressed that as a consumer, she feels that it is more important to  
24 answer the questions correctly versus answering the questions quickly. The  
25 questions require intensive thought to arrive to the correct answer, especially for ESL  
26 examinees.  
27

28 Dean Porter, California Association for Licensed Professional Clinical Counselors  
29 (CALPCC), stated that she has received comments regarding the testing experience.  
30 For example, the testing environment is noisy and distracting, which may have caused  
31 some examinees to “time out” and not complete the examination.  
32

33 Rebecca Gonzales, National Association of Social Workers California Chapter  
34 (NASW-CA), stated that NASW-CA agrees with allowing extra time for everyone to  
35 take the exam. The cost of the TOEFL exam is expensive and problematic. NASW-  
36 CA wants to be sure all communities are served by therapists. Allowing more time to  
37 take the exam could encourage the licensing of a broader range of therapists.  
38

39 Dr. Chiu asked how many of the examinees are ESL examinees.  
40

41 Dr. Christine Wietlisbach requested staff to conduct more research and report back to  
42 the Board.  
43

1 **XVII. Update Regarding the Possible Use of the AMFTRB National Examination for**  
2 **Licensure in California**

3 In 2011-2012, the Board engaged the services of Applied Measurement Services, LLC  
4 (AMS) to assess the AMFTRB national examination. AMS was charged with  
5 determining whether the AMFTRB national examination met prevailing standards for  
6 fair, valid, and legally defensible licensure examinations. AMS also evaluated the  
7 similarity between the AMFTRB national examination plan and the Board's  
8 examination plan.

9  
10 Additionally, in 2012, two Board Subject Matter Experts (SMEs) participated in  
11 AMFTRB's Practice Analysis Task Force. This task force developed the first draft of  
12 practice analysis outlining the domains, tasks, and/or activities performed in practice  
13 and the required knowledge and skill base appropriate for practice. This outline is  
14 comparable to the Board's Occupational Analysis that is conducted every 5 to 7 years.  
15 Both analyses serve as the foundation for the respective licensure examination.

16  
17 The involvement of California licensed SMEs in AMFTRB's national practice analysis  
18 represents the first time California has had an active role in the development of the  
19 national examination. One observation as to the differences between the Licensed  
20 Marriage and Family Therapist (LMFT) practice in California and the LMFT practice  
21 nationally is that California LMFT practice is much broader.

22  
23 During the August 2013 Board meeting, AMS presented their findings regarding the  
24 AMFTRB examination. AMS determined that the AMFTRB national examination met  
25 professional and technical guidelines for examination validation, but noted some  
26 technical issues. Due to the confidentiality agreement, AMS was not permitted to  
27 share some of these issues publicly. However, these issues were discussed with the  
28 Board Members during the closed session of the February 2013 Board meeting.

29  
30 AMS also noted the current ratio of LMFTs in California versus the nation. At that  
31 time, California had approximately 35,000 LMFTs versus a total of 20,000 nationally.  
32 Further, at the time of AMS' assessment of the AMFTRB examination, the  
33 administration of this examination was a paper and pencil test. AMS stated that  
34 AMFTRB was exploring the possibility of transitioning to a computer-based test  
35 format. Considering the Board's current acceptable examination performance and the  
36 delay in implementing the examination restructure, AMS suggested that the Board  
37 continue to have discussions with AMFTRB to resolve the technical issues.

38  
39 Board Members discussed the information presented by AMS. Considering the  
40 factors presented by AMS, Board Members were not inclined to use the national  
41 examination in California at that time.

42  
43 Since 2013, Board staff has not engaged in any further conversations with AMFTRB  
44 due to the implementation of BreZE and other Board priorities.

45

1 A review of the AMFTRB’s examination website reveals that the administration of the  
2 national examination is now computer-based. The examination is offered one week  
3 each month, and examination results are provided 20 business days after the test  
4 period closes. The fee for the national examination is \$350.

5  
6 Effective January 1, 2016, the Board will implement its examination restructure. Both  
7 the Licensed Professional Clinical Counselors (LPCCs) and Licensed Clinical Social  
8 Workers (LCSWs) will be taking a national examination as one of two required  
9 examinations for licensure in California. LMFTs will continue to take two Board-  
10 developed examinations for licensure in California. A Licensed Educational  
11 Psychologist (LEP) national examination does not exist. Therefore, the examination  
12 structure for LEPs will not change.

13  
14 National examinations frequently offer reduced waiting periods between examinations.  
15 California LCSW and LPCC examination candidates will be permitted to test more  
16 frequently according to the national examination procedure. This will allow candidates  
17 the opportunity to become licensed in California much sooner than under the Board’s  
18 current examination structure. Currently, examination candidates must wait 180 days  
19 between examinations. This waiting period coincides with the release of the two  
20 different versions of the Board-developed examinations.

21  
22 Board Members expressed an interest in exploring the AMFTRB national examination  
23 for licensure in California. Staff will perform another evaluation of the national  
24 examination if there is an interest in considering the national examination.

25  
26 Ms. Kahn, AAMFT-CA, requested that AAMFT-CA take part in exploring the pros and  
27 cons of the AMFTRB national examination.

28  
29 Jill Epstein, California Association of Marriage and Family Therapists (CAMFT),  
30 expressed interest in exploring the AMFTRB national examination.

31  
32 The Board directed staff to conduct an evaluation of the national exam.

33  
34 **XVIII. Discussion and Possible Action Regarding LMFT Trainees and Telehealth**

35 Rosanne Helms presented a proposal that would correct a potential loophole in  
36 Business and Professions Code (BPC) §2290.5 which does not specify that MFT  
37 Trainees may practice telehealth.

38  
39 The Board’s licensing law defines MFT and professional clinical counselor (PCC)  
40 trainees as individuals who are currently enrolled in a qualifying master’s degree  
41 program and have completed at least 12 semester or 18 quarter units in that program.

42  
43 The law specifies that trainees may not provide services in a private practice. It is the  
44 responsibility of the trainee’s school to coordinate the trainee’s services with the site at  
45 which he or she is providing services. The school must approve the site and have a

1 written agreement with the site detailing each party's responsibilities and outlining  
2 supervision methods.

3  
4 Licensing law for clinical social workers does not specifically define trainees or specify  
5 any requirements of them. It does recognize them as being exempt from licensure.

6  
7 Because trainees are practicing in exempt settings, the Board does not have authority  
8 to regulate their practice. This includes their use of telehealth.

9  
10 However, applicants for licensure as an LMFT are allowed to count some pre-degree  
11 hours of trainee experience. Because the Board accepts some of those hours as  
12 experience toward licensure, the Board may specify the conditions under which those  
13 hours are gained.

14  
15 A stakeholder has raised concern that BPC §2290.5 is written only for licensed  
16 individuals (a definition which includes interns/associates, but not trainees, who are  
17 not yet under the jurisdiction of the Board.)

18  
19 However, at the same time, BPC §4980.43 allows MFT trainees count some of their  
20 experience gained as an MFT trainee toward licensure and allows some of this  
21 experience to be via telehealth. This is causing concern that MFT trainees and their  
22 supervisors may be vulnerable to liability for providing telehealth services, as §2290.5  
23 does not include trainees.

24  
25 To address this concern, staff worked with DCA Legal to propose a solution via  
26 amendment to the LMFT statute BPC §4980.43, clarifying that MFT trainees are  
27 permitted to perform telehealth.

28  
29 At its January 2015 meeting, the Policy and Advocacy Committee (Committee)  
30 discussed the proposed language as part of a broader discussion regarding  
31 telehealth. The Committee approved the proposed language.

32  
33 However, at the meeting, the Committee learned that CAMFT was also pursuing a  
34 proposal to address this issue. The CAMFT amendments would amend BPC §2290.5  
35 directly.

36  
37 CAMFT indicated that they may be willing to consider the amendments proposed by  
38 Board staff in lieu of their own, possibly with some minor adjustments. The Committee  
39 directed staff to work with CAMFT and to bring both proposals to the May Board  
40 meeting for further discussion.

41  
42 The Board directed staff to work with CAMFT.

43  
44 *The Board took a break at 12:03 p.m. and reconvened at 1:30 p.m.*  
45



1 **XIX. Discussion and Possible Action Regarding Proposed Changes to Business and**  
2 **Professions Code Section 146**

3  
4 *Ms. Wong moved this agenda item. This item was heard after agenda item XX.*

5  
6 The Board approved language for the omnibus bill at its November 2014 meeting.  
7 Since that time, the need for an additional amendment has been identified.

8  
9 BPC §146 requires licensure to practice several professions and outlines the penalties  
10 for unlicensed practice. LEPs and LPCCs are not included in this section of  
11 professions requiring a license to practice. Staff is recommending an amendment to  
12 BPC §146 to include LEPs and LPCCs.

13  
14 ***Patricia Lock-Dawson moved to make any discussed changes and any non-***  
15 ***substantive changes to the proposed language, and submit to the Legislature***  
16 ***for inclusion in the 2015 omnibus bill. Samara Ashley seconded. The Board***  
17 ***voted unanimously to pass the motion.***

18  
19 Board vote:

- 20 Samara Ashley – aye
- 21 Dr. Leah Brew – aye
- 22 Deborah Brown – aye
- 23 Dr. Peter Chiu – aye
- 24 Betty Connolly – aye
- 25 Patricia Lock-Dawson – aye
- 26 Renee Lonner – aye
- 27 Karen Pines – aye
- 28 Dr. Christine Wietlisbach – aye
- 29 Christina Wong – aye

30  
31 **XX. Legislative Update**

32 The Board is pursuing the following legislative proposals:

33  
34 1. Supervised Work Experience Requirements

35 This bill proposal was approved by the Board at its November 2014 meeting.

36  
37 Ms. Epstein stated that CAMFT supports this bill. She also requested that the  
38 Board consider extending the grace period from 2 years to a 3-year or 5-year  
39 grace period.

40  
41 Ms. Kahn stated that AAMFT-CA supports extending the grace period. She  
42 requested that the Board reconsider placing the 100 hours of personal  
43 psychotherapy back in because those hours are valuable to its members.

44

1 Dr. Brew strongly supports extending the period to 5 years. In regards to personal  
2 psychotherapy, it was discussed at the Supervision Committee meetings that  
3 those hours are hindering reciprocity. Furthermore, evaluating those hours will  
4 slow the evaluation process. California is the only state that allowed those hours.  
5 She agrees that it is very valuable, but is not sure that it fits as a licensure  
6 requirement.

7  
8 ***Dr. Leah Brew moved to extend the grace period to 5 years. Dr. Peter Chiu***  
9 ***seconded. The Board voted unanimously to pass the motion.***

10  
11 Board vote:

12 Samara Ashley – aye  
13 Dr. Leah Brew – aye  
14 Deborah Brown – aye  
15 Dr. Peter Chiu – aye  
16 Betty Connolly – aye  
17 Patricia Lock-Dawson – aye  
18 Renee Lonner – aye  
19 Karen Pines – aye  
20 Dr. Christine Wietlisbach – aye  
21 Christina Wong – aye  
22

23 2. Enforcement Process

24 This bill makes two separate amendments to the law governing the enforcement  
25 process.  
26

27 3. Omnibus Legislation  
28

29 **XXI. Regulation Update**

- 30 • The Continuing Education proposal was approved. Effective January 1, 2015, the  
31 Board will cease accepting applications for Board-approved CE providers.  
32 Effective July 2, 2015, all Board-approved CE providers will no longer be renewed.
- 33 • The Disciplinary Guidelines and SB 1441 proposal is at the State and Consumer  
34 Services Agency for review.
- 35 • The Examination Restructure proposal is currently under review by DCA.
- 36 • The proposal to clarify the requirements for LPCCs to treat couples and families  
37 has been submitted to OAL.  
38

39 **XXII. Strategic Plan Update**

40 1. Licensing

- 41 • Current processing times are decreasing.  
42 • Supervision standards are being addressed by the Supervision Committee.  
43 • License portability is being addressed by the Supervision Committee.

- 1           2. Examinations
- 2           • Exam restructure is currently underway as reported in the Regulation Update.
- 3           • Staff is establishing a recruitment process for Subject Matter Experts (SME).
- 4
- 5           3. Enforcement
- 6           • Staff is establishing a recruitment process for SMEs, as well as a training
- 7           program for SMEs.
- 8
- 9           4. Legislation and Regulation
- 10          • Updates were provided under items XX. and XXI.
- 11
- 12          5. Organizational Effectiveness
- 13          • Staff continues to work on filling vacancies.
- 14          • Staff is evaluating procedures to identify areas for improvement to ensure
- 15          prompt and efficient work processes.
- 16          • Standing Board committees will be discussed in item XXV.
- 17
- 18          6. Outreach and Education
- 19          • Staff has been coordinating and conducting outreach for the new Continuing
- 20          Education and Exam Restructure requirements. Frequently Asked Questions
- 21          have been developed and staff is working with DCA staff to develop an
- 22          informative video concerning Exam Restructure.
- 23          • A winter newsletter has been produced and is waiting final editing.
- 24

25 **XXIII. Supervision Committee Update**

26 Staff is in the process of obtaining an author for the legislative proposal that would  
 27 reduce the number of “buckets” for LMFT and LPCC. This legislative proposal reflects  
 28 the language approved by the Board in November 2014.

29  
 30 The Committee reviewed prior informal decisions that were agreed on by the  
 31 committee and the stakeholders. The following decisions were discussed:

- 32          • Time licensed in another state should be able to count towards 2 years of licensure
- 33          for all supervisor/license types.
- 34          • Supervisor training requirements should be consistent across license types.
- 35          • Allow Triadic supervision in place of individual supervision.
- 36          • Offsite supervision laws should be consistent across license types.
- 37          • Offsite supervision laws should encompass offsite supervisors who are employed
- 38          or contracted by the employer (as opposed to only addressing volunteers).
- 39

40 There was also a discussion about the remaining areas that the Committee needs to  
 41 address: supervision requirements, supervisor responsibilities, and  
 42 employment/employers.

43

1 The discussion regarding supervisor qualifications included a review of the current  
2 supervisor requirements in California, a summary of ten other states' supervisor  
3 qualifications and a review of the "model" laws recommended by several professional  
4 associations.

5  
6 Staff presented the current draft of the Supervisor and Supervisee Surveys and noted  
7 the recommended changes.

8  
9 The next meeting is scheduled on April 10<sup>th</sup>.

#### 10 11 **XXIV. Enforcement Process Presentation**

12 Gina Bayless, Enforcement Program Manager, gave a presentation of the  
13 enforcement process and provided a flow chart of the process.

#### 14 15 **XXV. Discussion and Possible Action Regarding Establishing Standing Committees**

16 Ms. Madsen reported that during the November 2014 Board meeting, Board Members  
17 discussed establishing standing committees.

18  
19 Several Board Members expressed concern that the additional committees may be an  
20 increased burden to staff and lead to increased travel expenses. Other Board  
21 Members wondered if there was a need for all of the standing committees. Further,  
22 some Board Members expressed a desire for information regarding the upcoming  
23 year's priorities and goals to determine if standing committees were needed.

24  
25 Board staff is focusing on the following projects for 2015:

- 26 • Implementation of the examination restructure;
- 27 • Implementation of the revision to out-of-state education requirements;
- 28 • Completing the implementation to the Board's continuing education program.

29  
30 Successful completion of these projects involves revising the BreEZe data system to  
31 incorporate the new functionality; testing the BreEZe data system to ensure  
32 functionality performs as designed; revising all board forms to align with law changes;  
33 developing information for stakeholders specific to the changes; determining the best  
34 strategies to convey the information to stakeholders; and coordinating the changes  
35 with related DCA entities such as the Office of Professional Examination Services and  
36 PSI, the Board's testing vendor.

37  
38 Additionally, Board staff will begin preparing its Sunset Report to submit to the  
39 legislature. Preparation of the report typically begins late spring and the report is  
40 submitted to the legislature in November. The Sunset Report is a comprehensive  
41 review of Board operations since its last Sunset Review (2011/2012). The report will  
42 respond to specific questions from the legislature regarding areas of concern and/or  
43 current issues and will incorporate data relevant to all Board programs.

1 Board staff will continue to focus on all goals in the Strategic Plan with a 2015  
2 completion date. Some of these goals include the work of the Supervision Committee;  
3 Subject Matter Expert recruitment, training, and evaluation; evaluate and improve  
4 board processes; and enhancing the Board's outreach program.

5  
6 Staff resources are a strong consideration in the discussion of establishing standing  
7 committees. The projects noted will be time consuming for Board staff and will be in  
8 addition to their current daily tasks. Yet, these projects represent the near completion  
9 of the Board's comprehensive review of all Board programs that began with the initial  
10 discussion to revise the educational requirements for licensure in 2006/2007. The  
11 Board is currently performing a comprehensive review of its requirements for  
12 supervision. It is anticipated that this review will be complete at the end of 2015.

13  
14 If the Board were to establish the standing committees this year, there is a strong  
15 concern that Board staff will be "stretched too thin". Ultimately, committee work, the  
16 2015 projects, and daily tasks may be affected.

17  
18 However, an argument can be made to establish at least one additional committee this  
19 year to work with Board staff to prepare the Sunset Report. Ideally, this  
20 comprehensive report should be developed in consultation with the Board Members.

21  
22 Over the last five years, the Board has spent an average \$88,000 a year on travel.  
23 This figure is attributed to 10 to 12 board and committee meetings a year for Board  
24 Members and staff. Additional meetings will result in increased expenses. However,  
25 in the past five years, the Board has reverted funds (unexpended monies) from its  
26 budget. So it is likely that the Board could absorb the additional costs by achieving  
27 savings in other operational areas.

28  
29 The success of the Board's current Ad-Hoc committee approach is well documented.  
30 A primary reason for discussing the establishment of standing committees is to  
31 address the desire to immediately refer a topic to a specific committee instead of  
32 waiting to create an Ad-Hoc committee.

33  
34 Balancing the current 2015 projects, goals, and creation of the Sunset Report with the  
35 desire for standing committees, as well as considering Board resources may be  
36 achieved through the following options:

- 37 • Postpone the discussion of establishing standing committees until 2017. This  
38 timeline will be after all major revisions to board programs are implemented and  
39 will allow the Board to reassess its current goals and resources at that time.
- 40 • Continue using the Ad-Hoc Committee approach to specific topic areas.
- 41 • Establish a 2-person committee to work with staff to develop the Sunset Report.  
42 Re-evaluate the need for this committee for future Board projects after the  
43 completion of the Board's Sunset Review in the spring/summer of 2016.

- 1 • Consider developing a Board policy that specifies the number of years a Board  
2 member may serve on the Policy and Advocacy Committee or any other future  
3 standing committee. Within that policy determine committee composition and  
4 consider the rotation of members that will ensure continuity and avoid knowledge  
5 gaps.  
6

7 Dr. Brew agreed with the options outlined. A brief discussion took place. No action  
8 was taken.  
9

10 **XXVI. Consideration of Request for Recognition as Board-Recognized Continuing**  
11 **Education Approval Agency: California Psychological Association**

12 The California Psychological Association (CPA) requested approval as a Board-  
13 recognized continuing education (CE) approval agency. Patricia VanWoerkom,  
14 Director of Office of Development, presented information to support consideration of  
15 approving CPA as a Board-recognized CE approval agency.  
16

17 The Board reviewed the information and asked questions of CPA.  
18

19 Ms. Connolly expressed concerns regarding CPA's complaint process.  
20

21 *Dr. Leah Brew left at 3:00 p.m. A quorum remained.*  
22

23 After discussion, Dianne Dobbs reminded the Board Members that the Board has the  
24 authority to revoke an agency's recognition if the agency does not follow the Board's  
25 laws and regulations. She further stated that if the Board cannot articulate the failure  
26 of the agency to meet the Board's requirements, the Board must consider approving  
27 the agency.  
28

29 Ms. Kahn, AAMFT-CA, expressed concerns regarding CPA's criteria to become a CE  
30 provider.  
31

32 Ms. Madsen stated that the Board must determine if CPA has a process that is  
33 rigorous enough and meets the Board's criteria.  
34

35 ***Dr. Peter Chiu moved to end the discussion. Dr. Christine Wietlisbach***  
36 ***seconded. The Board voted unanimously to pass the motion.***  
37

38 Board vote:

39 Samara Ashley – aye  
40 Deborah Brown – aye  
41 Dr. Peter Chiu – aye  
42 Betty Connolly – aye  
43 Patricia Lock-Dawson – aye  
44 Renee Lonner – aye  
45 Karen Pines – aye  
46 Dr. Christine Wietlisbach – aye

1 Christina Wong – aye  
2 Dr. Leah Brew – not present

3  
4 ***Dr. Peter Chiu moved to recognize the California Psychological Association as a***  
5 ***Board-recognized continuing education approval agency. Dr. Christine***  
6 ***Wietlisbach seconded. The Board voted to pass the motion.***

7  
8 Board vote:

9 Samara Ashley – aye  
10 Deborah Brown – aye  
11 Dr. Peter Chiu – aye  
12 Betty Connolly – nay  
13 Patricia Lock-Dawson – aye  
14 Renee Lonner – aye  
15 Karen Pines – aye  
16 Dr. Christine Wietlisbach – aye  
17 Christina Wong – aye  
18 Dr. Leah Brew – not present

19  
20 **XXVII. Public Comment for Items not on the Agenda**

21 Craig Lomax commented on suicide prevention legislation, AB 2198, which was  
22 vetoed by the Governor. He expressed that the Board, not politicians, should be  
23 making decisions regarding curriculum. Mr. Lomax also explained that he lost a loved  
24 one to suicide and described the events that led to her death. Mr. Lomax expressed  
25 concerns regarding mental health providers who are not properly educated and  
26 trained in suicide prevention.

27  
28 Vic Ojakian commented on suicide prevention, asking the Board what it is doing about  
29 suicide prevention. Mr. Ojakian presented data regarding suicide. He requested that  
30 the Board take action.

31  
32 **XXVIII. Suggestions for Future Agenda Items**

33 Dr. Chiu suggested a discussion considering suicide prevention legislation.

34  
35 Ms. Wong announced the future meeting date changes:

- 36 • Cancellation of the April 23<sup>rd</sup> Disciplinary Hearing  
37 • Policy and Advocacy Committee meeting date change from April 24<sup>th</sup> to April 23<sup>rd</sup>.

38  
39 **XXIX. Adjournment**

40 The meeting was adjourned at 3:27 p.m.

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**To:** Board Members

**Date:** May 4, 2016

**From:** Christina Kitamura  
Administrative Analyst

**Telephone:** (916) 574-7830

**Subject:** **March 2016 Board Meeting Minutes**

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March 2016 Board Meeting draft minutes will be provided at the May Board Meeting.

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**2015/2016 Budget**

Following mid-year adjustments, the Board’s budget for FY 2015/2016 is \$10,351,000. Expenditures as of March 31, 2016 total \$7,512,070 or 73% of the Board’s budget.

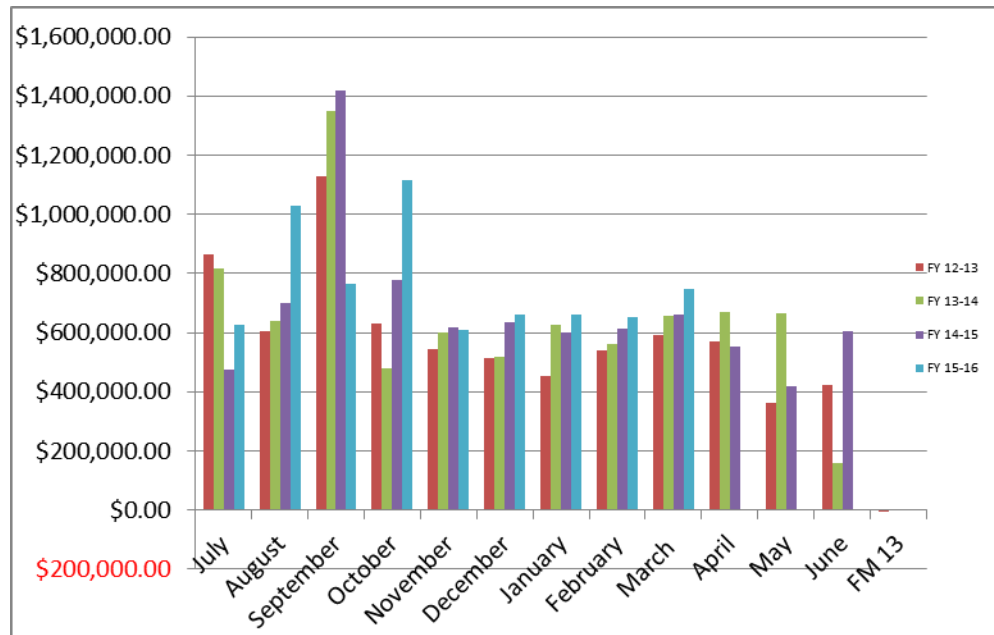
The chart below provides a breakdown of expense categories and percentages.

| Expense Category                            | Amount             | Percentage |
|---|--------------------|------------|
| Personnel                                   | \$2,972,538        | 29%        |
| OE&E  | \$3,181,421        | 31%        |
| Enforcement                                 | \$944,912          | 9%         |
| Minor Equipment<br><i>Includes LPCC exp</i> | \$413,378          | 4%         |
| <b>Total Expenses</b>                       | <b>\$7,512,070</b> | <b>73%</b> |

As of March 31, 2016, the Board had collected \$6,867,323.22 in total revenue.

| Month     | FY 12-13       | FY 13-14       | FY 14-15       | FY 15-16       |
|-----------|----------------|----------------|----------------|----------------|
| July      | \$865,553.99   | \$817,394.34   | \$475,567.98   | \$627,284.68   |
| August    | \$605,609.87   | \$641,178.70   | \$698,635.93   | \$1,026,917.57 |
| September | \$1,130,230.37 | \$1,349,479.66 | \$1,419,736.29 | \$764,549.24   |
| October   | \$631,685.86   | \$480,531.87   | \$779,134.95   | \$1,114,396.16 |
| November  | \$545,880.97   | \$600,316.56   | \$617,891.41   | \$610,736.93   |
| December  | \$514,784.93   | \$516,264.24   | \$635,199.34   | \$662,114.82   |
| January   | \$452,850.71   | \$625,528.05   | \$601,512.09   | \$662,285.92   |
| February  | \$541,115.50   | \$559,755.55   | \$612,208.93   | \$652,365.63   |
| March     | \$593,123.75   | \$655,619.38   | \$662,167.83   | \$746,672.27   |
| April     | \$569,381.90   | \$670,839.44   | \$554,415.62   |                |
| May       | \$360,131.06   | \$663,732.55   | \$420,330.14   |                |
| June      | \$421,329.60   | \$158,802.68   | \$606,750.69   |                |
| FM 13     | (\$266.97)     | \$388.71       | \$2,096.87     |                |

The chart below provides a fiscal year comparison of the Board’s monthly revenue.



**Board Fund Condition**

The Board’s Fund Condition report reflects 5.7 months in reserve. Projections for the FY 2016/2017 budget indicate a scheduled repayment of \$6.3 million dollars which will provide the Board 9.9 months in reserve. By law, the Board may only have 24 months in reserve.

**2016/2017 Budget**

The Board’s FY 2016/2017 budget is projected to be \$11,373,000. This figure includes the additional 8.5 staff positions for the licensing and examination units. Additionally, this figure includes the Board’s share of cost (\$123,000) for two budget change proposals sought by the Department of Justice (DOJ) Attorney General’s Office (AG). These proposals seek to add additional staff resources in the AG Licensing Section and implement the AG reporting requirements pursuant to Senate Bill 467.

As part of the annual budget process, the Governor will release an adjusted FY 2016/2017 budget in May. Commonly referred to as the May Revise, this adjusted budget incorporates any changes to the budget that occurred during the budget hearing process and state revenues. The May Revise is not expected to impact the Board’s new positions or the increased AG costs noted above.

**BBS EXPENDITURE REPORT FY 2015/16**

| OBJECT DESCRIPTION                         | FY 2014/15          | FY 2015/2016        |                         |                     |                      |
|--|---------------------|---------------------|-------------------------|---------------------|----------------------|
|  | ACTUAL EXPENDITURES | BUDGET ALLOTMENT    | CURRENT AS OF 3/31/2016 | PROJECTIONS         | UNENCUMBERED BALANCE |
| <b>PERSONAL SERVICES</b>                   |                     |                     |                         |                     |                      |
| Salary & Wages (Civ Svc Perm)              | 2,193,060           | 2,718,000           | 1,778,035               | 2,515,000           | 203,000              |
| Salary & Wages (Stat Exempt)               | 91,989              | 91,000              | 75,816                  | 101,088             | (10,088)             |
| Temp Help (907)(Seasonals)                 | 85,680              | 0                   | 62,193                  | -                   | -                    |
| Temp Help (915)(Proctors)                  | 0                   | 0                   | 0                       | 0                   | 0                    |
| Board Memb (Per Diem)                      | 18,600              | 13,000              | 14,100                  | 18,000              | (5,000)              |
| Overtime                                   | 23,670              | 2,000               | 4,312                   | 7,000               | (5,000)              |
| Totals Staff Benefits                      | 1,268,659           | 1,530,000           | 1,037,902               | 1,415,000           | 115,000              |
| Salary Savings                             |                     |                     |                         |                     |                      |
| <b>TOTALS, PERSONAL SERVICES</b>           | <b>3,681,658</b>    | <b>4,354,000</b>    | <b>2,972,358</b>        | <b>4,056,088</b>    | <b>297,912</b>       |
| <b>OPERATING EXP &amp; EQUIP</b>           |                     |                     |                         |                     |                      |
| Fingerprint Reports                        | 17,872              | 15,000              | 13,367                  | 17,000              | (2,000)              |
| General Expense                            | 93,648              | 58,000              | 62,318                  | 90,000              | (32,000)             |
| <b>Printing</b>                            | <b>92,313</b>       | <b>32,000</b>       | <b>76,639</b>           | <b>100,000</b>      | <b>(68,000)</b>      |
| Communication                              | 14,909              | 24,000              | 9,117                   | 13,500              | 10,500               |
| Insurance                                  | 0                   | 0                   | 0                       | 0                   | 0                    |
| <b>Postage</b>                             | <b>41,072</b>       | <b>65,000</b>       | <b>32,497</b>           | <b>45,000</b>       | <b>20,000</b>        |
| <b>Travel, In State</b>                    | <b>105,321</b>      | <b>59,000</b>       | <b>65,348</b>           | <b>105,000</b>      | <b>(46,000)</b>      |
| Travel, Out-of-State                       | 1,237               | 72,000              | 0                       | 0                   | 72,000               |
| <b>Training</b>                            | <b>2,496</b>        | <b>25,000</b>       | <b>2,525</b>            | <b>3,000</b>        | <b>22,000</b>        |
| Facilities Operations                      | 204,700             | 228,000             | 167,623                 | 248,000             | (20,000)             |
| Utilities                                  | 140                 | 4,000               | 0                       | 0                   | 4,000                |
| C&P Services - Interdept.                  | 0                   | 15,000              | 0                       | 0                   | 15,000               |
| <b>C&amp;P Services-External Contracts</b> | <b>8,527</b>        | <b>281,000</b>      | <b>14,223</b>           | <b>22,000</b>       | <b>259,000</b>       |
| <b>DEPARTMENTAL PRORATA</b>                |                     |                     |                         |                     |                      |
| DP Billing (424.03)                        | 885,579             | 1,591,000           | 1,193,360               | 1,591,000           | 0                    |
| Indirect Distribution Costs (427)          | 485,370             | 645,000             | 483,750                 | 645,000             | 0                    |
| Public Affairs (427.34)                    | 14,575              | 42,000              | 31,500                  | 42,000              | 0                    |
| D of I Prorata (427.30)                    | 13,408              | 16,000              | 12,000                  | 16,000              | 0                    |
| Consumer Relations Division (427..)        | 15,988              | 0                   | 0                       | 23,000              | (23,000)             |
| OPP Support Services (427.01)              | 0                   | 1,000               | 0                       | 1,000               | 0                    |
| Interagency Services (OER IACs)            | 255,469             | 325,000             | 159,278                 | 260,000             | 65,000               |
| Consolidated Data Services (428)           | 33                  | 26,000              | 257                     | 500                 | 25,500               |
| Data Proc (Maint,Supplies,Cont) (43)       | 16,296              | 14,000              | 13,937                  | 20,000              | (6,000)              |
| Statewide Pro Rata (438)                   | 388,161             | 410,000             | 307,446                 | 410,000             | 0                    |
| <b>EXAM EXPENSES</b>                       |                     |                     |                         |                     |                      |
| Exam Site Rental (Four Points)             | 41,656              | 100,000             | 49,128                  | 81,000              | 19,000               |
| Exam Contract (PSI) (404.00)               | 425,073             | 359,000             | 347,099                 | 466,000             | (107,000)            |
| C/P Svs - Expert Examiners (404.01)        | 0                   | 45,000              | 0                       | 0                   | 45,000               |
| C/P Svs - External Subj Matter (404)       | 180,090             | 365,000             | 140,010                 | 220,000             | 145,000              |
| <b>ENFORCEMENT</b>                         |                     |                     |                         |                     |                      |
| Attorney General                           | 898,872             | 802,000             | 613,721                 | 840,000             | (38,000)             |
| Office of Admin. Hearing                   | 202,462             | 155,000             | 173,883                 | 270,000             | (115,000)            |
| Court Reporters                            | 14,546              | 0                   | 18,077                  | 35,000              | (35,000)             |
| Evidence/Witness Fees                      | 28,475              | 95,000              | 76,232                  | 95,000              | 0                    |
| Division of Investigation                  | 217,959             | 84,000              | 63,000                  | 84,000              | 0                    |
| <i>LPC</i>                                 | <i>402,885</i>      |                     | <i>380,893</i>          | <i>480,000</i>      | <i>(480,000)</i>     |
| <b>Minor Equipment (226)</b>               | <b>46,164</b>       | <b>9,000</b>        | <b>29,123</b>           | <b>35,000</b>       | <b>(26,000)</b>      |
| <b>Equipment, Replacement (452)</b>        | <b>6,846</b>        | <b>0</b>            | <b>3,362</b>            | <b>3,500</b>        | <b>(3,500)</b>       |
| <b>Equipment, Additional (472)</b>         | <b>1,918</b>        | <b>16,000</b>       | <b>0</b>                | <b>0</b>            | <b>16,000</b>        |
| <b>Vehicle Operations</b>                  | <b>0</b>            | <b>19,000</b>       | <b>0</b>                | <b>0</b>            | <b>19,000</b>        |
| <b>TOTAL, OE&amp;E</b>                     | <b>5,124,060</b>    | <b>5,997,000</b>    | <b>4,539,712</b>        | <b>6,261,500</b>    | <b>(264,500)</b>     |
| <b>TOTAL EXPENDITURES</b>                  | <b>\$8,805,718</b>  | <b>\$10,351,000</b> | <b>\$7,512,070</b>      | <b>\$10,317,588</b> | <b>\$33,412</b>      |

|                             | FY 14/15<br>FM 13 | Budget<br>Alotment | Current<br>as of<br>3/31/2016 |
|-----------------------------|-------------------|--------------------|-------------------------------|
| <b>Reimbursements</b>       |                   |                    |                               |
| Fingerprints                | (14,488)          | (24,000)           | (10,817)                      |
| Other Reimbursements        | (6,815)           | (26,000)           | (123,469)                     |
| Unscheduled Reimbursements  | (184,138)         |                    |                               |
| <b>Total Reimbursements</b> | <b>(205,440)</b>  | <b>(50,000)</b>    | <b>(134,286)</b>              |

# 0773 - Behavioral Science

## Analysis of Fund Condition

Prepared 2.23.16

(Dollars in Thousands)

### 2016-17 Governor's Budget

|  | Actual<br>2014-15 | CY<br>2015-16 | Governor's<br>Budget<br>BY<br>2016-17 | BY +1<br>2017-18 |
|--|-------------------|---------------|---------------------------------------|------------------|
| <b>BEGINNING BALANCE</b>                                   | \$ 3,309          | \$ 3,958      | \$ 5,386                              | \$ 9,549         |
| Prior Year Adjustment                                      | \$ 119            | \$ -          | \$ -                                  | \$ -             |
| Adjusted Beginning Balance                                 | \$ 3,428          | \$ 3,958      | \$ 5,386                              | \$ 9,549         |
| <b>REVENUES AND TRANSFERS</b>                              |                   |               |                                       |                  |
| Revenues:  |                   |               |                                       |                  |
| 125600 Other regulatory fees                               | \$ 74             | \$ 68         | \$ 73                                 | \$ 73            |
| 125700 Other regulatory licenses and permits               | \$ 2,680          | \$ 3,218      | \$ 4,124                              | \$ 4,124         |
| 125800 Renewal fees  | \$ 5,019          | \$ 4,780      | \$ 4,917                              | \$ 4,917         |
| 125900 Delinquent fees                                     | \$ 90             | \$ 71         | \$ 74                                 | \$ 74            |
| 141200 Sales of documents                                  | \$ -              | \$ -          | \$ -                                  | \$ -             |
| 142500 Miscellaneous services to the public                | \$ -              | \$ -          | \$ -                                  | \$ -             |
| 150300 Income from surplus money investments               | \$ 9              | \$ 2          | \$ 4                                  | \$ 22            |
| 150500 Interest interest from Interfund loans              | \$ 321            | \$ -          | \$ -                                  | \$ -             |
| 160100 Attorney General Proceeds of Anti-Trust             | \$ 1              | \$ -          | \$ -                                  | \$ -             |
| 160400 Sale of fixed assets                                | \$ -              | \$ -          | \$ -                                  | \$ -             |
| 161000 Escheat of unclaimed checks and warrants            | \$ 3              | \$ 3          | \$ 3                                  | \$ 3             |
| 161400 Miscellaneous revenues                              | \$ 4              | \$ 4          | \$ 4                                  | \$ 4             |
| Totals, Revenues   | \$ 8,201          | \$ 8,146      | \$ 9,199                              | \$ 9,217         |
| Transfers from Other Funds                                 |                   |               |                                       |                  |
| F00001 GF loan repayment per item 1170-011-0773 BA of 2002 | \$ 1,000          | \$ 3,600      | \$ -                                  | \$ -             |
| F00001 GF loan repayment per item 1110-011-0773 BA of 2008 | \$ -              | \$ -          | \$ 3,000                              | \$ -             |
| F00001 GF loan repayment per item 1110-011-0773 BA of 2011 | \$ -              | \$ -          | \$ 3,300                              | \$ -             |
| Totals, Revenues and Transfers                             | \$ 9,201          | \$ 11,746     | \$ 15,499                             | \$ 9,217         |
| Totals, Resources  | \$ 12,629         | \$ 15,704     | \$ 20,885                             | \$ 18,766        |
| <b>EXPENDITURES</b>  |                   |               |                                       |                  |
| Disbursements:   |                   |               |                                       |                  |
| 8880 Financial Information System for California           | \$ 7              | \$ 17         | \$ 13                                 | \$ -             |
| 1110 Program Expenditures (State Operations)               | \$ 8,664          | \$ 10,301     | \$ -                                  | \$ -             |
| 1111 Program Expenditures (State Operations)               | \$ -              | \$ -          | \$ 11,323                             | \$ 11,549        |
| Total Disbursements  | \$ 8,671          | \$ 10,318     | \$ 11,336                             | \$ 11,549        |
| <b>FUND BALANCE</b>  |                   |               |                                       |                  |
| Reserve for economic uncertainties                         | \$ 3,958          | \$ 5,386      | \$ 9,549                              | \$ 7,217         |
| <b>Months in Reserve</b>                                   | 4.6               | 5.7           | 9.9                                   | 7.4              |

**Board Statistics**

Attached for your review are the quarterly performance statistics for the third quarter of FY 2015/2016.

**Licensing Program**

Application volumes for interns and associates decreased in the third quarter of FY 2015/2016. The significant increase in LMFT, LCSW, and LPCC examination application volumes is attributed the new Law and Ethics examination. Beginning July 1, 2016, the Board will report the Law and Ethic examination volume separately. Board staff is pleased to report that all applications are processed within 60 days or less.

**Application Volumes**

| Application Type | 3 <sup>rd</sup> Quarter<br>01/01/16-3/31/16 | 2 <sup>nd</sup> Quarter<br>10/1/15-12/31/15 | Difference |
|------------------|---|---|------------|
| MFT Intern       | 480   | 676   | -41%       |
| MFT Examination  | 1166  | 399   | +66%       |
| ASW Registration | 411   | 550   | -34%       |
| LCSW Examination | 1006  | 273   | +73%       |
| LEP Examination  | 14  | 17  | -21%       |
| LPCC Intern      | 162   | 174   | -7%        |
| LPCC Examination | 153   | 25  | +84%       |

**Days to Process Application**

| License Type     | 3 <sup>rd</sup> Quarter<br>FY 15/16 | 2nd Quarter<br>FY 15/16 | Difference |
|------------------|-------------------------------------|-------------------------|------------|
| MFT Intern       | 12 days                             | 12 days                 | 0          |
| MFT Examination  | 45 days                             | 51 days                 | - 6 days   |
| ASW              | 12 days                             | 11 days                 | + 1 day    |
| LCSW Examination | 27 days                             | 19 days                 | + 8 days   |
| LEP Examination  | 11 days                             | 7 days                  | + 4 days   |
| LPCC Intern      | 36 days                             | 33 days                 | + 3 days   |
| LPCC Examination | 39 days                             | 32 days                 | + 7 days   |

A total of 357 initial licenses were issued in the third quarter. As of May 1, 2016 the Board has 105,659 licensees and registrants. This figure includes all licenses that have been issued that are current and/or eligible to renew.

| <b>LICENSE POPULATION (As of 5/1/16)</b> |               |                          |                   |                         |
|--|---------------|--------------------------|-------------------|-------------------------|
| <b>License Type</b>                      | <b>Active</b> | <b>Current In-Active</b> | <b>Delinquent</b> | <b>Total Population</b> |
| <b>Registrants</b>                       |               |                          |                   |                         |
| MFTI                                     | 16,080        | N/A                      | 3,554             | 19,634                  |
| ASW                                      | 12,666        | N/A                      | 2,757             | 15,423                  |
| PCI                                      | 1,580         | N/A                      | 224               | 1,804                   |
| <b>Total Registrant</b>                  | <b>30,326</b> | <b>N/A</b>               | <b>6,535</b>      | <b>36,861</b>           |
| <b>Licensees</b>                         |               |                          |                   |                         |
| LMFT                                     | 32,525        | 4,327                    | 3,147             | 39,999                  |
| LCSW                                     | 19,649        | 2,466                    | 1,737             | 23,852                  |
| LEP                                      | 1,323         | 452                      | 421               | 2,196                   |
| PCE                                      | 1,243         | N/A                      | 139               | 1,382                   |
| LPCC                                     | 1,262         | 65                       | 42                | 1,369                   |
| <b>Total Licensee</b>                    | <b>56,002</b> | <b>7,310</b>             | <b>5,486</b>      | <b>68,798</b>           |
| <b>Total Population</b>                  | <b>86,328</b> | <b>7,310</b>             | <b>12,021</b>     | <b>105,659</b>          |

**Examination Program**

The Board administered 2,554 examinations in the third quarter. Of this number, 2,117 were Law and Ethics examinations. 181 candidates participated in the Association of Social Work Board (ASWB) national examination. Ten examination development workshops were conducted from January to March.

**Administration Program**

The Board received 5,948 applications in the third quarter, an increase of nearly 300 applications since last quarter. This figure does not include renewal applications. The chart below reflects the total renewal activity for the third quarter. Renewal candidates using the online renewal feature through BreZEz increased by 4% since last quarter.

| <b>RENEWAL ACTIVITY</b> |                           |                   |
|-------------------------|---------------------------|-------------------|
|                         | <b>Number of Renewals</b> | <b>Percentage</b> |
| DCA Processed           | 6,743                     | 60%               |
| BBS Processed           | 320                       | 3%                |
| Online Renewal          | 4,110                     | 37%               |
| <b>Total</b>            | <b>11,163</b>             |                   |



### **Enforcement Program**

The Enforcement staff received 291 consumer complaints and 214 criminal convictions in the third quarter. 501 cases were closed and 39 cases were referred to the Attorney General's office for formal discipline. 13 Accusations and 9 Statement of Issues were filed this quarter. The number of final citations for the third quarter is 41. The Board is unable to report the current average for Formal Discipline due to an error in the report.

### **Outreach Activity**

Board staff has either physically attended the following events or participated via a phone conference.

#### **January 2016**

- January 20, 2016 Orange County MFT Consortium
- January 29, 2016 Sacramento MFT Consortium
- January 31, 2016 California Society for Clinical Social Work (CSCSW) Board Meeting – Palo Alto, CA

#### **February 2016**

- February 25, 2016 Central Valley MFT Consortium
- February 26, 2016 Inland Empire MFT Consortium
- February 26-27, 2016 AAMFT Conference – San Francisco

#### **March**

- March 14, 2016 MFT Consortium of Central Coast
- March 16, 2016 Orange County MFT Consortium
- March 24, 2016 USC School of Social Work Webinar Presentation

#### **April**

- April 2, 2016 Orange County MFT Consortium/CAMFT Intern Faire
- April 3, 2016 CSCSW meeting
- April 15-16, 2016 CALPCC Conference – San Jose, CA
- April 17, 2016 NASW Lobby Days – Sacramento, CA

The Board's spring 2016 newsletter will be published in May.

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## QUARTERLY STATISTICAL REPORT FY 2015-2016 THIRD QUARTER

This report provides statistical information relating to various aspects of the Board's business processes. Statistics are grouped by unit.

### CASHIERING

| Renewals Processed In-House | 15-Jan | 15-Aug | 15-Sep | 15-Oct | 15-Nov | 15-Dec | 16-Jan | 16-Feb | 16-Mar | 16-Apr | 16-May | 16-Jun | YTD  |
|-----------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|------|
| Received                    | 290    | 411    | 311    | 207    | 243    | 113    | 63     | 137    | 120    |        |        |        | 1895 |
| Closed                      | 371    | 356    | 430    | 270    | 106    | 199    | 158    | 200    | 188    |        |        |        | 2278 |
| Process Time                | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A  |

| Renewals Processed By DCA Central Cashiering | 15-Jul | 15-Aug | 15-Sep | 15-Oct | 15-Nov | 15-Dec | 16-Jan | 16-Feb | 16-Mar | 16-Apr | 16-May | 16-Jun | YTD   |
|--|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|
| Received                                     | 2819   | 3219   | 3198   | 2658   | 2502   | 2236   | 2286   | 2312   | 2145   |        |        |        | 23375 |
| Closed                                       | 3391   | 3004   | 3157   | 2952   | 1933   | 2579   | 2523   | 2334   | 2875   |        |        |        | 24748 |
| Process Time                                 | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A   |

|                     | 15-Jul | 15-Aug | 15-Sep | 15-Oct | 15-Nov | 15-Dec | 16-Jan | 16-Feb | 16-Mar | 16-Apr | 16-May | 16-Jun | YTD   |
|---------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|
| Online Renewals     | 1323   | 1253   | 1374   | 1348   | 1366   | 1233   | 1298   | 1353   | 1459   |        |        |        | 12007 |
| Online Cert Reorder | N/A    | N/A    | N/A    | N/A    | 67     | 61     | 110    | 1349   | 1495   |        |        |        | 3082  |

| Application Payments Processed In-House** | 15-Jul | 15-Aug | 15-Sep | 15-Oct | 15-Nov | 15-Dec | 16-Jan | 16-Feb | 16-Mar | 16-Apr | 16-May | 16-Jun | YTD   |
|---|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|
| Received                                  | 2150   | 2727   | 2466   | 2179   | 2031   | 1441   | 1776   | 1911   | 2261   |        |        |        | 18942 |
| Closed                                    | 2694   | 2268   | 1870   | 2427   | 2388   | 2949   | 1490   | 1675   | 2151   |        |        |        | 19912 |
| Process Time                              | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A    | N/A   |

\*\*These totals represent all other applications and do not include renewal applications

## LICENSING

The Board's Licensing Unit evaluates applications for registration and examination eligibility. This involves verifying educational and experience qualifications to ensure they meet requirements defined in statute and regulation.

| <b>Initial Licenses Issued</b>                   | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b>  |
|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|-------------|
| LMFT   | 197           | 188           | 171           | 219           | 235           | 503           | 50            | 23            | 81            |               |               |               | <b>1667</b> |
| LCSW   | 78            | 130           | 103           | 135           | 146           | 297           | 49            | 38            | 73            |               |               |               | <b>1049</b> |
| LEP  | 15            | 8             | 4             | 5             | 4             | 3             | 4             | 5             | 7             |               |               |               | <b>55</b>   |
| LPCC   | 7             | 10            | 6             | 16            | 0             | 6             | 6             | 12            | 9             |               |               |               | <b>72</b>   |
| <b>TOTAL</b>                                     | <b>297</b>    | <b>336</b>    | <b>284</b>    | <b>375</b>    | <b>385</b>    | <b>809</b>    | <b>109</b>    | <b>78</b>     | <b>170</b>    |               |               |               | <b>2843</b> |
| <b>LMFT Examination Eligibility Applications</b> | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b>  |
| Received   | 177           | 277           | 187           | 160           | 212           | 27            | 369           | 403           | 394           |               |               |               | <b>2206</b> |
| Approved   | 270           | 263           | 248           | 263           | 298           | 374           | 245           | 1061          | 478           |               |               |               | <b>3500</b> |
| Process Time                                     | 45            | 44            | 47            | 51            | 51            | 51            | 55            | 52            | 45            |               |               |               | <b>49</b>   |
| Process Time Less Def Lapse                      | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           |               |               |               | <b>N/A</b>  |
| <b>LCSW Examination Eligibility Applications</b> | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b>  |
| Received   | 129           | 143           | 125           | 132           | 85            | 56            | 220           | 336           | 450           |               |               |               | <b>1676</b> |
| Approved   | 198           | 184           | 251           | 172           | 89            | 205           | 130           | 227           | 849           |               |               |               | <b>2305</b> |
| Process Time                                     | 41            | 31            | 15            | 12            | 18            | 27            | 42            | 34            | 27            |               |               |               | <b>27</b>   |
| Process Time Less Def Lapse                      | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           |               |               |               | <b>N/A</b>  |
| <b>LEP Examination Eligibility Applications</b>  | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b>  |
| Received   | 15            | 16            | 7             | 8             | 4             | 5             | 2             | 7             | 5             |               |               |               | <b>69</b>   |
| Approved   | 17            | 5             | 19            | 16            | 4             | 8             | 6             | 0             | 0             |               |               |               | <b>75</b>   |
| Process Time                                     | 12            | 15            | 14            | 8             | 7             | <b>5</b>      | 15            | 12            | 11            |               |               |               | <b>11</b>   |
| Process Time Less Def Lapse                      | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           |               |               |               | <b>N/A</b>  |

| <b>LPCC Examination Eligibility Applications</b> | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b> |
|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|------------|
| Received   | 2             | 9             | 23            | 13            | 10            | 2             | 58            | 47            | 48            |               |               |               | <b>212</b> |
| Approved   | 12            | 8             | 9             | 10            | 11            | 11            | 22            | 14            | 108           |               |               |               | <b>205</b> |
| Process Time                                     | 16            | 20            | 24            | 32            | 32            | 32            | 33            | 43            | 39            |               |               |               | <b>30</b>  |
| Process Time Less Def Lapse                      | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           |               |               |               | <b>N/A</b> |

| <b>LMFT Intern Registration Applications</b> | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b>  |
|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|-------------|
| Received                                     | 446           | 488           | 390           | 277           | 279           | 120           | 186           | 272           | 222           |               |               |               | <b>2680</b> |
| Approved                                     | 397           | 416           | 418           | 558           | 365           | 280           | 167           | 305           | 382           |               |               |               | <b>3288</b> |
| Process Time                                 | 11            | 15            | 22            | 13            | 11            | 13            | 15            | 10            | 12            |               |               |               | <b>14</b>   |
| Process Time Less Def Lapse                  | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           |               |               |               | <b>N/A</b>  |
| <b>ASW Registration Applications</b>         | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b>  |
| Received                                     | 398           | 367           | 310           | 240           | 227           | 83            | 134           | 149           | 128           |               |               |               | <b>2036</b> |
| Approved                                     | 535           | 427           | 478           | 315           | 228           | 201           | 156           | 182           | 151           |               |               |               | <b>2673</b> |
| Process Time                                 | 15            | 21            | 19            | 11            | 11            | 12            | 16            | 11            | 12            |               |               |               | <b>14</b>   |
| Process Time Less Def Lapse                  | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           |               |               |               | <b>N/A</b>  |
| <b>LPC Intern Registration Applications</b>  | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b>  |
| Received                                     | 64            | 127           | 98            | 62            | 60            | 52            | 65            | 54            | 43            |               |               |               | <b>625</b>  |
| Approved                                     | 78            | 70            | 86            | 82            | 62            | 89            | 56            | 33            | 74            |               |               |               | <b>630</b>  |
| Process Time                                 | 13            | 21            | 30            | 33            | 34            | 32            | 30            | 37            | 36            |               |               |               | <b>30</b>   |
| Process Time Less Def Lapse                  | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           | N/A           |               |               |               | <b>N/A</b>  |

## EXAMINATION

The Board's Examination Unit processes complaints and performs other administrative functions relating to the Board's examination processes.

| <b>Examinations Administered</b> | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b>   |
|----------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------|
| LCSW Written                     | 216           | 253           | 250           | 372           | 586           | 0             |               |               |               |               |               |               | <b>1677</b>  |
| LCSW L&E                         |               |               |               |               |               |               | 138           | 346           | 408           |               |               |               | <b>892</b>   |
| LCSW CV                          | 125           | 135           | 121           | 194           | 554           | 0             |               |               |               |               |               |               | <b>1129</b>  |
| ASWB Clinical                    |               |               |               |               |               |               | 15            | 59            | 107           |               |               |               | <b>181</b>   |
| LMFT Written                     | 348           | 388           | 458           | 607           | 666           | 0             |               |               |               |               |               |               | <b>2467</b>  |
| LMFT L&E                         |               |               |               |               |               |               | 107           | 394           | 724           |               |               |               | <b>1225</b>  |
| LMFT CV                          | 277           | 256           | 228           | 326           | 997           | 0             |               |               |               |               |               |               | <b>2084</b>  |
| LMFT Clinical                    |               |               |               |               |               |               | 17            | 79            | 257           |               |               |               | <b>353</b>   |
| LPCC Traditional L&E             | 14            | 7             | 7             | 7             | 13            | 0             | 18            | 8             | 15            |               |               |               | <b>89</b>    |
| LEP                              | 14            | 12            | 4             | 11            | 11            | 0             | 17            | 12            | 14            |               |               |               | <b>95</b>    |
| <b>Total Exams Administered</b>  | <b>994</b>    | <b>1051</b>   | <b>1068</b>   | <b>1517</b>   | <b>2827</b>   | <b>0</b>      | <b>312</b>    | <b>898</b>    | <b>1525</b>   |               |               |               | <b>10192</b> |
| <b>Examination Workshops</b>     | <b>3</b>      | <b>5</b>      | <b>4</b>      | <b>6</b>      | <b>3</b>      | <b>3</b>      | <b>3</b>      | <b>3</b>      | <b>2</b>      |               |               |               | <b>32</b>    |

## ENFORCEMENT

The Board's Enforcement Unit investigates consumer complaints and reviews prior and subsequent arrest reports for registrants and licensees. The pending total is a snapshot of all pending items at the close of a quarter.

| <b>Complaints<br/>(Complaint Intake*)</b>                 | <b>15-<br/>Jul</b> | <b>15-<br/>Aug</b> | <b>15-<br/>Sep</b> | <b>15-<br/>Oct</b> | <b>15-<br/>Nov</b> | <b>15-<br/>Dec</b> | <b>16-<br/>Jan</b> | <b>16-<br/>Feb</b> | <b>16-<br/>Mar</b> | <b>16-<br/>Apr</b> | <b>16-<br/>May</b> | <b>16-<br/>Jun</b> | <b>YTD</b> |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|------------|
| Received  | 94                 | 111                | 105                | 101                | 64                 | 85                 | 94                 | 90                 | 107                |                    |                    |                    | 851        |
| Closed without<br>Assignment for<br>Investigation         | 15                 | 22                 | 16                 | 2                  | 25                 | 12                 | 27                 | 41                 | 22                 |                    |                    |                    | 182        |
| Assigned for<br>Investigation                             | 90                 | 85                 | 66                 | 101                | 48                 | 60                 | 67                 | 57                 | 84                 |                    |                    |                    | 658        |
| Average Days to<br>Close or Assigned for<br>Investigation | 5                  | 6                  | 6                  | 7                  | 8                  | 8                  | 8                  | 9                  | 5                  |                    |                    |                    | 7          |
| Intake Pending  | 4                  | 9                  | 32                 | 27                 | 17                 | 28                 | 31                 | 17                 | 17                 |                    |                    |                    | 182        |

| <b>Convictions/Arrest<br/>Reports</b>  | <b>15-<br/>Jul</b> | <b>15-<br/>Aug</b> | <b>15-<br/>Sep</b> | <b>15-<br/>Oct</b> | <b>15-<br/>Nov</b> | <b>15-<br/>Dec</b> | <b>16-<br/>Jan</b> | <b>16-<br/>Feb</b> | <b>16-<br/>Mar</b> | <b>16-<br/>Apr</b> | <b>16-<br/>May</b> | <b>16-<br/>Jun</b> | <b>YTD</b> |
|--|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|------------|
| Received                               | 108                | 86                 | 110                | 87                 | 71                 | 66                 | 38                 | 84                 | 92                 |                    |                    |                    | 742        |
| Closed / Assigned for<br>Investigation | 0                  | 0                  | 0                  | 0                  | 0                  | 0                  | 0                  | 0                  | 0                  |                    |                    |                    | 0          |
| Assigned for<br>Investigation          | 91                 | 95                 | 98                 | 95                 | 87                 | 74                 | 38                 | 68                 | 95                 |                    |                    |                    | 741        |
| Average Days to<br>Close               | 2                  | 5                  | 3                  | 5                  | 7                  | 5                  | 2                  | 3                  | 4                  |                    |                    |                    | 4          |
| Intake Pending                         | 17                 | 8                  | 20                 | 12                 | 8                  | 0                  | 1                  | 17                 | 13                 |                    |                    |                    | 96         |

**Complaint Intake \***      Complaints Received by the Program.

**INVESTIGATION\*\***

| <b>Desk Investigation</b>              | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b> |
|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|------------|
| Assigned                               | 174           | 168           | 157           | 179           | 149           | 140           | 124           | 136           | 190           |               |               |               | 1417       |
| Closed                                 | 175           | 134           | 188           | 192           | 140           | 208           | 170           | 145           | 150           |               |               |               | 1502       |
| Average Days to Close                  | 117           | 99            | 94            | 112           | 95            | 105           | 74            | 120           | 92            |               |               |               | 101        |
| Pending                                | 525           | 573           | 555           | 538           | 537           | 459           | 411           | 373           | 422           |               |               |               |            |
| <b>Field Investigation (Non-Sworn)</b> | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b> |
| Assigned                               | 7             | 11            | 7             | 12            | 3             | 4             | 4             | 8             | 3             |               |               |               | 59         |
| Closed                                 | 1             | 7             | 8             | 4             | 17            | 6             | 9             | 5             | 15            |               |               |               | 72         |
| Average Days to Close                  | 166           | 105           | 176           | 155           | 107           | 92            | 110           | 151           | 144           |               |               |               | 134        |
| Pending                                | 33            | 37            | 36            | 41            | 26            | 23            | 19            | 23            | 12            |               |               |               |            |
| <b>Field Investigation (Sworn)</b>     | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b> |
| Assigned                               | 1             | 4             | 1             | 5             | 1             | 3             | 3             | 2             | 3             |               |               |               | 23         |
| Closed                                 | 6             | 4             | 4             | 5             | 2             | 4             | 2             | 2             | 3             |               |               |               | 32         |
| Average Days to Close                  | 175           | 367           | 351           | 323           | 426           | 267           | 310           | 172           | 115           |               |               |               | 278        |
| Pending                                | 36            | 36            | 33            | 30            | 29            | 27            | 28            | 28            | 25            |               |               |               |            |
| <b>All Investigations</b>              | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b> |
| First Assignments                      | 182           | 183           | 165           | 196           | 153           | 147           | 131           | 146           | 196           |               |               |               | 1499       |
| Closed                                 | 182           | 145           | 200           | 201           | 159           | 218           | 181           | 152           | 168           |               |               |               | 1606       |
| Average Days to Close                  | 153           | 190           | 207           | 197           | 209           | 155           | 165           | 148           | 117           |               |               |               | 171        |
| Pending                                | 565           | 619           | 596           | 609           | 592           | 509           | 458           | 424           | 459           |               |               |               |            |

**Investigations \*\***

Complaints investigated by the program whether by desk investigation or by field investigation.

Measured by date the complaint is received to the date the complaint is closed or referred for enforcement action.

If a complaint is never referred for Field Investigation, it will be counted as 'Closed' under Desk Investigation.

If a complaint is referred for Field Investigation, it will be counted as 'Closed' under Non-Sworn or Sworn.



| <b>Enforcement Actions</b>   | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> | <b>YTD</b> |
|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|------------|
| AG Cases Initiated   | 20            | 17            | 7             | 15            | 17            | 15            | 12            | 14            | 13            |               |               |               | 130        |
| AG Cases Pending   | 233           | 239           | 231           | 174           | 177           | 175           | 182           | 189           | 189           |               |               |               |            |
| SOIs Filed   | 5             | 2             | 2             | 5             | 4             | 2             | 2             | 4             | 3             |               |               |               | 29         |
| Accusations Filed  | 7             | 14            | 4             | 11            | 10            | 10            | 4             | 2             | 7             |               |               |               | 69         |
| Proposed/Default Decisions Adopted   | 2             | 1             | 4             | 5             | NA            | 3             | 3             | 2             | 3             |               |               |               | 23         |
| Stipulations Adopted   | 4             | 5             | 3             | 7             | NA            | 9             | 4             | 5             | 2             |               |               |               | 39         |
| <b>Disciplinary Orders</b>   | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> |            |
| Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations) | 11            | 1             | 0             | 15            | 0             | 17            | 10            | 6             | 14            |               |               |               | 74         |
| Average Days to Complete***  | 504           | 738           | N/A           | 430           | NA            | 492           | 615           | 785           | NA            |               |               |               |            |
| <b>Citations</b>   | <b>15-Jul</b> | <b>15-Aug</b> | <b>15-Sep</b> | <b>15-Oct</b> | <b>15-Nov</b> | <b>15-Dec</b> | <b>16-Jan</b> | <b>16-Feb</b> | <b>16-Mar</b> | <b>16-Apr</b> | <b>16-May</b> | <b>16-Jun</b> |            |
| Final Citations  | 1             | 0             | 2             | 5             | 2             | 3             | 29            | 4             | 8             |               |               |               | 54         |
| Average Days to Complete****   | 179           | N/A           | 610           | 208           | 71            | 171           | 35            | 100           | 200           |               |               |               |            |

**Disciplinary Orders Average Days to Complete \*\*\***

Measured by the date the complaint is received to the date the order became effective.

**Citations \*\*\*\***

Measured by the date the complaint is received to the date the citation was issued.

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Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Board Members

**Date:** April 28, 2016

**From:** Laurie Williams  
Human Resources Liaison

**Telephone:** (916) 574-7850

**Subject: Personnel Update**

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### **New Employees**

- **Staff Services Analyst (SSA) – Enforcement** – Craig Zimmerman promoted to an SSA in the Criminal Conviction & Probation Unit of Enforcement effective May 2, 2016. Mr. Zimmerman will function as an Enforcement Analyst performing Applicant Background Investigations. His prior position with the Board was as an Office Technician (Typing) functioning as an Enforcement Unit Support and handled Public Disclosures.
- **Office Technician (OT) – Cashiering** – Yee Her transferred to the OT permanent full-time vacancy in the Cashiering Unit behind Jared Washington effective April 14, 2016. Ms. Her was initially appointed to a limited-term OT position as a cashier. The Board has received approval from the Office of Human Resources (OHR) to refill this 12-month limited-term vacancy behind Ms. Her.

### **Departures**

Jared Washington has accepted employment in the private sector and separated from state service effective March 11, 2016. Mr. Washington was an Office Technician with the Board functioning as a Cashier.

### **Vacancies**

Board staff has initiated the recruitment process for the positions noted below:

- **Management Services Technician (MST) – Examination (new vacancy)** - The Request for Position Action (RPA) was approved to fill this vacancy by the Office of Human Resources (OHR). The Administration manager is in the process of reviewing the hiring applications. Interviews will be scheduled in the next couple of weeks. This position will assist with the Exam Restructure in the Exam Unit and will be filled as a 12-month Limited-Term position.

- Office Technician (OT) – Enforcement (fill behind C. Martinez) - The Request for Position Action (RPA) was approved to fill this vacancy by the Office of Human Resources. The Enforcement Manager has received hiring eligibility for her chosen candidate. The Board is awaiting final hiring approval pending review of the pre-employment documents so the Board can make a formal offer of employment.
- Office Technician (OT) – Cashiering (fill behind Y. Her) - The Request for Position Action (RPA) was submitted to the Office of Human Resources (OHR) and has been approved to fill as a 12-month limited-term. The job posting for this vacancy has been posted on the CalHR website for a 10-day advertisement.
- Office Technician (OT) – Enforcement (fill behind C. Zimmerman) - The Request for Position Action (RPA) has been submitted to the Office of Human Resources for review and approval to fill this vacancy. This position performs the duties of Enforcement Unit Support and handles Public Disclosures.

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**To:** Board Members

**Date:** April 28, 2016

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject: Sunset Review Update**

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The Board of Behavioral Sciences Sunset Hearing was held on March 14, 2016. The hearing was attended by Board Chair Christina Wong, Vice Chair Deborah Brown, Executive Officer Kim Madsen, and Assistant Executive Officer Steve Sodergren.

The Senate Business, Professions and Economic Development Committee Chair Jerry Hill and the Assembly Committee on Business and Professions Chair Rudy Salas conducted the hearing. During the hearing the Board presented a brief overview of the Board and responded to several issue questions raised in the Board's background paper.

The Board's background paper is prepared by committee staff and is included for your information. You may view the video of the Board's hearing at the following link. [http://calchannel.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=3448](http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=3448). The Board's hearing starts at the 5:50 mark.

On April 12, 2016, the Board submitted a written response to all of the issues in the Board's background paper. Attached for your information is a copy of the written response submitted to the Senate Business, Professions and Economic Development Committee Chair Jerry Hill and the Assembly Committee on Business and Professions Chair Rudy Salas.

Board staff is pleased to share that Assembly Bill 2191 proposes to extend the Board until 2021.

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# **BACKGROUND PAPER FOR THE BOARD OF BEHAVIORAL SCIENCES**

**Joint Oversight Hearing, March 14, 2016**

**Assembly Committee on Business and Professions  
and**

**Senate Committee on Business, Professions and Economic Development**

## **BRIEF OVERVIEW OF THE THE BOARD OF BEHAVIORAL SCIENCES**

The Board of Behavioral Sciences (BBS) is charged with the regulation of four mental health professions. In 1945, the Board of Social Work Examiners was established as a mechanism to identify only those competent professionals in the field of social work. Later, in 1963, the Marriage, Family, and Child Counselor Act was established and the Board of Social Work Examiners became duly responsible for regulation of both professions. In 1970, with the addition of Licensed Educational Psychologists, the name of the board was officially changed to the Board of Behavioral Science Examiners. In 1997, its current title of the BBS was established. In 2010, clinical counselors were added under the BBS's jurisdiction. The BBS's last sunset review was in 2012. All tables and statistical information contained in this report were provided by the BBS.

Today, the BBS licenses and regulates Licensed Clinical Social Workers (LCSWs), Licensed Marriage and Family Therapists (LMFTs), Licensed Educational Psychologists (LEPs), and Licensed Professional Clinical Counselors (LPCCs). Additionally, the BBS registers Associate Clinical Social Workers (ACSWs), Marriage and Family Therapist Interns (MFT Interns), Professional Clinical Counselor Interns (PCC Interns), and until June 30, 2015, registered continuing education (CE) providers.

The BBS licenses and regulates more than 100,000 licensees. In addition, the BBS regulates approximately 16,262 MFT Interns and 12,215 ACSWs. Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in certain areas. Below are a few examples of settings in which licensees may work; however, licensees may work in other settings that lawfully provide mental health services.

- LMFTs are employed in mental health agencies, counseling centers, and private practice. They utilize counseling or therapeutic techniques to assist individuals, couples, families, and groups with a focus on marriage, family, and relationship issues.
- LCSWs are employed in health facilities, private practice, and state and county mental health agencies. LCSWs utilize counseling and psychotherapeutic techniques to assist individuals, couples, families, and groups.
- LEPs work in schools or in private practice and provide educational counseling services such as aptitude and achievement testing or psychological testing. LEPs may not provide

psychological testing or counseling services that are unrelated to academic learning processes in the education system.

- LPCCs are the newest regulatory group under the BBS. LPCCs apply counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. LPCCs work in a variety of settings including hospitals, private practice, and community-based mental health organizations.

The Board’s mission as reported in its *2015 Sunset Review Report* is to:

*Protect and serve Californians by setting, communicating, and enforcing standards for safe and competent mental health practice. The [BBS's] vision is to ensure that Californians are able to access the highest-quality mental health services. To this end, the [BBS] develops and administers licensure examinations; investigates consumer complaints and criminal convictions; responds to emerging changes and trends in the mental health profession legislatively or through regulations; and creates informative publications for consumers, applicants, and licensees.*

The BBS's current mission statement as stated in the 2014-2017 Strategic Plan, is as follows:

*Protect and serve Californians by setting, communicating, and enforcing standards for safe and competent mental health practice.*

### **Board Membership and Committees**

Board membership (board) is comprised of 13 members; 6 professional and 7 public members. Effective January 1, 2012, the composition of the board increased from 12 to 13 members with the addition of a dedicated LPCC member. There are six professional members appointed by the Governor. Five of the public members are appointed by the Governor, one public member is appointed by the Senate Committee on Rules and one member is appointed by the Speaker of the Assembly. Board members receive a \$100-a-day per diem. The board meets a minimum of four times per year. All board and Committee meetings are subject to the Bagley-Keene Open Meetings Act. Since its last sunset review, the BBS has not had to cancel any meetings due to a lack of quorum. There is currently one board member vacancy. The following is a listing of the current members and their background:

| <b>Name and Short Bio</b>   | <b>Appointment Date</b>        | <b>Term Expiration Date</b> | <b>Appointing Authority</b> |
|---|--------------------------------|-----------------------------|-----------------------------|
| <b>Christina Wong, LCSW - Chair</b><br>Ms. Wong was appointed by Governor Brown as a LCSW member in May 2011. Since 2002, Ms. Wong has been employed by Glenn County Health Services and currently serves as Health Services Program Coordinator. | 5/18/2011<br><b>07/02/2013</b> | 6/01/19                     | Governor                    |
| <b>Deborah Brown, Public Member - Vice Chair</b><br>Ms. Brown was appointed by Governor Brown as a public member in August 2012. Ms. Brown has been a teacher for the Yosemite Unified School District since 1994.                                | 8/23/2012<br><b>07/02/2013</b> | 6/01/2017                   | Governor                    |
| <b>Samara Ashley</b><br>Ms. Ashley was appointed by Governor Schwarzenegger as a public member in January 2010. She has served as director of government affairs for the Port   | 1/21/2010<br><b>07/12/2013</b> | 6/01/2017                   | Governor                    |



|   |   |           |          |
|---|---|-----------|----------|
| of Long Beach since 2007.   |   |           |          |
| <b>Dr. Scott Bowling</b><br>Dr. Bowling was appointed by Governor Brown as a Public Member in September 2014. Mr. Bowling has been president and chief executive officer at the Exceptional Children's Foundation since 1999. He was associate director at New Horizons from 1989 to 1999. Bowling is a member of the Culver City Chamber of Commerce Board of Directors.   | 11/11/2014  | 6/01/2018 | Governor |
| <b>Dr. Leah Brew, LPCC</b><br>Dr. Brew was appointed by Governor Brown as an LPCC member in August 2012. Dr. Brew is currently an LPCC and serves as the Department Chair and Associate Professor in the Department of Counseling at California State University, Fullerton. As part of her 11 years as a faculty member, Dr. Brew has served on other professional boards such as the President of California Association for Licensed Professional Clinical Counselors, President of the Western Association for Counselor Education and Supervision, and Graduate Representative for the national Association for Counselor Education and Supervision. | 8/18/2012   | 6/01/2016 | Governor |
| <b>Dr. Peter Chiu</b><br>Dr. Chiu was appointed by Governor Brown as a public member in October 2013. He has been an adjunct clinical professor at Stanford University Medical School since 2009 and Hearing Board member of the Bay Area Air Quality Management District since 2013.   | 10/30/2013<br><b>06/03/2015</b>                     | 6/01/2019 | Governor |
| <b>Elizabeth "Betty" Connolly, LEP</b><br>Ms. Connolly was appointed by Governor Brown as a LEP member in August 2012. Ms. Connolly has been with the El Dorado County Office of Education for over 30 years, first as a School Psychologist and later as a Program Specialist and Principal. She currently works as the Director of Student Programs for Special Services.   | 8/22/2012   | 6/01/2016 | Governor |
| <b>Sarita Kohli, LMFT</b><br>Ms. Kohli was appointed by Governor Brown in June 2011 as an LMFT member. Ms. Kohli has been working in community mental health for over twelve years. Currently, she serves as Director of Mental Health Programs at Asian Americans for Community Involvement (AACI) in San Jose, overseeing outpatient Mental Health programs and the Center for Survivors of Torture. Ms. Kohli is in the Addressing Health Disparities Leadership Program of the National Council of Community Behavioral Health, a national leadership program for developing leaders from ethnically diverse communities.                             | 6/07/2011<br><b>06/13/2014</b>                      | 6/01/2018 | Governor |
| <b>Patricia Lock-Dawson</b><br>Ms. Lock-Dawson was appointed by Governor Schwarzenegger as a public member in January 2010. She has served the city of Riverside as planning commissioner since 2007 and director of the Santa Ana River Trail and Parkway Partnership for Riverside County Supervisor John Tavaglione since 2005. Additionally, Lock-Dawson has been principal of PLD Consulting since 2003.   | 1/13/2010<br><b>07/12/2013</b>                      | 6/01/2017 | Governor |
| <b>Renee Lonner, LCSW</b><br>Ms. Lonner was appointed by Governor Schwarzenegger as a LCSW member in January 2007. From 1992-2008, she served as the clinical director and chief clinical officer for Robert T. Dorris & Associates, a management consultation firm. Ms. Lonner has maintained a private practice specializing in individual, marital and family psychotherapy since 1976.  | 1/17/2007<br><b>07/06/2010</b><br><b>07/25/2010</b> | 6/01/2018 | Governor |
| <b>Karen Pines, LMFT</b><br>Ms. Pines was appointed by Governor Brown as a LMFT member in April 2011. She previously served as a member of the BBS from July 24, 1999 to July 31, 2006. During her tenure with the Board, she served three terms as the Board's Chair and one term as the Board's Vice Chair. In addition to her previous Board service, Ms. Pines has also served as public member for the Physical Therapy Board and is an adjunct professor at Pepperdine University, Graduate School of Education and Psychology.   | 4/5/2011<br><b>07/02/2013</b>                       | 6/01/2017 | Governor |

|   |  |           |        |
|---|--|-----------|--------|
| <p><b>Dr. Christine Wietlisbach</b><br/> Dr. Wietlisbach was appointed by the California State Senate as a public member in January 2010. Dr. Wietlisbach has over 20 years of experience in the health and higher education fields. She is a practicing occupational therapist at Eisenhower Medical Center, and a faculty member at Loma Linda University. In April 2011, she was granted her Doctor of Occupational Therapy degree with a dual emphasis in Hand Therapy and Administration/Practice Management. She also has a master's degree in Public Administration. Dr. Wietlisbach recently completed two terms as a governor-appointee to the California Board of Occupational Therapy.</p> | 2/04/2010<br><b>05/2011</b><br><b>07/16/2015</b> | 6/01/2019 | Senate |
|---|--|-----------|--------|

The BBS has one standing committee, the *Policy and Advocacy Committee*. The focus of this committee is on proposed legislation, proposed regulations, and legislative and regulatory changes. The committee is comprised of four board members. In addition, the BBS utilizes Ad-Hoc committees as necessary to address specific topic areas such as: 1) Continuing Education Review; 2) Out of State Education Committee; 3) Examination Program Review Committee; and, 4) Supervision Committee. The BBS reported that the *Supervision Committee* is currently the only active Ad-Hoc committee.

**Staff**

The Executive Officer (EO) is appointed by the BBS. The current EO, Kim Madsen, was appointed in 2010. For FY 2014/15, the BBS had 51.2 authorized staff positions, and 1.6 blanket positions (which are positions that are permanent intermittent or limited term positions). In total, the BBS currently has 53 staff positions: 20 staff persons, including one manager, are dedicated to licensing and examination and 20 staff persons, including two managers, are dedicated to enforcement.

In FY 2014/15, the BBS reported that its staff increased by 14% from 44 to 50 positions. Three of the new positions were assigned to the licensing program. The remaining 4.5 positions were dedicated to the enforcement program. As of December 1, 2015 the BBS had three staff vacancies: 1) Management Services Technician (Examination Unit); 2) Office Technician (Licensing Unit); and 3) two Office Technicians (Cashiering Unit).

The BBS reported that it has entered into a Memorandum of Understanding with the Department of Consumer Affairs (DCA) to utilize temporary staff from another unit within the department. The BBS borrowed three positions from DCA, one Staff Services Analyst and two Program Technicians. These positions were borrowed in order to help address unspecified backlog issues at the BBS. The cost of these positions was not included in DCA pro rata costs. The BBS funds these positions through reallocation of its budget. The timeframe for the personnel loans is as follows: the first individual was with the BBS for 32 months (09/12 to 05/15); the second individual was with the BBS for 10 months (08/14 to 06/15); and, the third individual was with the BBS for 16 months (08/14 to 12/15).

In addition, the BBS also engages the services of the American Association of Retired Persons (AARP) Program candidates. These individuals work a limited number of hours and are paid through AARP.

Stagnant staffing levels, increasing application volumes, furloughs, hiring freezes, and the implementation of a new licensing program and database system, created an unprecedented backlog of applications for the licensure examination. As a result, many applicants experienced an eight to nine month delay in processing their application to take the licensure examination. The BBS reported that it recently eliminated its severe application backlog attributed to these simultaneous events.

## Fiscal and Fund Analysis

As a Special Fund agency, the BBS receives no General Fund (GF) support and relies solely on fees set by statute for licensing and renewals.

The BBS ended FY 2014/15 with a reserve balance of \$395,800, which equates to 4.7 months of operating costs. The BBS estimates a FY 2015/16 reserve balance of approximately \$520,400 equaling 6.1 months in reserve. The BBS's statutory reserve fund limit is 24 months. Maintaining an adequate reserve level of at least six months provides for a reasonable contingency fund so that the BBS has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs.

Current BBS projections do not indicate any future deficit. Accordingly, the BBS does not have plans to increase or reduce fees.

## Trends in Revenues

During the last four FYs, on average, the BBS's enforcement program accounts for 43% of expenditures, the examination program accounts for 28%, and the licensing program accounts for 29%. The administrative program includes costs for the executive staff, the board, administrative support, and fiscal services. The BBS does not have a Diversion Program.

The percentage of expenditures spent on DCA pro rata is as follows: 17% for FY 2011/12; 20% for FY 2013/14; 20% for FY 2014/15; and, projected 19% for FY 2015/16.

## License and Renewal Fees

Renewal fees, inactive license fees, and CE provider fees are all paid on a biennial basis. The due date for the renewal fees are based on the licensees' birth month. Registrations for interns and associates are renewed annually. All other fees for examinations and initial licenses are received and processed on an on-going basis. The table below provides a history of fee changes over the last ten years.

| Fee data   | Date Repealed | Date Added |
|--|---------------|------------|
| Examination and re-examination fee for oral exam (LMFT & LCSW) | 3/3/2004      |            |
| LMFT & LCSW oral examination appeal fee                        | 3/3/2004      |            |
| LMFT & LCSW Clinical Vignette                                  |               | 3/3/2004   |
| Delinquency of CE Provider                                     |               | 1/26/2008  |
| LPCC (all)   |               | 5/24/2011  |

*\*Note: This table was taken from the BBS's 2015 Sunset Review Report*

## General Fund Loan

Since FY 2002/03 the BBS has made three loans to the GF: 1) \$6 million in FY 2002/03; \$3 million in FY 2008/09; and \$3.3 million in FY 2011/12; for a total loan of \$12.3 million dollars. The BBS has received one repayment in the amount of \$1.4 million in FY 2013/14, and is scheduled to receive the following: \$1.0 million in FY 2014/15, \$2.4 million in FY 2015/16, and \$6.3 million in FY 2016/17, for a total repayment of \$11.1 million. The remaining \$1.2 million is estimated to be paid in FY 2017/18 or later depending on the BBS's fund balance.

## Licensing

The BBS's total licensing population for its interns, registrants, and licensees is approximately 102,443 licensees (delinquent and active). The active population for each profession is as follows:

- LMFTs: 31,638  
MFT Interns: 16,262  
LCSWs: 19,027
- ACSWs: 12,215  
LPCCs: 1,245  
LEPs: 1,323  
CE Providers: 2,414. *As of June 2015, the BBS no longer licenses CE providers.*

The BBS reported that its licensing population has increased 32% since its last sunset review in 2012. Although LPCCs were added under the BBS's jurisdiction in 2010, the addition of this profession is not the sole reason for the increase in active licensees. The licensing population of LCSW's has shown the greatest increase in its licensing population since 2012.

The Licensing Program of the BBS provides public protection by ensuring licenses or registrations are issued only to those applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would be grounds for denial.

The BBS reported that it is currently meeting or exceeding the targeted timeframe for processing applications. Applications for registration as a PCC Intern and initial licensure examinations are taking fewer than 60 days to process. All other applications are processed within 30 days. Upon approval of the application and supporting documents, a license is issued.

Steps implemented to reduce licensing process times include:

- Added additional staffing resources to its licensing unit
- Hired seasonal clerks and entered into a Memorandum of Understanding with the DCA
- Redesigned the business process

The BBS requires primary source documentation for educational transcripts and license verification from other states. In addition, all applicants are required to submit fingerprints through the Department of Justice (DOJ), which then provides the BBS's authorized personnel with access to information contained in the Criminal Offender Record Information Database (CORI). The BBS requires both a DOJ and a Federal Bureau of Investigation (FBI) criminal history background check on all applicants for licensure or registration. If an applicant has a criminal history, the DOJ will notify the BBS of the results between 14 and 30 days. Licensure applications are held until both the DOJ and FBI have issued fingerprint clearances.

In 2009, the BBS promulgated California Code of Regulations (CCR) Title 16 CCR Section 1815, which required all licensees and registrants who had not previously submitted fingerprints to complete a state and federal level criminal offender record search. The BBS reported that the fingerprinting project has been completed and all licensees and registrants have either complied with the requirement or the BBS pursued or will continue to pursue disciplinary action for non-compliance. To date, the

BBS has issued 83 citations for non-compliance with the fingerprint requirement and the BBS estimates that it will issue another 200-300 in the next few months as it now has a dedicated staff person to complete the project.

According to the BBS, as part of the licensing process, all applicants are required to declare, under penalty of perjury, whether they have ever been convicted of, pled guilty to or pled nolo contendere to any misdemeanor or felony. Applicants must also declare, under penalty of perjury, whether they have been denied a professional license or had license privileges suspended, revoked or disciplined, or if they have ever voluntarily surrendered a professional license in California or any other state.

If an applicant reports disciplinary activity, the BBS requires the applicant to provide a written explanation and documentation relating to the conviction or disciplinary action. In addition, the applicant must include any and rehabilitative efforts or changes made to prevent future occurrences.

The National Practitioner Databank (NPDB), which merged with the Healthcare Integrity Protection Databank in 2013, contains information provided by state regulatory agencies or other entities that are required to report disciplinary information. However, the BBS notes that not all entities consistently comply with reporting requirements. When a record is queried, either the BBS or the applicant is required to pay a fee. At this time, the BBS does not utilize the NPDB due to the limitations of information provided and the fees involved. To verify out of state applicants' licensure status, the BBS reported that it verifies licensing information through state regulatory boards. For verification of in-state licensure status, the BBS can check for prior disciplinary action through the Commission on Teacher Credentialing, the Consumer Affairs System, or the DCA BreEZe system.

Currently, the BBS does not have reciprocity with any other state. Any person licensed in another state must comply with California's education and examination requirements.

### **Military Inquiry**

The BBS reported that as of May 2015, all application eligibility information inquires as to whether or not the applicant is serving, or has ever served in the United States Armed Forces or the California National Guard. The BBS reported that it has not received an application in which military education, training, or experience had been submitted to meet licensing requirements. The BBS reported that if an applicant has military experience or education, those applications will be reviewed on a case-by-case basis to determine if the applicant meets the licensing or registration requirements. The BBS reported that applicants may include supervised experience obtained at an out-of-state military base. The experience may be accepted if it can be determined that the supervision was substantially equivalent, and upon verification that the supervisor is an equivalently licensed acceptable professional who has been licensed, in good standing, for at least two-years in his or her current jurisdiction.

### **Continuing Education**

All BBS-regulated licensees are required to obtain 36 hours of CE as a condition of biennial licensure renewal. An individual is only required to complete 18 hours of CE during his or her initial license renewal period.

Existing law provides exemptions from the current CE requirements: 1) an inactive license (BPC Sections 4984.8, 4989.44, 4997 or 4999.12); 2) being absent from California for at least one year

during the licensees' previous license renewal period the licensee due to his or her military service; 3) residing in another country; and, 4) the licensee or an immediate family member, including a domestic partner, where the licensee is the primary caregiver for that family member, had a physical or mental disability or medical condition. The physical or mental disability or medical condition must be verified by a licensed physician or psychologist.

### **Continuing Education and Provider Approval**

In 2012, the BBS established the *Continuing Education Program Review Committee* (CE Review Committee) to conduct a comprehensive review of the BBS's CE Program. The Committee held a series of meetings with stakeholders to discuss improving the quality of CE, ensuring the coursework was relevant to the practice of BBS licensees, and ensuring compliance with the legislative intent of CE.

The CE Review Committee and stakeholders evaluated existing CE programs available through entities such as the National Association of Social Workers, Association of Social Work Boards, the National Board of Certified Counselors, the National Association of School Psychologists, and the American Psychological Association. The rigor and ongoing evaluation of CE providers and coursework exceeded the BBS's current program. Further, the resources necessary to establish a similar program within the BBS was not viable. As a result, the BBS proposed regulations to cease the BBS's CE provider program which required the BBS to approve CE providers

The CE Review Committee and stakeholders agreed that ceasing the BBS's current CE provider program would provide higher quality CE to BBS licensees. As a result, the BBS proposed significant changes to its CE program, which became effective January 1, 2015.

The BBS ended the renewal of CE providers on June 30, 2015. Effective July 1, 2015, licensees may only obtain continuing education from one of the following:

- 1) A BBS-approved continuing education provider with a current PCE provider number. (Note: as previously stated, these BBS-issued PCE provider numbers will no longer be renewable after July 1, 2015, existing provider numbers that have not expired by July 1, 2015 are valid until expiration)
- 2) An accredited or approved postsecondary institution that meets the requirements set forth in BPC Sections 4980.54(f)(1), 4989.34, 4996.22(d)(1), or 4999.76(d).
- 3) A BBS-recognized approval agency or a continuing education provider that has been approved or registered by a BBS-recognized approval agency. Listed below are the BBS recognized approval agencies:
  - i) National Association of Social Workers (NASW)
  - ii) Association of Social Work Boards (ASWB)
  - iii) National Board for Certified Counselors (NBCC)
  - iv) National Association of School Psychologists (NASP)
  - v) American Psychological Association (APA)
  - vi) California Association of Marriage and Family Therapists (CAMFT)
  - vii) California Psychological Association (CPA)

4) An organization, institution, association or other entity that is recognized by the BBS as a continuing education provider. Listed below are BBS-recognized continuing education providers:

- i) American Association for Marriage and Family Therapy (AAMFT)
- ii) American Association for Marriage and Family Therapy-California Division (AAMFT-CA)
- iii) California Association for Licensed Professional Clinical Counselors (CALPCC)
- iv) California Association for Marriage and Family Therapists (CAMFT)
- v) National Association of Social Workers-California Chapter (NASW-CA)
- vi) California Society for Clinical Social Work (CSCSW)
- vii) California Association of School Psychologists (CASP)
- viii) California Psychological Association (CPA)
- ix) California Counseling Association (CCA)
- x) American Counseling Association (ACA)

### Enforcement

The BBS reported that it receives approximately 2,000 consumer complaints and criminal notifications annually. The BBS reported that any increase in enforcement related activity is consistent with the BBS's licensing population. Since the BBS's last sunset review in 2012, consumer complaints and criminal conviction notifications have increased five percent and eight percent, respectively.

In 2010, the DCA developed standard performance measures (PM) for each of its regulatory entities to assess the effectiveness of their enforcement programs. The DCA established an overall goal to complete cases filed with the Attorney General (AG) within 12 to 18 months. Each regulatory entity is responsible for determining its performance targets.

The BBS reported that it is currently meeting six of its eight performance targets:

| Performance Measure (PM)                               | Definition   | Performance Target | Actual FY 2014/2015 |
|--|--|--------------------|---------------------|
| PM 1 Volume  | Number of complaints received.   | *                  | *                   |
| PM 2 Cycle Time  | Average number of days to complete complaint intake.   | 7 days             | 5 days              |
| <b>PM 3 Cycle Time****</b>                             | <b>Average number of days to complete closed cases not resulting in formal discipline.</b>   | <b>80 days</b>     | <b>100 days</b>     |
| <b>PM 4 Cycle Time****</b>                             | <b>Average number of days to complete cases resulting in formal discipline.</b>  | <b>540 days</b>    | <b>571 days</b>     |
| PM 5 Efficiency (cost)                                 | Average cost of intake and investigation for complaints not resulting in formal discipline.  | **                 | **                  |
| PM 6 Customer Satisfaction                             | Consumer satisfaction with the service received during the enforcement process.  | 75% Satisfaction   | ***                 |
| PM 7 Cycle Time (probation monitoring)                 | Average number of days from the date a probation monitor is assigned to a probationer to the date the probation monitor makes first contact. | 10 days            | 1 day               |
| PM 8 Initial Contact Cycle Time (probation monitoring) | Average number of days from the time a violation is reported to the program to the time the assigned probation monitor responds.             | 1 day              | **                  |

\* Complaint volume is counted and is not considered a performance measure.

\*\* The BreEZe system does not capture this data at this time.  
\*\*\* Due to lack of consumer response, data is not available for this measure.  
\*\*\*\* Not meeting current performance targets.  
*\*Note: This table was taken from the BBS's 2015 Sunset Review Report*

In response to not meeting all of its PM, the BBS reported that it has implemented changes to its internal procedures that will assist in meeting PM 3 and PM 4 (referenced in the above table). Regarding PM 3, the BBS revised procedures related to non-jurisdictional cases. Further, the enforcement managers conduct regular meetings with staff to discuss caseloads and case aging to identify any barrier to complete the case in a timely manner.

DCA set the performance target for PM 4 at 540 days (18 months). Achieving this goal is dependent upon the staffing and workload of outside agencies, such as the AG's office and the Office of Administrative Hearings (OAH). Any workload or staffing issues at the AG or the OAH may be outside of the BBS's jurisdiction and control. The BBS reported that it continues to evaluate its internal processes in an effort to meet PM 4.

Recently, the BBS added two staff positions dedicated to actively monitor all cases referred to the AG office.

### **Complaint Prioritization**

The BBS developed its Complaint Prioritization Guidelines in 2009, using the DCA model guidelines for health care agencies. Although similar to the DCA model, the BBS modified the complaint categories to reflect subject areas which are unique to the BBS.

Using these guidelines, complaints are reviewed by BBS staff and categorized as follows:

Complaints categorized as “urgent” demonstrate conduct or actions by the licensee or registrant that pose a serious risk to the public’s health, safety, or welfare. These complaints receive the immediate attention of the Enforcement Manager to initiate the appropriate action.

Complaints categorized as “high” involve allegations of serious misconduct but the licensee’s or registrant’s actions do not necessarily pose an immediate risk to the public’s health, safety, or welfare.

Complaints categorized as “routine” involve possible violations of the BBS’s statutes and regulations, but the licensee’s or registrant’s actions do not pose a risk to the public’s health, safety, or welfare.

### **Mandatory Reporting Requirements and Statute of Limitations**

The BBS is subject to certain mandatory reporting requirements which include the following:

- BPC Section 801(b) requires every insurer providing professional liability insurance to a BBS-licensee to report any settlement or arbitration award over \$10,000 of a claim or action for damages for death or personal injury caused by the licensee’s negligence, error or omission in practice, or by rendering of unauthorized professional services. This report must be sent to the BBS within 30 days of the disposition of the civil case.
- BPC Section 802(b) requires BBS licensees and claimants (or, if represented by counsel) to report any settlement, judgment, or arbitration award over \$10,000 of a claim or action for damages for death or personal injury caused by the licensee’s negligence, error or omission in practice, or by



rendering of unauthorized professional services. This report must be submitted to the BBS within 30 days after the written settlement agreement.

- BPC Section 803(c) requires the clerk of the court to report, within 10 days after judgment made by the court in California, any person who holds a license or certificate from the BBS who has committed a crime or is liable for any death or personal injury resulting from a judgment for an amount in excess of \$30,000 caused by his or negligence, error or omission in practice or by rendering of unauthorized professional services.
- BPC Section 803.5 requires a district attorney, city attorney or other prosecuting agency to report any filing against a licensee of felony charges and the clerk of the court must report a conviction within 48 hours.
- BPC Section 805(b) requires the chief of staff, chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic to file an 805 report within 15 days after the effective date which any of the following occurs as a result of an action taken by the peer review body of a LMFT, LCSW, or LPCC: 1) the licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason; 2) the licentiate's membership, staff privileges, or employment is terminated or revoked for medical disciplinary cause or reason; or, 3) restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.
- Penal Code Section 11105.2 establishes a protocol whereby the DOJ reports to the BBS whenever BBS-applicants, registrants or licensees are arrested or convicted of crimes. In such instances, the DOJ notifies the BBS of the identity of the arrested or convicted applicant, registrant or licensee in addition to specific information concerning the arrest or conviction.

Additionally, registrants and licensees are required to disclose at the time of renewal all convictions since their last renewal.

BPC Sections 4990.32 and 4982.05 specify that an accusation must be filed within three-years from the date the BBS discovers the alleged act or violation that is the basis for disciplinary action or within seven-years from when the alleged incident occurred, whichever occurs first. Cases regarding procurement of a license by fraud or misrepresentation are not subject to those same timeframe restrictions

Accusations regarding alleged sexual misconduct must be filed within three-years after the BBS discovers the alleged act or omission or within ten-years, whichever occurs first. In cases involving a minor patient, the seven and ten year limitation is tolled until the child reaches 18 years of age.

In the last three years, the BBS reported that it has only lost jurisdiction in one case, due to the limitation period. As a result, the BBS reported that it has implemented monitoring procedures to ensure that the statute of limitation deadline is identified and cases are monitored closely, including those cases which are sent to the AG.

## **Unlicensed Activity**

Unless specifically exempted by statute, anyone practicing as a LMFT, LPCC, LCSW, or LEP must meet specified education, examination and experience requirements to become licensed to practice in California. The BBS reported that any complaint received by the BBS related to unlicensed activity is investigated. Investigations resulting in the confirmation of unlicensed activity may result either in the BBS issuing a citation and fine up to \$5,000 to the unlicensed individual, or referring the case to the AG or the local district attorney's office for the appropriate action.

## **Cite and Fine Authority**

Cite and fine orders provide an alternative mechanism for the BBS to take action against licensed or unlicensed individuals.

The BBS utilizes its cite and fine authority if an investigation substantiates a violation of the BBS's statutes and regulations. According to the BBS, citations and fines are issued for violations related to unlicensed practice, practicing with an expired license, record keeping or advertising violations, or failure to provide treatment records in accordance with the law.

Additionally, Title 16 CCR, Section 1886 specifies that the EO is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a LMFT, LEP, LCSW, LPCC, MFT Intern, ACSW, or PCC intern of the statutes and regulations enforced by the BBS.

The five most common violations where citations are issued are as follows:

- Misrepresentation of the type or status of a license or registration held.
- Misrepresentation of the completion of CE requirements.
- Failure to complete specified CE requirements.
- Failure to maintain patient confidentiality.
- Providing services for which licensure is required.

An individual to whom a citation has been issued can appeal their case at an informal office conference. An individual may be present alone, present with counsel, or be represented by counsel. Since the BBS's last sunset review, the BBS has averaged six informal office conferences each year; during the same time period the BBS received six requests for an administrative hearing to appeal a citation and fine.

Cite and fine orders are not considered formal disciplinary actions, but are public record. A licensee or registrant who fails to pay the fine cannot renew his or her license or registration until the fine is paid in full.

The average fine pre-appeal is \$1,730 and the average fine post-appeal is \$1,042.

## **Franchise Tax Board Intercept Program**

The BBS utilizes the Franchise Tax Board Intercept Program which allows tax refunds to be intercepted as payment for any outstanding fines. The BBS reported that many uncollected fines are a result of unlicensed activity and the BBS has limited information to pursue collection.

## **Cost Recovery**

Pursuant to BPC Section 125.3, the BBS is authorized to seek reimbursement from a licensee who has been disciplined through the administrative process. Reimbursement may include the cost for the investigation and prosecution of a case. The BBS seeks cost recovery regardless of whether a case is settled by stipulation or proceeds to an administrative hearing.

The BBS reported that probationers are afforded a payment schedule to satisfy a cost recovery order. However, cost recovery is a condition of probation. Non-compliance with this condition may result in the case being returned to the AG to seek revocation of a license or extend the term of probation until the cost recovery is made in full.

According to the BBS, cost recovery is not always collected in disciplinary cases that resulted in the surrender of a license. Often, one of the terms in the final order accepting the license surrender requires that the cost recovery must be paid in full, if the individual were to reapply for licensure. Often times, the individual does not reapply and the BBS does not obtain cost recovery.

The BBS seeks cost recovery in every formal disciplinary case, although an Administrative Law Judge (ALJ) may reduce the amount of cost recovery payable to the BBS.

## **Restitution**

Pursuant to Government Code (GC) Section 11519, the BBS may impose a probation term requiring restitution. In cases regarding violations involving economic exploitation or fraud, restitution is a necessary term of probation. The BBS may require that restitution be ordered in cases regarding Medi-Cal or other insurance fraud. In addition, restitution would be ordered in cases where a patient paid for services that were never rendered or the treatment or service was determined to be negligent. According to the BBS, restitution is not commonly ordered.

## **Public and Licensee Information and Access**

According to the BBS, its website is actively updated to provide information to its licensing population and the public regarding board-related activities and to provide consumers with information about licensees. The BBS publishes on its website its annual meeting calendar prior to its August meeting. When possible, the BBS provides access to its board meetings via webcast, and all prior webcasts of meetings are available on the website as well.

The scope and practice of each license type (i.e. LMFTs, LCSWs, LEPs, and LPCCs); along with information about licensure requirements are also available.

Licensure status verification is available through the BreZE system. In addition, the BBS's website provides information about licensure requirements including education, completion of supervised work experience, and passage of the required examinations.

### **Additional Background Information**

For more detailed information regarding the responsibilities, operation and functions of the BBS, please refer to the BBS's *2015 Sunset Review Report*. The report is available on the Assembly Committee on Business and Profession's website at: <http://abp.assembly.ca.gov/reports>.

### **PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS**

The BBS was last reviewed by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection (Committees) in 2012. During the previous sunset review, the Committees raised 15 issues. Below, are actions which have been taken over the last four years to address the issues. For those issues which were not addressed, and which may still be of concern, they are discussed in the next section, *Current Sunset Review Issues for the Board of Behavioral Sciences*.

According to the BBS, the following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made:

**Recommendation 1:** The BBS should advise the Committee of the current status of their *Strategic Plan* and whether there should be an update of the *Strategic Plan*.

**Board Response:** *In August 2013, the BBS initiated the process to update its Strategic Plan. The current Strategic Plan in effect through 2017 was adopted on November 21, 2013.*

**Recommendation 2:** The BBS should inform the Committee of the current status of their implementation of the law. Specifically, what actions has the BBS taken to implement the 5 "pending" regulations including the regulations which would implement SB 1441 and AB 2699?

**Board Response:** *The BBS has completed the rulemaking process for four of the five regulatory packages referenced in the 2012 Sunset Review. These packages are as follows:*

- *Enforcement Regulations to implement the [DCA] Consumer Protection Enforcement Initiative provisions that do not require statutory authority. These regulations became effective July 1, 2013.*
- *Regulations to Implement Senate Bill 363 (Emmerson) Chapter 384, Statutes of 2011, became effective on October 1, 2013.*
- *Enforcement Regulations to revise the BBS's Disciplinary Guidelines became effective July 1, 2013.*
- *The rulemaking package to implement Senate Bill 1441 (Ridley-Thomas) Chapter 548, Statutes of 2008, was approved by the Secretary of State on June 23, 2015 and took effect on October 1, 2015.*

*The fifth regulatory package, the Examination Restructure Regulations, was withdrawn in May 2013, as staff learned that the implementation date conflicted with the implementation of the BreZE*

database system. Therefore, implementation of the BBS's examination restructure was delayed until January 1, 2016.

On November 14, 2014, the Examination Restructure rulemaking package was published in the California Regulatory Notice Register. The public hearing was held on December 29, 2014, and the 45-day public comment period ended. In December 2015 OAL did not approve the package citing a need for more clarity. The package was resubmitted with a 15 day comment period. OAL subsequently approved this package on December 30, 2015.

The BBS has not proposed a rulemaking package to implement the provisions of Assembly Bill 2699(Bass) Chapter 270, Statutes of 2010. That bill provided exemptions for licensees participating in Sponsored Free Health Care Events. These events often provide free medical, dental, or eye care services and utilize the services of state licensees or perhaps, licensees from other states.

Mental health services are not offered at these events. Attendees at these events may seek information regarding available resources for their current situation. Although a licensee may have this information, providing the information does not require licensure. Therefore, the BBS did not propose regulations to implement AB 2699. Furthermore, the BBS has not received a request for a licensure exemption for attendance at one of these events.

**Recommendation 3:** The BBS should provide an update to the Committee on the current status of the LPCC category including information about training programs, licensed LPCCs and any challenges to implementing this new license category. The BBS should also indicate if any legislation needs to be proposed in order to help the BBS more effectively oversee this facet of the profession and serve the professional interests of licensees.

**Board Response:** *The BBS faced multiple challenges to implement this new licensure program: limited resources, hiring constraints; and 15 months to develop the infrastructure necessary for a new program. Despite these challenges and through the extraordinary efforts of existing BBS staff, the LPCC program was established.*

Since the last review, the LPCC Grandparent application deadline ended on December 31, 2011. Qualified applicants who applied using this pathway and completed the licensure process are now licensed. With the end of the LPCC Grandparent pathway, all applicants must apply using the traditional pathway to licensure. As of June 30, 2015, there are 1,260 LPCCs and 1,102 LPCC Interns.

The BBS continues its work to refine the LPCC program through regulation and legislative proposals. These proposals either clearly define a statutory requirement or revise existing statutes to remove unnecessary barriers to licensure.

**Recommendation 4:** The BBS should provide an update to the Committee on the current status of the use of the NBCC licensing examination for LPCCs.

**Board Response:** *The BBS continues to use the National Clinical Mental Health Counseling Examination (NCMHCE) to license LPCCs in California. This national examination is offered by the National Board of Certified Counselors (NBCC). The use of this national examination for licensure in California provides the opportunity for licensure portability for not only California licensees; but also for LPCC licensees from other states who wish to practice in California.*

*The BBS has not experienced any significant challenges to use this examination. Exam candidates schedule their examinations directly with NBCC after the BBS has approved their application for the examination. Score reports and statistics from NBCC are provided in a timely manner. Additionally, NBCC resolves testing concerns quickly and ensures all candidates requesting testing accommodations pursuant to the ADA are provided with the appropriate accommodation.*

**Recommendation 5:** The BBS should provide rationale to explain why they do not utilize a national data bank to check the background of applicants for licensure.

**Board Response:** *The Healthcare Integrity and Protection Databank is the national databank relating to disciplinary boards. The accuracy, completeness, and timeliness of the information are dependent upon states and other required reporters fulfilling their statutory duty to report. A recent review of the national databank website revealed that not all 50 states are reporting. A fee per query is required to access this information. The fee is processed whether or not the query is accurately submitted or not.*

*In lieu of using the national databank, the BBS verifies out-of-state applicant's licensure status through the state regulatory boards in which the applicant is licensed. This verification process also provides disciplinary history, if any exists. Additionally, the BBS requires all applicants to submit fingerprints and receive a criminal background clearance prior to issuing a license or registration. Both California records DOJ and the FBI databases are checked.*

*Combined, these two requirements for out-of-state applicants provide the BBS with reliable information to make decisions about an individual's application.*

*The BBS may consider using the national databank as an adjunct to its existing process in the future. However, the limitations of the databank and the associated fees should be evaluated to determine what additional benefit the BBS gains by using this service.*

**Recommendation 6:** The BBS should provide updated data reflecting the current timeframe for issuing licenses and outline a plan to meet the performance targets outlined by the BBS.

**Board Response:** *As previously discussed, due to the efforts of the additional staff received in FY 2014/2015 and temporary staff, the BBS has eliminated its application backlog. Processing times are now reasonable. Examination eligibility and PCC Intern applications are processed within 60 days. All other applications are processed within less than 30 days.*

**Recommendation 7:** Even though the BBS has assured that NARTH has been removed from the list of approved CE Providers, and would have to apply for a new initial approval in order to become a CE Provider, the BBS should assure that it has sufficient authority to review the course content of both initial and renewal provider applications, and to deny the approval or renewal of those applicants who offer courses which teach inappropriate methods or practices. The BBS should report to the Committee its current assessment of changes that may need to be made to the requirements for CE Providers, and advise the Committee on any legislative changes that should be made. The BBS should further work with the stakeholders in the profession and in the Legislature to make the appropriate procedural, regulatory or legislative changes to its CE program.

**Board Response:** *In response to the concerns regarding the BBS's limitations under its current CE program, the BBS established the CE Review Committee in November of 2011. During 2012, the CE*

*Review Committee conducted a series of meetings with stakeholders and interested parties to assess the BBS's current CE program and to develop recommendations to improve the BBS's CE program.*

*The review encompassed researching various CE and accreditation models throughout the state and country. The CE Review Committee members, stakeholders, and interested parties were afforded the opportunity to provide comments about the current program and the proposed changes. The work of the CE Review Committee was completed in late 2012, and the recommendations to revise the BBS's program were presented to board members for approval in 2013.*

*The CE Review Committee recommended significant changes to the BBS's program. Specifically, the CE Review Committee recommended ceasing the BBS's provider approval program. The CE Review Committee further recommended that licensees instead be required to obtain CE from BBS-recognized approval agencies (national entities with established CE programs) or BBS-recognized providers such as professional associations.*

*On February 28, 2013, the BBS approved the proposed revisions to the program and directed staff to initiate the rulemaking process. On September 16, 2014, the OAL approved the changes which became effective on January 1, 2015.*

**Recommendation 8:** The BBS should report the current status of vacancies and newly hired staff to the Committee. The BBS should review the nature of the remaining vacancies and report to the Committee its plan to fill the vacancies.

**Board Response:** *The vacancies identified in the 2012 Sunset Review Report were a result of the BBS receiving new staff positions at the same time a hiring freeze was in effect. The lifting of the hiring freeze allowed the BBS to fill vacancies in a timely manner. Since the 2012 Sunset Review, the BBS has experienced relatively little turnover.*

**Recommendation 9:** The BBS should review the nature of the vacancies in the licensing and cashiering unit and report to the Committee its efforts to hire staff. The BBS should outline the plan to improve customer satisfaction with staff and with the Website in the interim. The BBS should also provide suggestions about how the Committee might assist the BBS in operating at its full capacity thereby providing good customer service.

**Board Response:** *In 2012, the BBS began to see an improvement in its overall customer satisfaction rating. This trend continued in 2013. The improvement was attributed to the BBS's ability to fill its vacancies and improve processing times. The BBS discontinued the use of its survey in 2013 due to declining response rates. The BBS is developing a new customer survey which will be implemented in the second quarter of 2016.*

**Recommendation 10:** The BBS should detail the steps involved in reviewing the enforcement program and advise the Committee of the "duplicative and obsolete" processes that were eliminated. Have the changes made as a result of the enforcement program review resulted in any positive outcomes e.g. decreased work load and/or decreased consumer complaints? Also, what is the BBS's plan for continuing to handle the increased workload?

**Board Response:** *Following the 2010 review of its Enforcement Program, the BBS implemented several procedural changes to improve and increase efficiency. Some of these procedural changes included elimination of duplicate data entry and eliminating multiple reviews of non-jurisdictional cases prior to closing.*

*Additionally, the BBS received one manager position and four staff positions in FY 2014/15 for its Enforcement Program. The new positions allowed the BBS to reorganize the Enforcement Unit to provide consistent and ongoing oversight to the Enforcement Staff. These additional resources have allowed the BBS to keep pace with the increasing workload.*

**Recommendation 11:** The BBS should provide the Committee with an explanation of why the Board is not spending all funds under its authority.

**Board Response:** *The under-spending of BBS funds was a result of numerous factors; specifically, the Executive Orders to reduce spending, furloughs, staff vacancies, hiring freezes, and the delayed implementation of BreEZe. These unique events in combination led to the large reversions in the past four FYs.*

**Recommendation 12:** The Committee requests that the BBS provide an update about the status of the loans and when the funds are projected to be returned. Has the BBS received any report from the Department of Finance regarding the repayment of the loans?

**Board Response:** *The BBS received a \$1.4 million loan repayment in fiscal years 2012/13 and 2013/14. The BBS is scheduled to receive the following loan repayments; \$1 million (FY 2014/15), \$1.2 million (FY 2015/16), and \$2.4 million (FY 2016/17) for a total repayment of \$6 million. Should the BBS receive all of the scheduled loan repayments the BBS will have an outstanding loan balance of \$6.3 million to the GF.*

**Recommendation 13:** The BBS should utilize webcasting at future Board meetings in order to allow the public the best access to meeting content and to stay apprised of the activities of the BBS and trends in the professions.

**Board Response:** *The BBS concurs with the Committee's 2012 recommendation. Since February 2012, the BBS has webcasted all quarterly BBS meetings with the exception of the May 16-17, 2012 meeting. Additionally, the BBS decided to webcast all Supervision Committee meetings. Committee meetings are not typically webcasted. However, due to the nature of the Supervision Committee's work, the BBS wanted to ensure all stakeholders and interested parties throughout California were aware of the discussions and had the opportunity to comment.*

**Recommendation 14:** The BBS should update the Committee about the current status of their implementation of BreEZe. What have the challenges of implementing the system been? What are the costs of implementing this system? Is the cost of BreEZe consistent with what the BBS was told the project would cost?

**Board Response:** *BreEZe was released in October 2013. The initial days of BreEZe were relatively uneventful for the BBS and BBS staff. Since the release, BBS staff has identified "fixes" in the BreEZe system that would benefit BBS processes and reporting capabilities. Yet, none of the requested "fixes" adversely affect BBS operations.*

*In November 2014, the BBS implemented the online renewal feature. At the August 2015 Board Meeting, staff reported that from April 1, 2015 through June 30, 2015, 27% of the renewal applications were completed using the online renewal feature. As of October 1, 2015, licensees and registrants are now able to update their address and request duplicate or replacement certificates online. The BBS plans to add additional online features in future.*



**Recommendation 15:** Recommend that the LCSW, LMFT, LEP and LPCC professions and registration of ASW, MFT Interns, PCC Interns and Continuing Education Providers continue to be regulated by the current the BBS in order to protect the interests of consumers and be reviewed once again in four years.

**Board Response:** *The BBS concurs with the Committee's recommendations and comments.*

### **Major Changes Since the BBS's Last Sunset Review**

- Increase of licensing population.
- Received authority through a Budget Change Proposal (BCP) to hire six new staff.
- Increased the board member composition by one person, to include a LPCC member.
- Adopted the 2014-2017 Strategic Plan.

### **CURRENT SUNSET REVIEW ISSUES FOR THE BOARD OF BEHAVIORAL SCIENCES**

The following are unresolved issues pertaining to the BBS, or those which were not previously addressed by the Committees, and other areas of concern for the Committees to consider, along with background information concerning the particular issue. There are also recommendations the Committee staff has made regarding particular issues or problem areas which need to be addressed. The BBS and other interested parties, including the professions, have been provided with this *Background Paper* and can respond to the issues presented and the recommendations of staff.

#### **BUDGET ISSUES**

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#### **ISSUE #1: Does the BBS have the funds to hire additional staff as requested in its FY2016/17 Budget Change Proposal?**

**Background:** The BBS projected to end FY 2015/16 with a reserve balance of approximately \$5 million which equates to 6.1 months and estimates ending FY 2016/17 with a reserve of approximately \$10 million which equates to 11.7 months. Since FY 2011/12, the BBS reported that it has seen a steady increase in its reserve balance, even with an outstanding balance on loans to the GF. For FY 2016/17, the BBS is "requesting special fund expenditure authorization in the amount of \$557,000 in FY 2016/17 and \$533,000 ongoing for 8.0 positions in the Licensing and Examination Units, the [BBS] is also requesting an increase in time base for a half time (.5) position in the Licensing Unit."

The BBS states that approval of this request will provide the BBS with sufficient resources to address the ongoing and steady increase of applications, help reduce and maintain processing times, request testing accommodations and avoid overall serious delays in the license and examination unit.

The BBS reported in its BCP request for 2016/17 that as of June 1, 2015, the BBS has over 102,000 licensees and registrants and that its populations has increased 29% over the last six years, and 16% in the last four years (2012/13). The increased licensing population impacts many aspects of the BBS including the volume of mail, applications, requests for address, name, and other administrative changes, number of files, certification of license request, along with phone and email requests. Additionally, the examination restructure is likely to increase the number of examination-related inquires and applications the BBS will need to address on an on-going basis.

In addition to the reason specified above, the BBS also notes in the 2016/17 BCP that the first LPCC graduates from California schools began in the spring of 2015. BBS estimates that LPCC graduates from California schools will increase PCC intern applications by approximately 1,500 to 2,000. Additionally, the BBS reported that increased populations in its other licensing categories will increase overall workload for the BBS.

***Staff Recommendation:*** *The BBS should provide the Committees with an update on its fund condition and provide an explanation for the increase in its long term fund balance. In addition, the BBS should update the Committees as to whether or not it anticipates changes to the timeframe for the repayment of loans to the GF.*

## LICENSING ISSUES

**ISSUE #2:** *How will implementation of the examination restructure impact licensing and application processing? Does the BBS anticipate delays?*

**Background:** As a result of SB 704 (Negrete McLeod), Chapter 387, Statutes of 2011, the BBS implemented the "examination restructure" for applicants seeking licensure as a LMFT, LCSW, and an LPCC. SB 704 required that applicants for licensure be required to take and pass two examinations: 1) a California law and ethics examination; and, 2) a clinical examination, in place of the former clinical vignette and written examinations. SB 704 also required registered interns and associates (those who have not satisfied the supervised hours required for licensure) to take and pass the California law and ethics examination annually in order to renew their registration with the BBS. Part of the provisions of SB 704 provided for a delayed implementation for the examination restructure to take effect. As a result of the magnitude of the restructure, the BBS requested approval from the Legislature to delay the original implementation of the examination restructure in 2013 through two different bills, SB 1575 (Senate Business, Professions, and Economic Development Committee) Chapter 799, Statutes of 2012, extended the examination restructure implementation date from January 1, 2013, to January 1, 2014, and SB 821 (Senate Business, Professions, and Economic Development Committee) Chapter 473, Statutes of 2013, extended the implementation date from January 1, 2014 to January 1, 2016.

### **Implementation of the Examination Restructure**

Effective January 1, 2016, all applicants for licensure are required to take and pass a California law and ethics examination and a clinical examination, and all registrants are required to take and pass the California law and ethics examination at least once a year in order to renew their registration. According to the BBS, over 34,000 registrants will now be required to submit an application to take the California law and ethics examination annually.

For those registrants who do not pass the California law and ethics examination, they will be permitted to retake the examination every 90 days, up to four times per year. The BBS estimates that it will receive over 61,000 applications (initial examination application and retake applications) within this first year of the new examination restructure and over 31,000 applications ongoing.

As a result of the implementation of the examination restructure the BBS's anticipates an increased workload in the licensing and enforcement area.

Through a BCP in FY 2014/15, the BBS requested and was approved for additional staff. The BBS acquired an additional 7.5 positions (one of which was a two-year limited term position).

In addition, the BBS's submitted a BCP for FY 2015/16, which was also approved. It increased the time base for two half-time positions and added two new positions for the examination restructure, one of which is a two-year limited term position.

As a result of the examination restructure, the BBS has submitted another BCP for FY 2016/17 to request an additional eight staff positions (six of those positions are currently classified as temporary, seasonal or limited term staff). The BBS reported in its BCP, "Without the requested staff resources, the [BBS's] processing times will dramatically increase due to the implementation of the [BBS's] Examination Restructure and the increasing licensee and registrant population."

***Staff Recommendation:*** *The BBS should explain to the Committees what impacts it anticipates this year and future years as result of the examination restructure. In addition, the BBS should explain to the Committees what, if any, plans or procedures it has in place if its current BCP request for FY 2016/17 is partially approved or not approved at all. How does the BBS plan to address potential backlogs?*

***ISSUE #3: Supervised Hours Required for Licensure. How does the BBS verify that individuals have completed the required supervised hours? How does the BBS verify that licensed supervisors are not supervising or employing more than three BBS-registered interns or associates at one time? Has the BBS received complaints from registered interns and associates regarding this issue?***

***Background:*** As part of the requirements for licensure, applicants for a LMFT, LCSW, and LPCC are required to obtain at least 3,000 hours of supervised work experience, as specified by each licensing practice act. BPC Sections 4980.45, 4996.24, and 4999.455 specify that a licensed professional (LMFT, LCSW, or LPCC) in private practice cannot supervise or employ, at any one time, more than a total of three individuals registered with the BBS as a MFT intern, PCC intern, or an ACSW. Title 16 CCR Sections 1821, 1833.1, and 1870 specify supervisors' responsibility. In order to be qualified as a LMFT, LCSW, or LPCC supervisor, the licensed professional is required to be licensed for two-years in good standing with the BBS, meet specified education requirements, and have sufficient experience, training, and education in the area of clinical supervision to competently supervise associates or interns. In addition, current regulations require both trainees and supervisors to have some level of responsibility in ensuring the record of supervised hours are signed and verified accurately and submitted to the BBS as required under specified sections of the BPC. It is unclear under current law how the BBS enforces the provision of law prohibiting a supervisor from employing or supervising, at any one time, more than three individuals registered with the BBS as an associate or an intern.

In addition, the BBS reported that it conducted two surveys related to its comprehensive review of registrant supervision. The Supervisee Survey was designed to collect demographic information and to determine the types and quality of supervision that registrants are receiving. The Supervisor Survey was designed to collect demographic information and gather opinions regarding current supervisory requirements. The BBS reported there were 527 responses to the Supervisee Survey and 427 responses to the Supervisor Survey. While only a fraction of the BBS's total licensing population responded, the diverse responses to the questions warrant further discussion.

Responses to a number of the questions on both of the surveys expressed participant concerns with the current supervisor program including: the ability for registrants or interns to find a qualified supervisor in the appropriate setting; the ability to complete required hours of supervision within the timeframe permitted; the ability to provide and receive feedback from both supervisor and supervisee; inadequate supervisor preparation; and the types of facilities where supervision is available.

Although the majority of supervisee respondents were able to obtain the required supervised experience hours needed for licensure, 15% of respondents had to register for additional registrations, (2 or 3 times) citing their inability to gain hours in the allotted amount of time, working part time while trying to obtain hours and finding the appropriate supervisor with the requirements to sign-off.

Survey responses also indicated that the majority of supervisors 69% were LMFTs, while only 18% were LCSW's and only 2% were LPCCs. Although LMFTs account for the majority of BBS-licensees, there is an upward trend in the number LCSW licensees in California. As noted in the BBS's *2015 Sunset Review Report*, the licensing population of LCSW's has shown the greatest increase in its licensing population since 2012. The survey results would suggest that there must be a shortage in LCSW supervisors available to the increasing license-seeking population.

One of the survey questions inquired as to whether or not a supervisor felt they were adequately prepared to be a supervisor, while 77% responded yes, 22% of available supervisors responded no. Although 22% represents a minority of the supervisor population, the reasons provided for being underprepared suggest potential issues with the current supervisor requirements which may need further exploration by the BBS. One respondent replied, "other than taking the required [CEs], there was nothing in place to teach me the hands on skills on providing direct supervision." Another replied, "even though I took the course on supervision, it wasn't geared for the populations nor the type of cases my agency saw." Lastly, one respondent stated, "the classroom or workshop provides great fundamentals, theory and opportunity to network. However, it does not adequately prepare for real life experiences. Further, of the survey questions asked if supervisors believe that the six hours of supervision training or coursework is sufficient for a new supervisor; 70% responded "no".

Although a fraction of the BBS's licensed or registered populations participated in the survey, the results provide important feedback for the BBS to review and encourage future dialogue about the current supervisor program and requirements.

**Staff Recommendation:** *The BBS should explain to the Committees its role in ensuring that supervisors are following the current law regarding the number of associates or interns they are authorized to supervise. In addition, the BBS should explain to the Committees, the role of the Supervision Committee and how the committee can help to address some of the concerns and issues raised during the survey process.*

## **ENFORCEMENT ISSUES**

**ISSUE #4:** *What is the BBS doing to meet Performance Measures set as a result of the Consumer Protection Enforcement Initiative (CPEI)?*

**Background:** Targets and expectations for the enforcement program were set in 2010 by the CPEI. The specific goal of the CPEI was to reduce the average length of time it takes health care boards to take formal disciplinary action from three years to 12 to 18 months. Key components of the CPEI

include administrative changes, ensuring the regulatory entities' enforcement programs are sufficiently staffed and have adequate technology to conduct their regulatory functions, and establishing and publishing precise performance targets. The CPEI introduced Performance Measures (PM) and set target cycle times for every stage of the enforcement process in an effort to streamline the enforcement process, and reduce backlogs.

The BBS reported in its *2015 Sunset Review Report* that it is currently meeting all of its performance targets with the exception of PM 3 (cycle time for cases not resulting in formal discipline) and **PM 4** (cycle time for cases resulting in formal discipline). The BBS reported that it has implemented changes to its internal procedures that will assist the BBS in meeting the outstanding PMs.

DCA established PM of 540 days to close cases resulting in formal discipline (PM 4); currently the BBS is taking 570 days to close those cases. For those cases which do not result in formal discipline, PM 3 targets 80 days to close a case; the BBS is taking 100 days. The BBS reported in its *2015 Sunset Review Report* that achieving PM 4 depends upon the resources available from outside agencies including the AG and the OAL; however, the BBS reported that it continues to review its internal process in an effort to meet PM 4.

The BBS reported that it receives on average over 2,000 consumer complaints and criminal conviction notifications annually. The BBS sees an increase in its enforcement workload consistent with the BBS's increasing licensee population. In FY 2014/15, the BBS acquired additional enforcement staff and reorganized staff to address enforcement-related issues.

**Staff Recommendation:** *The BBS should inform the Committees about the viable solutions to meeting its performance targets? When does the BBS anticipate meeting those targets?*

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**ISSUE #5:** *Why has the number of BBS-issued citations decreased significantly in the last two FYs?*

**Background:** BPC Section 125.9 authorizes the BBS to issue citations and fines for certain types of violations. Although citations are not considered formal disciplinary actions, they are a matter of public record. 16 CCR Section 1886 specifies that the EO of the BBS is authorized to determine when and against whom a citation will be issued, and to issue citations containing orders of abatement and fines for violations of the statutes and regulations enforced by the BBS.

The BBS reported that the five most common violations for which citations are issued include, misrepresentation as to the type or status of a license or registration held, misrepresentation regarding the completion of CE requirements, failure to complete specific CE coursework requirements, failure to maintain patient confidentiality, and providing services for which a license is required. Those citations issued for unlicensed practice are more challenging for the BBS to collect as the BBS has limited information about the individual (they are not licensed and their information is not on file with the BBS) and there is no recourse if they choose not to pay. BBS licensees who do not pay a citation cannot renew a license until the fine is paid in full.

The table below reflects the number of citations issued by the BBS for the last four FYs. The table shows that the number of citations issued by the BBS has steadily decreased since FY 2012/13. However, the BBS reported in *2015 Sunset Review Report*, that the BBS's overall enforcement workload has continued to increase. Since the BBS's 2012 sunset review, the receipt of consumer

complaints and criminal conviction notifications increased five percent and eight percent, respectively. However, the number of citations issued has steadily decreased, as referenced in the table below.

| <b>CITATION AND FINE</b>      |                   |                   |                   |                   |
|-------------------------------|-------------------|-------------------|-------------------|-------------------|
|                               | <b>FY 2011/12</b> | <b>FY 2012/13</b> | <b>FY 2013/14</b> | <b>FY 2014/15</b> |
| Citations Issued              | 92                | 105               | 39                | 24                |
| Average Days to Complete      | 177               | 147               | 279               | 375               |
| Amount of Fines Assessed      | \$111,850         | \$209,450         | \$46,100          | \$41,500          |
| Reduced, Withdrawn, Dismissed | \$15,000          | \$41,025          | \$16,500          | \$37,800          |
| Amount Collected              | \$71,244          | \$28,650          | \$20,850          | \$17,150          |

*\*Note: This table was taken from the BBS's 2015 Sunset Review Report*

**Staff Recommendation:** *The BBS should advise the Committees about why there has been such a decrease in the number of citations issued by the BBS during the last two FYs, especially given that the BBS has experienced an increase in its enforcement workload.*

**ISSUE #6: Why does the BBS's overall enforcement workload continue to increase?**

**Background:** During the BBS's 2012 sunset review, it was reported in the *Background Paper* that the BBS's enforcement-related workload had increased 210% since its 2004 Sunset Review. At that time, Committee staff requested that the BBS detail the steps involved in reviewing the enforcement program, among other requests. In the BBS's *2015 Sunset Review Report*, it stated that it had received one manager position and four staff positions in FY 2014/15 for its Enforcement Program. According to the BBS, the new positions allowed the BBS to reorganize the Enforcement Unit to provide consistent and ongoing oversight to the Enforcement Staff. These additional resources have allowed the BBS to keep pace with the increasing workload.

Currently, the BBS reported that on average it receives over 2,000 consumer complaints and criminal conviction notifications each year and that its increased enforcement workload coincides with the increased licensing population. The BBS supports evidence of the increase by the number of applications denied, number of AG cases initiated, the number of Accusations and Statement of Issues filed, and the number of new probationers each year. Although the BBS reported that it is working to address enforcement-related workload issues through staffing and other means, it is unclear what the BBS is doing to ensure its licensees are not subject to enforcement-related delays, and ensuring consumer protection.

The BBS receives complaints from a variety of sources including the public, professional groups and "other sources" such as subsequent arrest notifications, internal, other DCA entities and anonymous. The following table identifies complaints from "other sources" as the highest number of complaints received annually.

| Enforcement Statistics       |              |              |              |              |
|------------------------------|--------------|--------------|--------------|--------------|
|                              | FY 2011/12   | FY 2012/13   | FY 2013/14   | FY 2014/15   |
| <b>COMPLAINT</b>             |              |              |              |              |
| <b>Intake</b>                |              |              |              |              |
| Received                     | 986          | 991          | 1,243        | 1,018        |
| Closed                       | 0            | 1            | 65           | 346          |
| Referred to INV              | 949          | 992          | 1,206        | 642          |
| Average Time to Close (days) | 5            | 7            | 14           | 6            |
| Pending (close of FY)        | 37           | 35           | 19           | 9            |
| <b>Source of Complaint</b>   |              |              |              |              |
| Public                       | 773          | 813          | 672          | 751          |
| Licensee Professional Groups | 4            | 8            | 18           | 8            |
| Governmental Agencies        | 7            | 3            | 7            | 12           |
| <b>Other</b>                 | <b>1,168</b> | <b>1,241</b> | <b>1,260</b> | <b>1,338</b> |

*\*Note: This table was taken from the BBS's 2015 Sunset Review Report*

The BBS reported that it has one standing committee and utilizes Ad-Hoc committees as necessary. Currently, the BBS does not have a committee dedicated to enforcement-related matters. In 2006/07, the BBS had a *Consumer Protection Committee*, and in 2010/11, the BBS had a *Compliance and Enforcement Committee*. As mentioned above the BBS has seen an increase in enforcement related issues, yet there is not currently an enforcement related committee to help address the increase in enforcement-related issues.

In addition, BPC Section 4990.10 authorizes the BBS to conduct research in, and make studies of problems involved in the maintaining of professional standards among those engaged in the profession it licenses and publish its recommendations. As reported by the BBS, this is accomplished through legislative and regulatory proposals and developing outreach materials for consumers as well as licensees and registrants.

**Staff Recommendation:** *Given that the BBS has identified an increase in its enforcement-related workload, the Committees may wish to consider whether or not re-establishing an advisory committee dedicated to enforcement-related matters would be beneficial. An enforcement-related advisory committee may help identify those areas where the BBS can improve its enforcement program to better serve licensees and consumers. In addition, the BBS should update the Committees on whether or not it has utilized the authority granted in BPC Section 4990.10 to help maintain professional standards.*

## TECHNOLOGY ISSUES

### **ISSUE #7:** *How is the BreZE database system working for the BBS?*

**Background:** The "BreZE Project" was designed to provide the DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreZE system was engineered to replace outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

According to the original project plan, BreZE was to be implemented in three releases. The budget change proposal that initially funded BreZE indicated the first release was scheduled for FY 2012/13, and the final release was projected to be complete in FY 2013/14.

In October 2013, after a one-year implementation delay, the first ten regulatory entities, including the BBS, were transitioned to Release 1 of the BreEZe system. As a result of significant cost and implementation concerns, among others, the DCA reported in late 2014 that the current vendor contract is no longer in place, and the regulatory entities that were scheduled for Release 3 will not transition to the current BreEZe system.

The BBS reported that the transition to BreEZe was challenging, but not impossible. Prior to the implementation of the BreEZe system, staff attended training through DCA SOLID and “in-house” training to become familiar with the new data system. The “in-house” training was provided to assist staff with their specific job duties.

To manage the transition to BreEZe, BBS management staff established a process during those early days that allowed staff to identify possible issues to existing business procedures due to the data system’s design and functionality. This process allowed staff and management to evaluate the issue, determine a possible solution to the issue, and to consider any impact the solution may have to procedures or the data system, and if appropriate, submit a request for change to DCA’s BreEZe team.

The BBS opted to phase in some of the online features of BreEZe. The BBS determined this strategy was the best method to manage the scope of change for staff and stakeholders. In November 2014, the BBS released the BreEZe online renewal feature. This release was relatively uneventful. The online renewal module has shown daily increasing usage.

Since the initial launch of BreEZe, staff continues to work with the DCA BreEZe team and the vendor to develop and enhance reports for licensing and enforcement purposes. Additionally, the BBS reported that it continues its work to identify issues in the data system and submits requests for changes, if appropriate.

Currently BBS staff is working with the DCA BreEZe team to implement the requirements for its examination restructure. This collaboration differs slightly from the work completed to initially implement the BreEZe database system. Specifically, the design plan is being developed by staff and the DCA BreEZe team, but not with the vendor.

The completed design plan has been submitted to the vendor to confirm the viability of the plan, obtain estimates for costs and time required to build the design, and support after the design is implemented. The examination restructure design is a pilot project for the BBS and DCA. However, this collaboration appears to be efficient and does provide some cost savings to the BBS.

***Staff Recommendation:*** *The BBS should update the Committees about the current status of its implementation of BreEZe. What have been the challenges to implementing this new system? What are the costs of implementing the system, and are there any new costs associated with the project? Is the cost of BreEZe consistent with what the BBS was told the project would cost? Please explain how the BBS staff works with the DCA BreEZe team and the vendor to develop and enhance reports for licensing and enforcement purposes. How does the BBS identify issues in the data system and submit change requests? What is the timeframe for needed updates and do costs impact the ability to move ahead with an update? Does the BBS foresee any maintenance necessary? Additionally, the BBS should inform the Committees about any current or foreseeable challenges associated with updating BreEZe to comply with the examination restructure and the new application processing components.*



## ADMINISTRATIVE ISSUES

### **ISSUE #8: Audits of Continuing Education. Does the BBS have a process to audit continuing education?**

**Background:** Under current law, LMFTs, LCSWs, LEPs and LPCCs are required to obtain CE hours to renew a license. In order to renew a license, a licensee must certify to the BBS, on a designated form, that he or she has completed not less than 36 hours of CE in the topic areas required by each practice act. BPC Sections 4980.54(d), 4989.34(d), 4996.22(b), and 4999.76(b) provide the BBS with the authority to audit the records of the licensees to ensure compliance with the CE requirement.

In the BBS's *2015 Sunset Review Report*, the BBS reported that the number of audits completed in the last four years has been significantly impacted by staffing resources and other high priority issues, which has resulted in the BBS conducting very few CE audits since 2012. The table below reflects the number of audits conducted and the number of audits failed.

| CE Audit Table                      |         |         |         |         |
|-------------------------------------|---------|---------|---------|---------|
|                                     | 2011/12 | 2012/13 | 2013/14 | 2014/15 |
| Audits Performed                    | 131     | 50      | 31      | 0       |
| Fails                               | 23      | 8       | 7       | N/A     |
| Percent of Audits Resulting in Fail | 18%     | 16%     | 23%     | N/A     |

*\*Note: This table was taken from the BBS's 2015 Sunset Review Report*

Current law does not require the BBS to complete a specified number of CE audits annually; the BBS determines the number of audits to be completed.

According to the BBS, in order to conduct a CE audit of a licensee individuals to be audited are randomly required to submit copies of their CE certificates to demonstrate compliance with CE requirements, once submitted, BBS staff will review the certificates to confirm the CE was taken during the renewal period from a valid CE provider. Licensees who fail the CE audit are subject to a citation and fine as specified in 16 CCR Section 1887.1(b), which states that “a licensee who falsifies or makes a material misrepresentation of fact when applying for license renewal or who cannot verify completion of continuing education by producing a record of course completion, upon request by the board, is subject to disciplinary action under BPC Sections 4982(b), 4989.54(b), 4992.3(b), and 4999.90(b) of the Code.” Depending on the severity of the violation, fines for failure to comply with the CE requirements may be levied in an amount up to \$1,200.

**Staff Recommendation:** *LMFTs, LCSWs, LPCCs, and LEPs are required to complete 36 hours of CE in order to renew a license. The BBS recognizes that the number of CE audits has steadily decreased since 2011/12, but noted in its 2015 Sunset Review Report that it anticipates increasing CE audits beginning in 2015. The BBS should provide an update to the Committees on its current efforts to increase the number of annual CE audits.*

### **ISSUE #9: Audits of Continuing Education Providers. Does the BBS need to audit continuing education providers?**

**Background:** Prior to June 1, 2015, the BBS was responsible for the review and approval of CE providers. CE providers were required to submit an application and pay a fee in order to determine if the proposed coursework provided by the program was directly or indirectly related to the practice of

the specified mental health professions. As of FY 2014/15, the BBS reported an active population of 2,414 CE providers.

In 2012, the BBS assembled the CE Review Committee which conducted a comprehensive review of the BBS's CE Program. The CE Review Committee held a series of meetings with stakeholders to discuss improving the quality of continuing education, ensuring the coursework was relevant to the practice of licensees, and ensuring compliance with the legislative intent of CE.

Through the evaluation of existing CE programs available through entities such as the National Association of Social Workers, Association of Social Work Boards, the National Board of Certified Counselors, the National Association of School Psychologists, and the American Psychological Association, the CE Review Committee determined, "the rigor and ongoing evaluation of CE providers and coursework exceeded the BBS's current program. Further, the resources necessary to establish a similar program within the BBS was not viable."

As reported by the BBS, the CE Review Committee and participating stakeholders agreed that ceasing the BBS's current CE provider program would provide higher quality CE to licensees. As a result, the BBS proposed significant changes to its CE program, including no longer approving or disapproving CE providers. These changes became effective January 1, 2015. CE providers who had been approved by the BBS prior to June 1, 2015 will be permitted as CE providers until two-years after the expiration of their most recent renewal or original license with the BBS. Effectively, all BBS-approved CE providers will expire on June 1, 2017.

Instead of directly approving the CE provider, the BBS will recognize specific agencies' CE approval programs. Licensees will be required to acquire education from a CE provider approved by one of the following entities:

- National Association of Social Workers
- Association of Social Work Boards
- National Board of Certified Counselors
- National Association of School Psychologists
- American Psychological Association
- California Association of Marriage and Family Therapists
- California Psychological Association

The BBS's statutes and regulations never provided the authority for the BBS to audit its CE providers. The BBS anticipates that periodic audits of CE providers will be conducted by the BBS recognized approval agencies.

***Staff Recommendation:*** *Given that the BBS is no longer approving CE providers, and has conducted minimal audits of CE requirements for its licensees, the BBS should explain to the Committees its process and or plan for reviewing and updating its list of approved agencies to ensure that those entities are maintaining high standards for CE. In addition, the BBS should update the Committees on how it has helped to inform licensees about the transition.*

## **ISSUE #10: *Customer Service Satisfaction Surveys.***

**Background:** During the BBS's 2012 *Sunset Review*, the BBS's customer satisfaction surveys were raised as an issue. That report showed that the overall satisfaction rating with the services provided by the BBS staff had declined over the prior three years. In its 2015 *Sunset Review Report*, the BBS reported that while its average customer ratings for overall satisfaction and courtesy have improved since FY 2011/12, accessibility has remained low. However, the total number of respondents has decreased, which significantly undermines the validity of the surveys.

The BBS reported that From July 1, 2011 through September 30, 2013, survey responses decreased by 87%. The BBS attributes this to the staffing constraints which the BBS reported it experienced during California's budget crisis.

As the number of respondents decreased, the BBS reported that it became concerned with this trend and questioned the value of the information provided by so few respondents.

The BBS reported that it was using a survey tool that was more than five years old. In 2013, the BBS implemented the BreZE data system and at the same time decided to discontinue the current survey and develop a new survey.

Due to insufficient staff resources and higher priority tasks, the BBS reported that it has not been able to develop a new customer satisfaction survey. However, the BBS reported that it will discuss the new customer survey at its March 2016 board member meeting. The BBS contends that once a survey is approved, implementation will be immediate. The BBS anticipates that the new survey will be available in second quarter of 2016.

**Staff Recommendation:** *The BBS should update the Committees about its current progress in developing a new customer satisfaction survey, and if it still anticipates discussing this issue at its March 2016 board member meeting. The BBS should inform the Committees as to the other pressing issues that have prevented the BBS from focusing on customer service.*

### **EDITS TO THE BBS PRACTICE ACT**

## **ISSUE #11: *Are there minor/non-substantive changes to the BBS's practice act that may improve the BBS's operations?***

**Background:** There may be a number of non-substantive and technical changes to the BBS practice act which may need to be made. The appropriate place for these types of changes to be made is in the Senate Committee on Business, Professions and Economic Development's (BP&ED) annual committee omnibus bills.

**Background:** Since the BBS's last sunset review in 2012, the BBS has sponsored or been impacted by more than 20 pieces of legislation which address all or parts of the BBS's duty, oversight authority, licensing requirements and educational standards, among others. There may be a number of non-substantive and technical changes to the practice acts which the BBS regulates which may need to be made.

Each year, the Senate BP&ED Committee introduces two omnibus bills. One bill contains provisions related to health boards/bureaus and the other bill contains provisions related to non-health

boards/bureaus. The Senate BP&ED Committee staff reviews all proposals, and consults with the Republican caucus staff and Committee member offices to determine the provisions that are suitable for inclusion in the committee omnibus bills. All entities that submit language for consideration are notified of the BP&ED Committee's decision regarding inclusion of the proposed language. Examples of technical clarifications are referenced below.

As a result of numerous statutory changes and implementation delays, code sections can become confusing, contain provisions that are no longer applicable, make references to outdated report requirements, and cross-reference code sections that are no longer relevant. Numerous code sections pertaining to the LMFTs, LCSWs, LEPs and LPCCs have operative dates and inoperative dates which may no longer be applicable. As a result, the statutes regulating LMFTs, LCSWs, LEPs, and LPCCs may need to be updated to reflect recent amendments and provisions which were schedule to repeal.

For example, BPC Section 4999.54 pertains to applicants for licensure as an LPCC who submit an application for licensure between January 1, 2011 and December 31, 2011. This section dealt with grandfathering provisions which are no longer applicable. The appropriate place for these types of changes to be made is in the Senate Committee on Business, Professions and Economic Development's (BP&ED) annual committee omnibus bills.

***Staff Recommendation:*** *The BBS should submit their proposal for any technical changes to its practice act to the Senate BP&ED Committee for possible inclusion in one of its annual committee omnibus bills.*

**CONTINUED REGULATION OF THE PROFESSION BY THE  
CURRENT PROFESSION BY THE BBS**

**ISSUE #12:** *Should the licensing and regulation of the BBS be continued and be regulated by its current membership?*

**Background:** The health and safety of consumers is protected by well-regulated professions. The BBS is charged with protecting the consumer from unprofessional and unsafe licensees. It appears as if the BBS has been an effective, and for the most part efficient, regulatory body for the professions that fall under its purview. However, the BBS needs to continue to work on improving its enforcement program, managing a more effective CE program, maintain high standards for the professions by ensuring active supervisors are not misrepresenting supervised employees and focus on reducing any application backlogs which may result from the fully implemented examination restructure. Given that the BBS has been working to increase staff to help improve efficiency, the BBS should be able to continue to fulfill its mandate, meet performance targets, and continue to protect consumers, the BBS should be granted a four-year extension of its sunset date.

**Staff Recommendation:** *The committee recommends that the LCSW, LMFT, LEP and LPCC professions, and registration of ASW Interns, MFT Interns, and PCC Interns continue to be regulated by the BBS in order to protect the interests of consumers and be reviewed once again in four years.*

April 12, 2016

Senator Jerry Hill, Chair  
Senate Business, Professions and Economic Development Committee  
Assembly Member Rudy Salas, Chair  
Assembly Committee on Business and Professions  
State Capitol Room 2053  
Sacramento, CA 95814

Dear Senator Hill and Assembly Member Salas:

This is in response to the Senate Business, Professions and Economic Development Committee (Committee) request to provide a written response to the Issues and Recommendations raised in the Committee's Background Paper prepared for the Oversight Hearing held on March 14, 2016. I will address the issues in the order presented in the Background Paper.

***Issue #1: Does the BBS have the funds to hire additional staff as requested in its FY 2016/17 Budget Change Proposal?***

Committee Comments:

The BBS should provide the Committees with an update on its fund condition and provide an explanation for the increase in its long term fund balance. In addition, the BBS should update the Committees as to whether or not it anticipates changes to the time frame for the repayment of loans to the GF.

Board Response:

The Board has the funds to hire the additional staff as requested in its FY 2016/17 Budget Change Proposal. Three of the positions requested are new for the Board. The remaining positions have incumbents and are either limited term, temporary, or are staff borrowed from the Department of Consumer Affairs. These 5.5 positions are currently funded by the Board by redirecting resources.

As of February 23, 2016, the Board's fund condition reflects a reserve balance for FY 2015/16 of 5.7 months (\$5,386,000), 9.9 months (\$9,549,000) in FY 2016/17, and 7.4 months in FY 2017/18. These projections reflect three General Fund loan repayments of \$3,600,000 in FY 2015/16 and \$6,300,000 in FY 2016/17 and contribute significantly to the Board's projected reserves. At this time the Board is not aware of any changes to the General Fund loan repayment schedule.

***Issue #2: How will implementation of the examination restructure impact licensing and application processing? Does the BBS anticipate delays?***

Committee Comments:

The BBS should explain to the Committees what impacts it anticipates this year and in future years as result of the examination restructure. In addition, the BBS should explain to the Committees what, if any, plans or procedures it has in place if its current BCP request for FY 2016/17 is partially approved or not approved at all. How does the BBS plan to address potential backlogs?

Board Response:

The Board does not anticipate any unusual delays related to licensing and application processing as a result of the examination restructure. To ensure that the Board maintains reasonable processing times for all applications, the Board requested and received two staff positions in FY 2015/2016 for the examination restructure.

These two positions are dedicated to the examination unit and will process the Law and Ethics examination applications. Further, the Board has requested additional positions for FY 2016/2017. These positions are currently included in the Governor's budget. The three positions will be dedicated to cashiering, mail and phone support, and approving requests for testing accommodations pursuant to the ADA, and will also address the workload created by the examination restructure.

Approval of the Board's request for additional positions in FY 2016/17 ensures that the examination restructure will not adversely impact licensing and application processing. If the Board's request is not approved in full or is only partially approved, the Board is concerned that reasonable processing times may be adversely affected. However, the Board would explore all available options, such as overtime and continued use of temporary staff in an effort to keep pace with its workload.

***Issue #3: Supervised Hours Required for Licensure. How does the BBS verify that individuals have completed the required supervised hours? How does the BBS verify that licensed supervisors are not supervising or employing more than three BBS-registered interns or associates at one time? Has the BBS received complaints from registered interns and associates regarding this issue?***

Committee Comments:

The BBS should explain to the Committees its role in ensuring that supervisors are following the current law regarding the number of associates or interns they are authorized to supervise. In addition, the BBS should explain to the Committees the role of the Supervision Committee and how the committee can help to address some of the concerns and issues raised during the survey process.

Board Response:

Each applicant for licensure must submit an Experience Verification Form to the Board for review and approval. The form is completed by the applicant and the applicant's supervisor, and documents the number of supervised hours gained (clinical and non-clinical), the dates the hours were gained, and the dates of supervision. Board staff reviews the information to ensure compliance with the licensure requirements. If additional information is required, the applicant's weekly log, documenting the supervised hours which is signed by the supervisor, is requested.

The Board does not identify supervisors or their place of employment. Nor does the Board capture any data related to an intern's place of employment. Interns may have several different employment settings and several different supervisors while gaining their supervised hours. Considering the current process of gaining supervised hours and lack of data, the Board is unable to verify the supervisor/intern ratio. To date, the Board has not received a complaint regarding this issue.

The Supervision Committee began working with its stakeholders in 2014 to improve the quality of supervision Board registrants receive, as well as remove unnecessary barriers to gaining supervised work experience hours. To this end, the Board sponsored Senate Bill 620 (Chapter 262, Statutes of 2015) which revised the requirements for gaining supervised work experience hours. This bill became effective on January 1, 2016.

The Supervision Committee continues to work with its stakeholders to address additional concerns regarding supervision that were identified in the informal supervision survey. For example, the committee is working to develop specific criteria to be a supervisor, criteria to continue as a supervisor, evaluating the performance of the intern/registrant, and developing a plan to improve the intern/registrant's performance. The Supervision Committee anticipates proposing its recommendations at the November 2016 Board meeting.

***Issue #4: What is the BBS doing to meet Performance Measures set as a result of the Consumer Protection Enforcement Initiative (CPEI)?***

Committee Comments:

The BBS should inform the Committees about the viable solutions to meeting its performance targets. When does the BBS anticipate meeting those targets?

Board Response:

Overall the Board is consistently meeting the CPEI Performance Measures within its control. Specifically, the Board is meeting Performance Measure 2 (complaint intake) and Performance Measure 3 (average time to complete investigations not referred to AG). For Performance Measure 2, complaint intake, the Board's goal is 5 days. Since the third quarter of FY 14/15, the Board has either met or exceeded that goal. For Performance Measure 3, (investigation time) the Board's goal is 180 days. Since FY 2014/2015, to the end of the first quarter of FY 2015/2016, Board has exceeded this goal ranging from a high of 142 days to a low of 71 days. The Board's first quarter report for FY 2015/2016 reflects the Board's Performance Measure 3 average is 93 days.

Achieving Performance Measure 4 is dependent upon outside entities such as the Office of Attorney General and the Office of Administrative Hearing. The workload and staffing at these entities are not within the Board's control. In an effort to meet Performance Measure 4, the Board has dedicated two staff members to actively monitor all cases referred to the Attorney General's Office for formal discipline. Further, the Board now includes settlement terms, when appropriate, at the time a case is referred to the AG Office. The Board believes these internal changes will be useful in reducing the overall time period to complete the formal discipline process.

***Issue #5: Why has the number of BBS-issued citations decreased significantly in the last two FYs?***

Committee Comments: The BBS should advise the Committees about why there has been such a decrease in the number of citations issued by the BBS during the last two FYs, especially given that the BBS has experienced an increase in its enforcement workload.

Board Response:

The decrease in Board issued citations can be attributed to two factors. First, due to insufficient resources, the Board suspended auditing licensees for compliance with the continuing education requirements. The Board now has a full time staff person to conduct these audits. The Board resumed these audits in January 2016.

Second, the Board's retro-fingerprint project is complete. During this project, all licensees and registrants who had not previously submitted fingerprints to the Board were required to do so. A licensee or registrant who did not comply with the fingerprint requirement was issued a citation and fine.

***Issue #6: Why does the BBS's overall enforcement workload continue to increase?***

Committee Comments:

Given that the BBS has identified an increase in its enforcement-related workload, the Committees may wish to consider whether or not re-establishing an advisory committee dedicated to enforcement-related matters would be beneficial. An enforcement-related advisory committee may help identify those areas where the BBS can improve its enforcement program to better serve licensees and consumers. In addition, the BBS should update the Committees on whether or not it has utilized the authority granted in BPC Section 4990.10 to help maintain professional standards.

Board Response:

The rise in the Board's licensee and registrant population can be attributed to the increased workload in the Board's enforcement unit. The additional staff positions and a manager received in FY 2014/2015 allow the Board to keep pace with its enforcement workload. As discussed earlier, the Board is consistently meeting the CPEI Performance Measures within its control.

The Board acknowledges the Committee's suggestion that consideration should be given to establishing an advisory committee dedicated to enforcement related matters. In response to this suggestion, the following details some of the changes since FY 2014/2015 to the Board's enforcement program to improve its efficiency.

- Reorganized to create two units within the Enforcement Program to provide increased staff oversight, training, and program evaluation.
- Assigned two staff positions to monitor all cases referred for formal discipline in an effort to achieve Performance Measure 4.
- Revised referral of cases for formal discipline to include Board settlement terms, when appropriate, to reduce the length of time to complete formal investigations.



- Increased the pool of Subject Matter Experts to review enforcement cases and conducted training.
- Revised the procedure for closing non-jurisdictional cases.

Ongoing, the Board's two Enforcement Managers continue to evaluate the daily operations and procedures to identify opportunities to increase efficiency. All of the Enforcement Unit's work and progress is reported at each quarterly Board Meeting.

The changes to the Enforcement Unit are fairly recent. With this in mind, establishing an advisory committee at this time may be premature. A sufficient amount time has not passed to determine if the changes are achieving the desired results. Yet, if in the future, the Enforcement Unit's performance is not satisfactory to the Board, the Board will consider establishing an advisory committee.

The Committee also inquired whether or not the Board has used the authority granted in Business and Professions Code section 4990.10 to help maintain professional standards. This code section states that the Board may conduct research in, and make studies of problems involved in, the maintaining of professional standards among those engaged in the professions it licenses and may publish its recommendations thereon.

The nature of the Board's work is to establish and ensure licensees meet professional standards to deliver mental health services safely to consumers. The Board accomplishes this task through legislative and regulatory proposals and developing outreach materials for consumers as well as licensees and registrants.

Prior to any proposed change, the Board works with its stakeholders through a series of meetings to discuss proposed changes to collectively identify a solution that will ensure consumer protection and professional standards. Additionally, Board staff will conduct research related to the topic being discussed. This research may include determining another state's requirements or practices; reviewing articles or data related to the topic; and conducting informal surveys.

Once the legislation or regulation is proposed and enacted, Board staff will conduct outreach to licensees and develop brochures or informational sheets. The brochures and informational sheets are made available on the Board's website. Examples of the Board's work include the following:

- Legislation enacted revised the supervised work experience requirements to eliminate the various categories in which an applicant must obtain supervised work experience hours. Informational sheets were published on the Board's website. Additionally, the revisions were published in the Board's Winter 2015 and Winter 2016 newsletters.
- Legislation enacted revised the Board's licensure examination process (examination restructure). Informational sheets were published on the Board's website. Articles discussing this change were published in the Board's Winter 2015 and Winter 2016 newsletters. Additionally, video tutorials were developed and posted on the Board's website.
- Revised the Board's Continuing Education Program. Informational sheets were posted on the Board's website. Articles advising licensees of the change were published in the Board's Winter 2015 and Summer 2015 newsletters.

- Proposed regulations related to the standards of practice for telehealth. Board staff researched the regulations or guidelines by other states as well as best practices. The proposed regulations outline acceptable practices for telehealth. If approved, the Board will conduct outreach to its licensees and publish the new standards on its website and in future newsletters.

**Issue #7: How is the BreEZe database system working for the BBS?**

Committee Recommendation:

The BBS should update the Committees about the current status of its implementation of BreEZe. What have been the challenges to implementing this new system? What are the costs of implementing the system, and are there any new costs associated with the project? Is the cost of BreEZe consistent with what the BBS was told the project would cost? Please explain how the BBS staff works with the DCA BreEZe team and the vendor to develop and enhance reports for licensing and enforcement purposes. How does the BBS identify issues in the data system and submit change requests? What is the timeframe for needed updates and do costs impact the ability to move ahead with an update? Does the BBS foresee any maintenance necessary? Additionally, the BBS should inform the Committees about any current or foreseeable challenges associated with updating BreEZe to comply with the examination restructure and the new application processing components.

Board Response:

The Board was part of the October 2013 R1 release of BreEZe. Initially, obtaining reports from BreEZe was a challenge. Yet, since the initial release of BreEZe, some reports became available and the Board resumed reporting statistical data at its Board Meeting in 2014.

The Board's total cost for BreEZe through FY 2014/205 was \$1,223,891. The Board's costs are different since the Board was informed of initial cost of BreEZe. Specifically, the Board has undergone some major program changes, such as the addition of a new licensure program (effective January 2010) and the examination restructure (effective January 2016). None of these program changes were in effect at the time the BreEZe contract was developed. Therefore, these changes have contributed to the Board's increased BreEZe costs. Additionally, the revisions to the vendor contract will also increase the Board's BreEZe costs.

Board staff attends various meetings with other board and bureau staff and the DCA BreEZe team to discuss the development and enhancement of BreEZe reports. Through this process the definition of specific terms and milestones are discussed to determine viable solutions. Once the possible solution is developed by the vendor, Board staff will participate in testing to provide feedback regarding the functionality and application of the solution.

Frequently, issues with the BreEZe data system are identified through the daily work of the Board. Once the issue is identified and documented, the Board will follow the change request process to determine if a revision to the data system is required. During the change request process, the Board may learn that another board has requested the same or similar fix. In those situations, the Board may request to be included in that revision. If the change request identified by the Board is new, the Board's change request is reviewed and considered by the DCA Change Control Board.

The timeframe for updates is determined by the vendor. Simple changes may take weeks to complete, while complex changes may require months. The Board is aware that staff

resources may impact an update, but is not aware of any situation in which costs impacted an update.

As with any data system, the Board anticipates that ongoing maintenance will be required for the BreEZe data system.

***Issue #8: Audits of Continuing Education. Does the BBS have a process to audit continuing education?***

Committee Recommendation:

LMFTs, LCSWs, LPCCs, and LEPs are required to complete 36 hours of CE in order to renew a license. The BBS recognizes that the number of CE audits has steadily decreased since 2011/12, but noted in its 2015 Sunset Review Report that it anticipates increasing CE audits beginning in 2015. The BBS should provide an update to the Committees on its current efforts to increase the number of annual CE audits.

Board Response:

As of January 2016, the Board resumed auditing a licensee's continuing education hours. The goal is to audit 1% of the renewal population each month for each license type, LMFT, LCSW, LEP and LPCC. Each audit is expected to take approximately two months from the date the first letter is sent. Licensees who fail the audit will be referred to the Enforcement Unit for issuance of a citation and fine.

The first audit closed on March 8, 2016. Currently, the CE Analyst is preparing the files to refer licensees who failed the audit to the Enforcement Unit for review and issuance of a citation and fine. During the first audit period a total of 28 licensees were audited. Of this number, 10 licensees (36%) failed the audit.

The second audit was completed on April 1, 2016. Notification letters were sent out on March 1, 2016 to 39 licensees. Of this number, 9 (23%) licensees failed the audit.

The January audit was the first audit completed since FY 2013/2014.

***Issue #9: Audits of Continuing Education Providers. Does the BBS need to audit continuing education providers?***

Committee Recommendation:

Given that the BBS is no longer approving CE providers, and has conducted minimal audits of CE requirements for its licensees, the BBS should explain to the Committees its process and or plan for reviewing and updating its list of approved agencies to ensure that those entities are maintaining high standards for CE. In addition, the BBS should update the Committees on how it has helped to inform licensees about the transition.

Board Response:

The revision of the Board's Continuing Education Program includes a pathway for interested entities to request approval to become a Board Recognized Approval Agency. The entity must demonstrate compliance with the criteria specified in California Code of Regulations section 1887.4.1 (b)(1-5). The entity's request is presented during a Board Meeting for consideration.

The Board has received and approved two requests to become a Board Recognized Approval Agency. Both the California Association of Marriage and Family Therapists and the California Psychological Association have been added to the list of Board Recognized Approval Agencies.

California Code of Regulations section 1887.4.2 specifies the responsibilities of a Board Recognized Approval Agency. For example, upon request, the Board Recognized Approval Agency must provide the Board a copy of the periodic review of a provider's continuing education course. This requirement provides the Board the opportunity to review the coursework offered through a Board Recognized Approval Agency and to verify compliance with the continuing education coursework requirements.

In an effort to inform Board licensees about the changes to the Board's Continuing Education Program, informational sheets were developed and posted to the Board's website. Articles advising licensees of the changes to the Board's Continuing Education Program were published in the Board's Winter 2015 and Summer 2015 newsletter. Finally, Board staff participated in professional association outreach events to discuss the changes to the Board's Continuing Education Program.

***Issue #10: Customer Service Satisfaction Surveys.***

Committee Recommendation:

The BBS should update the Committees about its current progress in developing a new customer satisfaction survey, and if it still anticipates discussing this issue at its March 2016 Board meeting. The BBS should inform the Committees as to the other pressing issues that have prevented the BBS from focusing on customer service.

Board Response:

At its March 2016 meeting, Board Members reviewed the first draft of the customer satisfaction survey. The Board Members directed staff to make the changes that were discussed and implement the survey. Additionally, the Board Members suggested Board staff contact the Department of Consumer Affairs Public Affairs Office for assistance with the survey. At this time, Board staff continues to work on the survey and looks to implement the new survey within the next several months.

The Board recognizes that the experience a stakeholder has with the Board greatly influences their perception of the Board. The Board continues its efforts to improve customer service to its stakeholders. To this end, in 2015, all Board staff attended customer service training. Additionally, the Board has implemented the use of social media to improve communication regarding Board activities, instead of solely relying on stakeholders accessing the information on the Board's website.

***Issue #11: Are there minor/non-substantive changes to the BBS's practice act that may improve the BBS's operations?***

Committee Recommendation:

The BBS should submit their proposal for any technical changes to its practice act to the Senate BP&ED Committee for possible inclusion in one of its annual committee omnibus bills.

Board Response:

The Board appreciates the Committee's recommendation. At this time, the Board has submitted all minor/non-substantive changes needed to the Board's practice act to the Senate Business, Professions, and Economic Development Committee for inclusion in this year's omnibus bill.

***Issue #12: Should the licensing and regulation of the BBS be continued and be regulated by its current membership?***

Committee Recommendation:

The committee recommends that the LCSW, LMFT, LEP and LPCC professions, and registration of ASW Interns, MFT Interns, and PCC Interns continue to be regulated by the BBS in order to protect the interests of consumers and be reviewed once again in four years.

Board Response: The Board concurs with the Committee's recommendation. Thank you for the opportunity to respond to the Committee's concerns. I hope that you find this information useful and would be pleased to answer any questions you may have.

Sincerely,

Kim Madsen  
Executive Officer

cc: Awet Kidane, Director, Department of Consumer Affairs  
Melinda McCain, Deputy Director, Division of Legislative and Regulatory Review,  
Department of Consumer Affairs  
Christina Wong, Chair, Board of Behavioral Sciences

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(916) 574-7830, (916) 574-8625 Fax  
[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Board Members

**Date:** May 2, 2016

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7847

**Subject: Strategic Plan Update**

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Management and staff continue to address the strategic goals and objectives. Attached for your review is the Strategic Plan update for May 2016.

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| <b>Licensing</b>   | <b>DUE DATE</b> | <b>STATUS</b>  |
|--|-----------------|--|
| <b><i>Establish licensing standards to protect consumers and allow reasonable and timely access to the profession.</i></b>   |                 |  |
| <b>1.1</b><br>Identify and implement improvements to the licensing process to decrease application processing times.   | <b>Q1 2015</b>  | Application processing times are now less than the parameters set forth in Regulation. All applications are processed under 60 days. |
| <b>1.2</b><br>Complete the processing of Licensed Professional Clinical Counselor grandfathered licensing application.   | <b>Q1 2014</b>  | Completed October 1, 2013  |
| <b>1.3</b><br>Review the current eligibility process for Licensed Marriage and Family Therapists and Licensed Professional Clinical Counselors to identify and reduce barriers and implement process improvements. | <b>Q4 2018</b>  | Completed. SB 620, the “Buckets” legislation, was signed by the Governor in September 2015.  |
| <b>1.4</b><br>Explore development of uniform clinical supervision standards to ensure consistent supervision of registrants and trainees.  | <b>Q4 2015</b>  | Committee met on February 5, 2016 to discuss draft language for LMFTs and other topics. Next meeting is April 29, 2016.              |
| <b>1.5</b><br>Investigate the use of technology for record keeping and therapeutic services and its effects on patient safety and confidentiality and establish best practices for licensees.                      | <b>Q4 2016</b>  | Telehealth regulations related to the delivery of services were proposed in 2015.  |

|   |                |  |
|---|----------------|--|
| <b>1.6</b><br>Determine feasibility of license portability and pursue legislation if needed.  | <b>Q3 2020</b> | Effective January 1, 2016 implemented use of national exam for LCSWs and revisions to modify the out-of-state requirements for LMFTs and LPCCs.  |
| <b>1.7</b><br>Establish ongoing process to evaluate requirements for all license types to promote parity between licensing programs as appropriate. | <b>Q4 2016</b> | Staff effort continues. The Supervision Committee continues to discuss revisions to supervisor qualifications and is working toward parity where appropriate.                            |
| <b>1.8</b><br>Evaluate the feasibility of online application submission through the Breeze system and implement if possible.                        | <b>Q2 2016</b> | The Board now has three transactions available on Breeze: renewals, address changes and replacement documents. The Board continues to explore the future use of the online capabilities. |

| <b>Examinations</b><br><i>Administer fair, valid, comprehensive, and relevant licensing examinations.</i>   | <b>DUE DATE</b> | <b>STATUS</b>  |
|---|-----------------|--|
| <b>2.1</b><br>Implement recommendations made by the Exam Program Review Committee to restructure the examination process and promulgate regulations as necessary. | <b>Q1 2016</b>  | Completed. Exam Restructure implemented on January 1, 2016.          |
| <b>2.2</b><br>Establish a recruitment process for Subject Matter Experts to ensure a diverse pool on which to draw for examination development.                   | <b>Q2 2016</b>  | Completed Spring 2015  |
| <b>2.3</b><br>Create a process for evaluating the performance of Subject Matter Experts assisting with exam development.  | <b>Q4 2015</b>  | Staff is collaborating with OPES to develop an method of evaluation. |

| <b>Enforcement</b><br><i>Protect the health and safety of consumers through the enforcement of laws and regulations.</i>                       | <b>DUE DATE</b> | <b>STATUS</b>  |
|--|-----------------|--|
| <b>3.1</b><br>Establish a recruitment process for Subject Matter Experts to ensure a diverse pool on which to draw for case evaluations.       | <b>Q4 2014</b>  | Completed Spring 2015  |
| <b>3.2</b><br>Develop a training program, including uniform standards for reports and evaluations, for all enforcement Subject Matter Experts. | <b>Q1 2015</b>  | Staff conducted an all-day training session on July 30, 2015. Second training will occur in 2016.  |
| <b>3.3</b><br>Improve internal process to regularly consult with the Attorney General's office to advance pending disciplinary cases.          | <b>Q4 2014</b>  | Staff effort continues.  |
| <b>3.4</b><br>Establish uniform standards and templates for reports and evaluations submitted to the Board related to disciplinary matters.    | <b>Q2 2015</b>  | Committee met on January 8, 2016. Board staff developed draft documents to present to the full Board at March 2016 meeting. Committee will hold a second meeting following the May Board meeting to address other templates. |
| <b>3.5</b><br>Create a process for evaluating the performance of Subject Matter Experts assisting on enforcement cases.                        | <b>Q2 2015</b>  | Completed May 2015.  |
| <b>3.6</b><br>Identify and implement improvements to the investigation process to decrease enforcement processing times.                       | <b>Q1 2015</b>  | Staff effort continues.  |

| <b>Legislation and Regulation</b><br><i>Ensure that statutes, regulations, policies, and procedures strengthen and support the Board's mandate and mission.</i>                | <b>DUE DATE</b> | <b>STATUS</b>                                     |
|--|-----------------|---|
| <b>4.1</b><br>Adopt regulations to incorporate <u>Uniform Standards for Substance Abusing Licensees</u> to align with other healing arts boards.                               | <b>Q2 2015</b>  | Complete October 1, 2015                          |
| <b>4.2</b><br>Modify regulations to shift oversight of continuing education providers to Approval Agencies.  | <b>Q4 2014</b>  | Completed January 1, 2015                         |
| <b>4.3</b><br>Pursue legislation to implement the recommendations of the Out of State Education Review Committee to ensure parity with California educational requirements.    | <b>Q4 2014</b>  | Complete. Legislation became effective 1/1/16.    |
| <b>4.4</b><br>Pursue legislation to resolve the conflict in law that prohibits the Board's access to information necessary for investigations regarding child custody reports. | <b>Q4 2014</b>  | Complete. Legislation became effective on 1/1/15. |
| <b>4.5</b><br>Review regulatory parameters for exempt settings and modify, if necessary, to ensure adequate public protection.   | <b>Q4 2017</b>  | Committee will begin work in 2017.                |

| <b>Organizational Effectiveness</b><br><i>Build an excellent organization through proper Board governance, effective leadership, and responsible management.</i> | <b>DUE DATE</b> | <b>STATUS</b>  |
|--|-----------------|--|
| <b>5.1</b><br>Pursue adequate staffing levels across all functional areas within the Board.  | <b>Q3 2015</b>  | Board continues to work on filling vacancies and assessing current staffing levels. BCP for 2016/2017 for additional staff is included in the Governor's budget. |
| <b>5.2</b><br>Evaluate internal procedures to identify areas for improvement to ensure prompt and efficient work processes.                                      | <b>Q1 2016</b>  | Staff effort continues.  |
| <b>5.3</b><br>Enhance Board employee recognition program to reward exceptional performance and service.  | <b>Q4 2014</b>  | Staff effort continues.  |
| <b>5.4</b><br>Implement an internal training and education program for all Board staff to enhance skills and abilities for professional development.             | <b>Q3 2015</b>  | Board management meets one on one with individuals who desire further information regarding the Board and upcoming interviews.                                   |
| <b>5.5</b><br>Establish standing Board committees that align with the Board's strategic goal areas.  | <b>Q4 2014</b>  | Board will revisit this topic in 2016.   |

| <b>Outreach and Education</b><br><i>Engage stakeholders through continuous communication about the practice and regulation of the professions.</i>   | <b>DUE DATE</b> | <b>STATUS</b>  |
|--|-----------------|--|
| <b>6.1</b><br>Implement cost-effective ways to educate applicants and licensees on current requirements.   | <b>Q1 2015</b>  | Staff outreach efforts continue. Board launched Twitter and Facebook in order to keep applicants and licensees updated on Board activities and news. |
| <b>6.2</b><br>Enhance the Board’s outreach program by redesigning publications and the Board’s website, leveraging new technologies and exploring the use of social media.                 | <b>Q3 2015</b>  | Three newsletters were published and distributed in 2015. Staff continues to review and revise Board website.  |
| <b>6.3</b><br>Partner with the Office of Statewide Planning Health and Development and other external stakeholder groups to encourage more diversity within the mental health professions. | <b>Q4 2019</b>  | Staff effort continues.  |

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**To:** Board Members  
**From:** Christy Berger  
Regulatory Analyst  
**Date:** May 2, 2016  
**Telephone:** (916) 574-7817  
**Subject: Supervision Committee Update**

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The Supervision Committee held its tenth meeting on April 29, 2016, and is expected to complete its work in late 2016. The purpose of this memo is to provide an update on the topics discussed and informal decisions made by the Committee.

### **Informal Decisions**

Informal decisions made by the Committee may change or evolve as we work through various issues. Upon completion of the Committee's work, proposed language will be presented to the Board for consideration, and will require the passage of both legislation and regulations in order to implement.

The majority of informal decisions made by the Supervision Committee to date have been incorporated into an initial draft of proposed language, which addresses the following:

- Supervision via videoconferencing
- Methods of monitoring/evaluating the supervisee
- Addressing issues related to supervisee performance (plan for remediation)
- Supervisory Plan form
- Supervisors being reachable while supervisee is providing services
- Initial supervisor training – 15 hours for all professions
- Six (6) hours ongoing supervisor training for all professions every two years - may consist of professional development activities
- Require supervisors to notify the Board that they are supervising

- Require supervisors to perform a self-assessment of qualifications and provide a copy to the Board and to supervisees
- Auditing supervisors
- Make the definition of supervision consistent among the professions
- Require the supervisor to ensure that the amount of group supervision is appropriate to each supervisee's needs, considering eight (8) are allowed in the group
- Allow triadic supervision (two supervisees, one supervisor) in place of individual supervision
- Allow one-half hour increments of supervision to be counted toward experience hours (beyond the minimum required)
- Require applicants who have completed their experience hours to continue receiving one hour of supervision per week, per work setting
- Define parameters for acceptable documentation when a supervisor is deceased and an Experience Verification form had not yet been signed.

### **Topics Remaining**

- Supervisor not signing for hours/one-week notice requirement
- Review BBS Unprofessional Conduct code sections pertaining to supervision
- More thorough requirements to become a supervisor for individuals on probation
- Offsite or Contract Supervisors:
  - Do the current requirements pertaining to offsite supervision adequately protect the supervisor, supervisee and client?
  - Should offsite supervision requirements be made consistent between license types, keeping in mind possible differences needed for MFT Trainees since they are still in school?

### **Future Meeting Date**

June 9, 2016

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**To:** Board Members

**Date:** May 3, 2016

**From:** Steve Sodergren  
Assistant Executive Officer

**Telephone:** (916) 574-7847

**Subject: Exam Restructure Update**

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Since January 1, 2016 the Board has been working on the transition to the new exam restructure requirements. While the transition has been fairly smooth, it has not been without its challenges. The greatest challenge has been the processing of exam applications and examinee scores. These challenges existed because of the increased volume of exam applications and the fact that the Board had yet to implement system changes in BreEZe. Processes that had been automatic before January 1<sup>st</sup> now require manually processing and data entry in the system.

On May 5, 2016 the system changes that are necessary for the BreEZe system to properly process applications under the new requirements will be implemented. This was the last component necessary for the full implementation of the Exam Restructure project. This could not have been completed without the excellent cooperation and collaboration of the Department's BreEZe team. Also, under the leadership of the Board's IT specialist Lynne Stiles, the Board tested and was able to ensure the proper function of the system changes.

After the BreEZe system changes are implemented, the Board is hopeful that the current challenges regarding the processing of applications and the transfer of exam eligibilities will be greatly reduced. This will allow the Board to concentrate more resources to providing outreach and assisting the applicants in navigating the new exam restructure requirements.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 796                      **VERSION:** AMENDED JANUARY 13, 2016

**AUTHOR:** NAZARIAN                      **SPONSOR:** DIR FLOOR TIME COALITION

**RECOMMENDED POSITION:** NEUTRAL

**SUBJECT:** HEALTH CARE COVERAGE: AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS

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### **Summary:**

This bill seeks ensure that individuals with pervasive development disorder or autism are able to receive insurance coverage for types of evidence-based behavioral health treatment other than applied behavior analysis. To accomplish this, it directs the Board of Psychology to form a committee to develop a list of acceptable behavioral health evidence-based treatment modalities.

### **Existing Law:**

- 1) Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism (PDD/A). (Health and Safety Code (HSC) §1374.73(a), Insurance Code (IC) §10144.51(a))
- 2) Requires these health care service plans and health insurers subject to this provision to maintain an adequate network of qualified autism service providers. (HSC §1374.73(b), IC §10144.51(b))
- 3) Defines “behavioral health treatment” as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets the following criteria (HSC §1374.73(c), IC §10144.51(c):
  - a) Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;
  - b) Is provided under a treatment plan prescribed by a qualified autism service provider and administered by such a provider or by a qualified autism service professional under supervision and employment of a qualified autism service provider;
  - c) The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and

- d) Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.
- 4) Defines a “qualified autism service provider” as either (HSC §1374.73(c), IC §10144.51(c)):
- a) A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited and which designs, supervises, or provides treatment for pervasive developmental disorder or autism; or
  - b) A person who is licensed as a specified healing arts practitioner, including a psychologist, marriage and family therapist, educational psychologist, clinical social worker, or professional clinical counselor. The licensee must design, supervise, or provide treatment for pervasive developmental disorder or autism and be within his or her experience and competence.
- 5) Defines a “qualified autism service professional” as someone who meets all of the following (HSC §1374.73(c), IC §10144.51(c)):
- a) Provides behavioral health treatment;
  - b) Is employed and supervised by a qualified autism service provider;
  - c) Provides treatment according to a treatment plan developed and approved by the qualified autism service provider.
  - d) Is a behavioral service provider approved by a regional center to provide services as an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations (CCR); and
  - e) Has training and experience providing services for pervasive developmental disorder or autism pursuant to the Lanterman Developmental Disabilities Services Act.
- 6) Defines a “qualified autism service paraprofessional” as an unlicensed and uncertified person who meets all of the following (HSC §1374.73(c), IC §10144.51(c)):
- a) Is employed and supervised by a qualified autism service provider;
  - b) Provides treatment according to a treatment plan developed and approved by the qualified autism service provider;
  - c) Meets criteria set forth in regulations regarding use of paraprofessionals in group practice providing behavioral intervention services; and

- d) Is certified by a qualified autism service provider as having adequate education, training, and experience.
- 7) Defines vendor service codes and sets requirements for regional centers to classify the following professions (CCR 17 §54342):
- a) Associate Behavior Analysts;
  - b) Behavior Analysts;
  - c) Behavior Management Assistants;
  - d) Behavior Management Consultants; and
  - e) Behavior Management Programs.

**This Bill:**

- 1) Requires the Board of Psychology to form a committee to create a list of behavioral health evidence-based treatment modalities for PDD/A. (HSC §1374.73(g), IC §10144.51(g))
- 2) Extends the provisions in law requiring health care contracts and insurance policies to provide coverage for PDD/A from January 1, 2017 to January 1, 2022. (HSC §1374.73(h), IC §10144.51(h))

**Comments:**

- 1) **Author's Intent.** SB 946 (Chapter 650, Statutes of 2011) required health service plan and insurance policies to provide coverage for evidence-based behavioral health treatment for PDD/A. However, this bill only referenced one type of behavioral health treatment, which was applied behavior analysis (ABA).

According to the author, although SB 946 intended that the type of evidence-based behavioral health treatment prescribed should be selected by the physician who best knows the patient, the reference to ABA in the bill has caused insurance companies to develop networks of ABA practitioners, but not necessarily a network of practitioners of other forms of evidence-based behavioral health treatment.

Due to this, the author notes that it is difficult for patients with PDD/A, who have been prescribed an evidence-based treatment that is not ABA, to obtain coverage for that treatment. Instead, they are forced to accept a form of behavioral health treatment that has not been prescribed.

By having the Board of Psychology develop a list of other types of appropriate evidence-based treatments for PDD/A, the author's office is seeking to ensure that a PDD/A patient will be able to obtain insurance coverage for treatments other than ABA, if his or her doctor believes that other treatment is more appropriate.

- 2) **Related Legislation.** The California Association for Behavior Analysis is currently sponsoring a bill proposal (AB 1715, Holden), which would create a licensure

category for behavior analysts and assistant behavior analysts under the Board of Psychology.

The prospect of competing types of effective behavioral health treatment may raise questions about the implications of establishing a licensure category for one of the treatment types, but not the others.

SB 1034 (Mitchell) would extend indefinitely the provisions in current law that all health insurance plans must provide coverage for behavioral health treatment for PDD/A. (This bill instead proposes extending them until January 1, 2022).

- 3) Previous Legislation.** SB 946 (Chapter 650, Statutes of 2011) requires every health care service plan contract and insurance policy that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for PDD/A.

AB 171 (Beall, 2012), would have required health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of PDD/A other than behavioral health treatment. This bill died in the Senate Health Committee.

SB 126 (Chapter 680, Statutes of 2013) extended the provisions of SB 946 until January 1, 2017.

- 4) Previous Position.** This bill is a two-year bill. When the Board considered this bill last year, the author was seeking to accomplish the same purpose, but the approach was different. Last year, the bill was proposing to amend the definition of “qualified autism service professional” and “qualified autism service paraprofessional” to allow insurance coverage for types of behavioral health treatment other than applied behavior analysis.

At its May 2015 meeting, the Board considered this bill and decided to take a “neutral” position. It also directed staff to bring the bill back to the Board for consideration if it moved forward.

At its April 15, 2016 meeting, the Policy and Advocacy Committee considered the latest version of this bill. It recommended that the Board consider taking a “neutral” position.

## **5) Support and Opposition.**

### Support:

- DIR Floor Time Coalition (Sponsor)
- Occupational Therapy Association of California
- Numerous Individuals

### Oppose:

- Autism Research Group (previous version)



- Center for Autism & Related Disorders (previous version)

## 6) History

02/04/16 Referred to Coms. on HEALTH and HUMAN S.  
 01/25/16 In Senate. Read first time. To Com. on RLS. for assignment.  
 01/25/16 Read third time. Passed. Ordered to the Senate. (Ayes 75. Noes 0. Page 3476.)  
 01/21/16 Read second time. Ordered to third reading.  
 01/21/16 From committee: Do pass. (Ayes 17. Noes 0.) (January 21).  
 01/14/16 Re-referred to Com. on APPR.  
 01/13/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.  
 01/13/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 18. Noes 0.) (January 12). Re-referred to Com. on APPR.  
 01/12/16 From committee: Do pass and re-refer to Com. on HEALTH. (Ayes 12. Noes 0.) (January 12). Re-referred to Com. on HEALTH.  
 01/07/16 (pending re-refer to Com. on HEALTH.)  
 01/07/16 Assembly Rule 56 suspended. (Page 3366.)  
 01/04/16 Re-referred to Com. on B. & P.  
 01/04/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.  
 05/07/15 In committee: Reconsideration granted.  
 05/07/15 Joint Rule 62(a), file notice suspended. (Page 1320.)  
 05/05/15 In committee: Set, first hearing. Failed passage.  
 04/09/15 (Ayes 51. Noes 26. Page 845.)  
 04/09/15 Re-referred to Coms. on B. & P. and HEALTH pursuant to Assembly Rule 96.  
 04/08/15 In committee: Hearing postponed by committee.  
 03/26/15 In committee: Hearing postponed by committee.  
 03/12/15 Referred to Coms. on HEALTH and B. & P.  
 02/27/15 From printer. May be heard in committee March 29.  
 02/26/15 Read first time. To print.

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AMENDED IN ASSEMBLY JANUARY 13, 2016

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 796**

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**Introduced by Assembly Member Nazarian  
(Coauthor: Assembly Member Rendon)**

February 26, 2015

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An act to amend Section 1374.73 of the Health and Safety Code, and to amend Section 10144.51 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 796, as amended, Nazarian. Health care coverage: autism and pervasive developmental disorders.

Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A violation of those provisions is a crime. Existing law provides for the licensure and regulation of health insurers by the Department of Insurance.

Existing law requires every health care service plan contract and health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism until January 1, 2017, and defines "behavioral health treatment" to mean specific services provided by, among others, a qualified autism service professional supervised and employed by a qualified autism service provider. For purposes of this provision, existing law defines a "qualified autism service professional" to mean a person who, among other requirements, is a behavior service provider approved as a vendor by a California regional center to provide services as an associate behavior

analyst, behavior analyst, behavior management assistant, behavior management consultant, or behavior management program pursuant to specified regulations adopted under the Lanterman Developmental Disabilities Services Act.

This bill would extend the operation of these provisions to January 1, 2022. By extending the operation of these provisions, the violation of which by a health care service plan would be a crime, the bill would impose a state-mandated local program. The bill would require the Board of Psychology, no later than December 31, 2017, and thereafter as necessary, to convene a committee to create a list of evidence-based treatment modalities for purposes of ~~developing mandated~~ behavioral health treatment ~~modalities~~ for pervasive developmental disorder or ~~autism~~, autism, and to post the list on the department's Internet Web site no later than January 1, 2019.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Autism and other pervasive developmental disorders are
- 4 complex neurobehavioral disorders that include impairments in
- 5 social communication and social interaction combined with rigid,
- 6 repetitive behaviors, interests, and activities.
- 7 (b) Autism covers a large spectrum of symptoms and levels of
- 8 impairment ranging in severity from somewhat limiting to a severe
- 9 disability that may require institutional care.
- 10 (c) One in 68 children born today will be diagnosed with autism
- 11 or another pervasive developmental disorder.
- 12 (d) Research has demonstrated that children diagnosed with
- 13 autism can often be helped with early administration of behavioral
- 14 health treatment.
- 15 (e) There are several forms of evidence-based behavioral health
- 16 treatment, including, but not limited to, applied behavioral analysis.

1 (f) Children diagnosed with autism respond differently to  
2 behavioral health treatment.

3 (g) It is critical that each child diagnosed with autism receives  
4 the specific type of evidence-based behavioral health treatment  
5 best suited to him or her, as prescribed by his or her physician or  
6 developed by a psychologist.

7 (h) The Legislature intends that all forms of evidence-based  
8 behavioral health treatment be covered by health care service plans,  
9 pursuant to Section 1374.73 of the Health and Safety Code, and  
10 health insurance policies, pursuant to Section 10144.51 of the  
11 Insurance Code.

12 (i) The Legislature intends that health care service plan provider  
13 networks include qualified professionals practicing all forms of  
14 evidence-based behavioral health treatment other than just applied  
15 behavioral analysis.

16 SEC. 2. Section 1374.73 of the Health and Safety Code is  
17 amended to read:

18 1374.73. (a) (1) Every health care service plan contract that  
19 provides hospital, medical, or surgical coverage shall also provide  
20 coverage for behavioral health treatment for pervasive  
21 developmental disorder or autism no later than July 1, 2012. The  
22 coverage shall be provided in the same manner and shall be subject  
23 to the same requirements as provided in Section 1374.72.

24 (2) Notwithstanding paragraph (1), as of the date that proposed  
25 final rulemaking for essential health benefits is issued, this section  
26 does not require any benefits to be provided that exceed the  
27 essential health benefits that all health plans will be required by  
28 federal regulations to provide under Section 1302(b) of the federal  
29 Patient Protection and Affordable Care Act (Public Law 111-148),  
30 as amended by the federal Health Care and Education  
31 Reconciliation Act of 2010 (Public Law 111-152).

32 (3) This section shall not affect services for which an individual  
33 is eligible pursuant to Division 4.5 (commencing with Section  
34 4500) of the Welfare and Institutions Code or Title 14  
35 (commencing with Section 95000) of the Government Code.

36 (4) This section shall not affect or reduce any obligation to  
37 provide services under an individualized education program, as  
38 defined in Section 56032 of the Education Code, or an individual  
39 service plan, as described in Section 5600.4 of the Welfare and  
40 Institutions Code, or under the federal Individuals with Disabilities

1 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing  
2 regulations.

3 (b) Every health care service plan subject to this section shall  
4 maintain an adequate network that includes qualified autism service  
5 providers who supervise and employ qualified autism service  
6 professionals or paraprofessionals who provide and administer  
7 behavioral health treatment. Nothing shall prevent a health care  
8 service plan from selectively contracting with providers within  
9 these requirements.

10 (c) For the purposes of this section, the following definition  
11 shall apply:

12 (1) “Behavioral health treatment” means professional services  
13 and treatment programs, including applied behavior analysis and  
14 evidence-based behavior intervention programs, that develop or  
15 restore, to the maximum extent practicable, the functioning of an  
16 individual with pervasive developmental disorder or autism and  
17 that meet all of the following criteria:

18 (A) The treatment is prescribed by a physician and surgeon  
19 licensed pursuant to Chapter 5 (commencing with Section 2000)  
20 of, or is developed by a psychologist licensed pursuant to Chapter  
21 6.6 (commencing with Section 2900) of, Division 2 of the Business  
22 and Professions Code.

23 (B) The treatment is provided under a treatment plan prescribed  
24 by a qualified autism service provider and is administered by one  
25 of the following:

26 (i) A qualified autism service pr vider.

27 (ii) A qualified autism service professional supervised and  
28 employed by the qualified autism service pr vider.

29 (iii) A qualified autism service paraprofessional supervised and  
30 employed by a qualified autism service pr vider.

31 (C) The treatment plan has measurable goals over a specifi  
32 timeline that is developed and approved by the qualified autism  
33 service provider for the specific patient being treated. The treatment  
34 plan shall be reviewed no less than once every six months by the  
35 qualified autism service provider and modified whenever  
36 appropriate, and shall be consistent with Section 4686.2 of the  
37 Welfare and Institutions Code pursuant to which the qualifie  
38 autism service provider does all of the following:

39 (i) Describes the patient’s behavioral health impairments or  
40 developmental challenges that are to be treated.

1 (ii) Designs an intervention plan that includes the service type,  
2 number of hours, and parent participation needed to achieve the  
3 plan’s goal and objectives, and the frequency at which the patient’s  
4 progress is evaluated and reported.

5 (iii) Provides intervention plans that utilize evidence-based  
6 practices, with demonstrated clinical efficacy in treating pervasive  
7 developmental disorder or autism.

8 (iv) Discontinues intensive behavioral intervention services  
9 when the treatment goals and objectives are achieved or no longer  
10 appropriate.

11 (D) The treatment plan is not used for purposes of providing or  
12 for the reimbursement of respite, day care, or educational services  
13 and is not used to reimburse a parent for participating in the  
14 treatment program. The treatment plan shall be made available to  
15 the health care service plan upon request.

16 (2) “Pervasive developmental disorder or autism” shall have  
17 the same meaning and interpretation as used in Section 1374.72.

18 (3) “Qualified autism service provider” means either of the  
19 following:

20 (A) A person, entity, or group that is certified by a national  
21 entity, such as the Behavior Analyst Certification Board, that is  
22 accredited by the National Commission for Certifying Agencies,  
23 and who designs, supervises, or provides treatment for pervasive  
24 developmental disorder or autism, provided the services are within  
25 the experience and competence of the person, entity, or group that  
26 is nationally certified

27 (B) A person licensed as a physician and surgeon, physical  
28 therapist, occupational therapist, psychologist, marriage and family  
29 therapist, educational psychologist, clinical social worker,  
30 professional clinical counselor, speech-language pathologist, or  
31 audiologist pursuant to Division 2 (commencing with Section 500)  
32 of the Business and Professions Code, who designs, supervises,  
33 or provides treatment for pervasive developmental disorder or  
34 autism, provided the services are within the experience and  
35 competence of the licensee.

36 (4) “Qualified autism service professional” means an individual  
37 who meets all of the following criteria:

38 (A) Provides behavioral health treatment.

39 (B) Is employed and supervised by a qualified autism service  
40 provider.

1 (C) Provides treatment pursuant to a treatment plan developed  
2 and approved by the qualified autism service provider.

3 (D) Is a behavioral service provider approved as a vendor by a  
4 California regional center to provide services as an Associate  
5 Behavior Analyst, Behavior Analyst, Behavior Management  
6 Assistant, Behavior Management Consultant, or Behavior  
7 Management Program as defined in Section 54342 of *Subchapter*  
8 *2 of Chapter 3 of Division 2* of Title 17 of the California Code of  
9 Regulations.

10 (E) Has training and experience in providing services for  
11 pervasive developmental disorder or autism pursuant to Division  
12 4.5 (commencing with Section 4500) of the Welfare and  
13 Institutions Code or Title 14 (commencing with Section 95000)  
14 of the Government Code.

15 (5) “Qualified autism service paraprofessional” means an  
16 unlicensed and uncertified individual who meets all of the  
17 following criteria:

18 (A) Is employed and supervised by a qualified autism service  
19 provider.

20 (B) Provides treatment and implements services pursuant to a  
21 treatment plan developed and approved by the qualified autism  
22 service provider.

23 (C) Meets the criteria set forth in the regulations adopted  
24 pursuant to Section 4686.3 of the Welfare and Institutions Code.

25 (D) Has adequate education, training, and experience, as  
26 certified by a qualified autism service provider.

27 (d) This section shall not apply to the following:

28 (1) A specialized health care service plan that does not deliver  
29 mental health or behavioral health services to enrollees.

30 (2) A health care service plan contract in the Medi-Cal program  
31 (Chapter 7 (commencing with Section 14000) of Part 3 of Division  
32 9 of the Welfare and Institutions Code).

33 (3) A health care service plan contract in the Healthy Families  
34 Program (Part 6.2 (commencing with Section 12693) of Division  
35 2 of the Insurance Code).

36 (4) A health care benefit plan or contract entered into with the  
37 Board of Administration of the Public Employees’ Retirement  
38 System pursuant to the Public Employees’ Medical and Hospital  
39 Care Act (Part 5 (commencing with Section 22750) of Division 5  
40 of Title 2 of the Government Code).



1 (e) Nothing in this section shall be construed to limit the  
2 obligation to provide services under Section 1374.72.

3 (f) As provided in Section 1374.72 and in paragraph (1) of  
4 subdivision (a), in the provision of benefits required by this section,  
5 a health care service plan may utilize case management, network  
6 providers, utilization review techniques, prior authorization,  
7 copayments, or other cost sharing.

8 (g) No later than December 31, 2017, and thereafter as  
9 necessary, the Board of Psychology, upon appropriation of the  
10 Legislature, shall convene a committee to create a list of  
11 evidence-based treatment modalities for purposes of ~~developing~~  
12 ~~mandated~~ behavioral health treatment ~~modalities~~ for pervasive  
13 developmental disorder or autism. *The Board of Psychology shall*  
14 *post the list of evidence-based treatment modalities on its Internet*  
15 *Web site no later than January 1, 2019.*

16 (h) This section shall remain in effect only until January 1, 2022,  
17 and as of that date is repealed, unless a later enacted statute, that  
18 is enacted before January 1, 2022, deletes or extends that date.

19 SEC. 3. Section 10144.51 of the Insurance Code is amended  
20 to read:

21 10144.51. (a) (1) Every health insurance policy shall also  
22 provide coverage for behavioral health treatment for pervasive  
23 developmental disorder or autism no later than July 1, 2012. The  
24 coverage shall be provided in the same manner and shall be subject  
25 to the same requirements as provided in Section 10144.5.

26 (2) Notwithstanding paragraph (1), as of the date that proposed  
27 final rulemaking for essential health benefits is issued, this section  
28 does not require any benefits to be provided that exceed the  
29 essential health benefits that all health insurers will be required by  
30 federal regulations to provide under Section 1302(b) of the federal  
31 Patient Protection and Affordable Care Act (Public Law 111-148),  
32 as amended by the federal Health Care and Education  
33 Reconciliation Act of 2010 (Public Law 111-152).

34 (3) This section shall not affect services for which an individual  
35 is eligible pursuant to Division 4.5 (commencing with Section  
36 4500) of the Welfare and Institutions Code or Title 14  
37 (commencing with Section 95000) of the Government Code.

38 (4) This section shall not affect or reduce any obligation to  
39 provide services under an individualized education program, as  
40 defined in Section 56032 of the Education Code, or an individual

1 service plan, as described in Section 5600.4 of the Welfare and  
 2 Institutions Code, or under the federal Individuals with Disabilities  
 3 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing  
 4 regulations.

5 (b) Pursuant to Article 6 (commencing with Section 2240) of  
 6 *Subchapter 2 of Chapter 5* of Title 10 of the California Code of  
 7 Regulations, every health insurer subject to this section shall  
 8 maintain an adequate network that includes qualified autism service  
 9 providers who supervise and employ qualified autism service  
 10 professionals or paraprofessionals who provide and administer  
 11 behavioral health treatment. Nothing shall prevent a health insurer  
 12 from selectively contracting with providers within these  
 13 requirements.

14 (c) For the purposes of this section, the following definition  
 15 shall apply:

16 (1) “Behavioral health treatment” means professional services  
 17 and treatment programs, including applied behavior analysis and  
 18 evidence-based behavior intervention programs, that develop or  
 19 restore, to the maximum extent practicable, the functioning of an  
 20 individual with pervasive developmental disorder or autism, and  
 21 that meet all of the following criteria:

22 (A) The treatment is prescribed by a physician and surgeon  
 23 licensed pursuant to Chapter 5 (commencing with Section 2000)  
 24 of, or is developed by a psychologist licensed pursuant to Chapter  
 25 6.6 (commencing with Section 2900) of, Division 2 of the Business  
 26 and Professions Code.

27 (B) The treatment is provided under a treatment plan prescribed  
 28 by a qualified autism service provider and is administered by one  
 29 of the following:

- 30 (i) A qualified autism service provider.
- 31 (ii) A qualified autism service professional supervised and
- 32 employed by the qualified autism service provider.
- 33 (iii) A qualified autism service paraprofessional supervised and
- 34 employed by a qualified autism service provider.

35 (C) The treatment plan has measurable goals over a specific  
 36 timeline that is developed and approved by the qualified autism  
 37 service provider for the specific patient being treated. The treatment  
 38 plan shall be reviewed no less than once every six months by the  
 39 qualified autism service provider and modified whenever  
 40 appropriate, and shall be consistent with Section 4686.2 of the

1 Welfare and Institutions Code pursuant to which the qualifie  
2 autism service provider does all of the following:

3 (i) Describes the patient’s behavioral health impairments or  
4 developmental challenges that are to be treated.

5 (ii) Designs an intervention plan that includes the service type,  
6 number of hours, and parent participation needed to achieve the  
7 plan’s goal and objectives, and the frequency at which the patient’s  
8 progress is evaluated and reported.

9 (iii) Provides intervention plans that utilize evidence-based  
10 practices, with demonstrated clinical efficacy in treating pervasive  
11 developmental disorder or autism.

12 (iv) Discontinues intensive behavioral intervention services  
13 when the treatment goals and objectives are achieved or no longer  
14 appropriate.

15 (D) The treatment plan is not used for purposes of providing or  
16 for the reimbursement of respite, day care, or educational services  
17 and is not used to reimburse a parent for participating in the  
18 treatment program. The treatment plan shall be made available to  
19 the insurer upon request.

20 (2) “Pervasive developmental disorder or autism” shall have  
21 the same meaning and interpretation as used in Section 10144.5.

22 (3) “Qualified autism service provider” means either of the  
23 following:

24 (A) A person, entity, or group that is certified by a national  
25 entity, such as the Behavior Analyst Certification Board, that is  
26 accredited by the National Commission for Certifying Agencies,  
27 and who designs, supervises, or provides treatment for pervasive  
28 developmental disorder or autism, provided the services are within  
29 the experience and competence of the person, entity, or group that  
30 is nationally certified

31 (B) A person licensed as a physician and surgeon, physical  
32 therapist, occupational therapist, psychologist, marriage and family  
33 therapist, educational psychologist, clinical social worker,  
34 professional clinical counselor, speech-language pathologist, or  
35 audiologist pursuant to Division 2 (commencing with Section 500)  
36 of the Business and Professions Code, who designs, supervises,  
37 or provides treatment for pervasive developmental disorder or  
38 autism, provided the services are within the experience and  
39 competence of the licensee.

- 1 (4) “Qualified autism service professional” means an individual
- 2 who meets all of the following criteria:
- 3 (A) Provides behavioral health treatment.
- 4 (B) Is employed and supervised by a qualified autism service
- 5 provider.
- 6 (C) Provides treatment pursuant to a treatment plan developed
- 7 and approved by the qualified autism service provider.
- 8 (D) Is a behavioral service provider approved as a vendor by a
- 9 California regional center to provide services as an Associate
- 10 Behavior Analyst, Behavior Analyst, Behavior Management
- 11 Assistant, Behavior Management Consultant, or Behavior
- 12 Management Program as defined in Section 54342 of *Subchapter*
- 13 *2 of Chapter 3 of Division 2* of Title 17 of the California Code of
- 14 Regulations.
- 15 (E) Has training and experience in providing services for
- 16 pervasive developmental disorder or autism pursuant to Division
- 17 4.5 (commencing with Section 4500) of the Welfare and
- 18 Institutions Code or Title 14 (commencing with Section 95000)
- 19 of the Government Code.
- 20 (5) “Qualified autism service paraprofessional” means an
- 21 unlicensed and uncertified individual who meets all of the
- 22 following criteria:
- 23 (A) Is employed and supervised by a qualified autism service
- 24 provider.
- 25 (B) Provides treatment and implements services pursuant to a
- 26 treatment plan developed and approved by the qualified autism
- 27 service provider.
- 28 (C) Meets the criteria set forth in the regulations adopted
- 29 pursuant to Section 4686.3 of the Welfare and Institutions Code.
- 30 (D) Has adequate education, training, and experience, as
- 31 certified by a qualified autism service provider.
- 32 (d) This section shall not apply to the following:
- 33 (1) A specialized health insurance policy that does not cover
- 34 mental health or behavioral health services or an accident only,
- 35 specified disease, hospital indemnity, or Medicare supplement
- 36 policy.
- 37 (2) A health insurance policy in the Medi-Cal program (Chapter
- 38 7 (commencing with Section 14000) of Part 3 of Division 9 of the
- 39 Welfare and Institutions Code).

1 (3) A health insurance policy in the Healthy Families Program  
2 (Part 6.2 (commencing with Section 12693)).

3 (4) A health care benefit plan or policy entered into with the  
4 Board of Administration of the Public Employees' Retirement  
5 System pursuant to the Public Employees' Medical and Hospital  
6 Care Act (Part 5 (commencing with Section 22750) of Division 5  
7 of Title 2 of the Government Code).

8 (e) Nothing in this section shall be construed to limit the  
9 obligation to provide services under Section 10144.5.

10 (f) As provided in Section 10144.5 and in paragraph (1) of  
11 subdivision (a), in the provision of benefits required by this section,  
12 a health insurer may utilize case management, network providers,  
13 utilization review techniques, prior authorization, copayments, or  
14 other cost sharing.

15 (g) No later than December 31, 2017, and thereafter as  
16 necessary, the Board of Psychology, upon appropriation by the  
17 Legislature, shall convene a committee to create a list of  
18 evidence-based treatment modalities for purposes of ~~developing~~  
19 ~~mandated~~ behavioral health treatment modalities for pervasive  
20 developmental disorder or autism. *The Board of Psychology shall*  
21 *post the list of evidence-based treatment modalities on its Internet*  
22 *Web site no later than January 1, 2019.*

23 (h) This section shall remain in effect only until January 1, 2022,  
24 and as of that date is repealed, unless a later enacted statute, that  
25 is enacted before January 1, 2022, deletes or extends that date.

26 SEC. 4. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 1001

**VERSION:** AMENDED JANUARY 14, 2016

**AUTHOR:** MAIENSCHWEIN

**SPONSOR:** CHILDREN'S ADVOCACY INSTITUTE  
AT UNIVERSITY OF SAN DIEGO  
SCHOOL OF LAW

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** CHILD ABUSE: REPORTING: FOSTER FAMILY AGENCIES

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### **Overview:**

- 1) This bill seeks to address a report that social workers who work for foster family agencies are sometimes prohibited by their supervisors from making mandated reports of child abuse. Foster family agencies are licensed by the Department of Social Services. The amendments in this bill give the Department of Social Services more authority to ensure that foster family agencies follow mandated reporting requirements.

### **Existing Law:**

- 1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and as such, must submit a report whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code (PC) §§11165.7(a)(21) – (25) and 11166(a))
- 2) Requires mandated reports of suspected child abuse or neglect be made to any police or sheriff's department, the county probation department, or the county welfare department. (PC §11165.9)
- 3) Makes mandated reporting duties individual. Supervisors or administrators may not impede reporting duties, and mandated reporters shall not be subject to sanctions for making a report. (PC §11166(i)(1))
- 4) States that reporting a case of possible child abuse or neglect to an employer or supervisor is not a substitute for making a mandated report to a designated agency. (PC §11166(i)(3))
- 5) States that a supervisor or administrator who impedes reporting duties shall be punished by a fine up to \$1,000 and/or up to six months in county jail. (PC §11166.01)

- 6) Defines a “foster family agency” (FFA), as a public agency or private organization engaged in the recruiting, certifying, and training of foster parents, or in finding homes for placement of children for temporary or permanent care. (Health and Safety Code (HSC) §1502(a)(4))

**This Bill:**

- 1) This bill focuses on mandated reporting from foster family agencies, which are licensed by the Department of Social Services (DSS). The bill makes four new amendments in an effort to increase the Department of Social Services’ enforcement power over foster family agencies in order to ensure that they are following mandated reporting requirements. The four amendments are as follows:
  - a. If the DSS requires orientation training for board members or administrators of a foster family agency, it must include training on mandated reporting duties. (HSC §1556.5(a))
  - b. If the DSS requires an FFA to submit a written plan of operation as a requirement for licensure, that plan must include written policies, procedures, or practices to ensure that the foster family agency does not violate mandated reporting requirements. (HSC §1556.5(b))
  - c. Requires the DSS to take reasonable action against a supervisor or administrator who impedes or inhibits mandated reporting duties. This may include prohibiting a person from being a board member, executive, or officer of an FFA, or denying, suspending or revoking an FFA license. (HSC §1558(i))
  - d. Allows FFA social workers to participate in DSS’s already-existing process for social workers to voluntarily report violations of mandated reporting requirements. (Welfare and Institutions Code (W&I) §10605.5(e))

**Comment:**

- 2) **Author’s Intent.** The author’s office states that social workers who work for FFAs, as well as one teacher, have reported to the Children’s Advocacy Institute at the University Of San Diego School Of Law that supervisors at some FFAs are willing to override child abuse mandated reporting requirements. The purpose of this bill is to give the state agency that licenses FFAs more authority to ensure mandated reporting requirements are followed.
- 3) **Previous Position.** This bill is a two-year bill and was considered by the Board at its May 2015 meeting. That version of the bill amended the Penal Code section that addresses mandated reporting in an attempt to clarify that it is illegal for anyone, including a supervisor, to impede or interfere with the making of a mandated report of suspected child abuse or neglect. The Board took a “support” version on the 2015 version of this bill. It has been amended significantly since then, and no longer amends the Penal Code.



At its April 15, 2016 meeting, the Policy and Advocacy Committee considered the latest version of this bill. It recommended that the Board consider taking a “support” position.

#### **4) Support and Opposition.**

##### Support

- Children's Advocacy Institute at the University of San Diego School of Law (Sponsor)
- Crime Victims United of California (CVUC)

##### Opposition

- None on this version at this time.

#### **5) History**

##### **2016**

02/04/16 Referred to Coms. on HUMAN S. and PUB. S.

01/27/16 In Senate. Read first time. To Com. on RLS. for assignment.

01/27/16 Read third time. Passed. Ordered to the Senate. (Ayes 78. Noes 0. Page 3509.)

01/21/16 Read second time. Ordered to Consent Calendar.

01/21/16 From committee: Do pass. To Consent Calendar. (Ayes 17. Noes 0.) (January 21).

01/15/16 Re-referred to Com. on APPR.

01/14/16 Read second time and amended.

01/13/16 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 7. Noes 0.) (January 12).

01/05/16 From committee: Be re-referred to Com. on HUM. S. Re-referred. (Ayes 11. Noes 0.) (January 5). Re-referred to Com. on HUM. S.

01/04/16 Re-referred to Com. on RLS. pursuant to Assembly Rule 96.

01/04/16 Re-referred to Com. on PUB. S.

01/04/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.

##### **2015**

04/21/15 In committee: Set, second hearing. Hearing canceled at the request of author.

04/07/15 In committee: Set, first hearing. Hearing canceled at the request of author.

03/19/15 Referred to Com. on PUB. S.

02/27/15 From printer. May be heard in committee March 29.

02/26/15 Read first time. To print.

#### **6) Attachments**

**Attachment A:** Penal Code Section 11166

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AMENDED IN ASSEMBLY JANUARY 14, 2016

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1001**

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**Introduced by Assembly Member Maienschein**  
**(Coauthors: Assembly Members Chávez and Gallagher)**  
**(Coauthor: Senator Anderson)**

February 26, 2015

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An act to amend Section ~~1554~~ 1558 of, and to add Sections ~~1550.1~~ and Section 1556.5 to, the Health and Safety Code, and to amend Section 10605.5 of the Welfare and Institutions Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as amended, Maienschein. Child abuse: reporting: foster family agencies.

(1) The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Under existing law, the failure to make this report is a crime. Existing law also prohibits a supervisor or administrator from impeding or inhibiting the reporting duties, provides that a person making the report shall not be subject to any sanctions for making the report, and prohibits internal procedures to facilitate reporting from requiring any employee required to make reports to disclose his or her identity to the employer.

Existing law, the California Community Care Facilities Act (the act), governs the licensing and regulation of community care facilities, as defined, including foster family agencies for children. Existing law vests responsibility for administering and enforcing laws and regulations governing those facilities in the State Department of Social Services. *Existing law authorizes the department to prohibit a person from being a member of the board of directors, an executive director, or an office of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility or certified family home, or allowing contact with clients of a licensed facility or certified family home by, any employee, prospective employee, or person who is not a client who has committed various acts or has been denied an exemption to work or to be present in a facility or certified family home, as specified*

~~This bill would require the department to deny an application for, or suspend or revoke, a license pursuant to the act, upon a finding that the applicant or licensee has impeded or inhibited those mandated reporting duties, sanctioned a person making a report, or required an employee to disclose his or her identity to the employer in violation of the provisions described above governing mandated reporters. The bill would prohibit the reinstatement of a license, registration, or special permit that is suspended pursuant to this provision, as specified. The bill would also impose other related requirements on the department governing conditions of licensure.~~

*This bill would require that if the department, as a condition of licensure, requires the chief executive officer or other authorized member of the board of directors and the administrator of a foster family agency to attend an orientation give by the licensing agency that outlines the applicable rules and regulations for operation of a foster family agency, then that orientation shall include a description of policies, procedures, or practices, that violate the provisions described above governing mandated reporters. The bill would also require the department to take reasonable action, including, among other things, prohibiting a person from being a member of the board of directors, upon a finding of a violation of the provisions described above governing mandated reporters.*

(2) Existing law requires the department, in consultation with counties and labor organizations, to establish a process to receive voluntary disclosures from social workers, if a social worker has reasonable cause to believe that a policy, procedure, or practice, related to the provision

of child welfare services by a county child welfare agency, meets any of specified conditions, including that the policy, procedure, or practice endangers the health or well-being of children or is contrary to *an* existing statute or regulation. Existing law requires the department to make available to counties and labor organizations a description of the process established, and, no later than January 1, 2018, to report to the Legislature the total number of relevant disclosures received from social workers and a summary description of both the issues raised in the disclosures received and the actions taken by the department in response to the disclosures, and to post the information on the department's Internet Web site.

This bill would, effective January 1, 2018, require the department to carry out the duties imposed pursuant to these provisions with respect to voluntary disclosures from social workers employed at a foster family agency, as defined, including, but not limited to, disclosures from social workers who have reasonable cause to believe that a policy, procedure, or practice violates the provisions governing mandated reporters described in paragraph (1). The bill would require the department to make a report regarding this information, similar to the report required pursuant to existing law, no later than July 1, 2019, and to post the information on its Internet Web site.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 1550.1 is added to the Health and Safety~~
- 2     ~~Code, to read:~~
- 3     ~~1550.1. The department shall deny an application for, or~~
- 4     ~~suspend or revoke, any license, or any special permit, certifiat-~~
- 5     ~~of approval, or administrator certificate, issued under this chapter,~~
- 6     ~~or shall deny a transfer of a license pursuant to paragraph (2) of~~
- 7     ~~subdivision (e) of Section 1524, upon a finding that the applican-~~
- 8     ~~or licensee has impeded or inhibited mandated reporting duties~~
- 9     ~~within the meaning of subdivision (i) of Section 11166 of the Penal~~
- 10    ~~Code, or sanctioned a person making a report within the meaning~~
- 11    ~~of that subdivision, or required an employee to disclose his or her~~
- 12    ~~identity to the employer in violation of that subdivision.~~
- 13    ~~SEC. 2. Section 1554 of the Health and Safety Code is amended~~
- 14    ~~to read:~~

1     ~~1554. Any license, registration, or special permit suspended~~  
 2 ~~pursuant to this chapter, and any special permit revoked pursuant~~  
 3 ~~to this chapter, may be reinstated pursuant to the provisions of~~  
 4 ~~Section 11522 of the Government Code. This section does not~~  
 5 ~~apply to a license, registration, or special permit that is suspended~~  
 6 ~~or to a special permit that is revoked pursuant to Section 1550.1.~~

7     ~~SEC. 3.~~

8     ~~SECTION 1.~~ Section 1556.5 is added to the Health and Safety  
 9 Code, to read:

10     1556.5. (a) If the department, as a condition of licensure,  
 11 requires the chief executive officer or other authorized member of  
 12 the board of directors and the administrator of a foster family  
 13 agency to attend an orientation given by the licensing agency that  
 14 outlines the applicable rules and ~~regulation~~ *regulations* for  
 15 operation of a foster family agency, that orientation shall include,  
 16 but not be limited to, a description of policies, procedures, or  
 17 practices that violate paragraph (1) or (2) of subdivision (i) of  
 18 Section 11166 of the Penal Code.

19     (b) If the department requires, as part of an application for  
 20 licensure for a foster family agency, a written plan of operation,  
 21 that plan of operation shall include a written plan establishing  
 22 policies, procedures, or practices to ensure that the foster family  
 23 agency does not violate paragraph (1) or (2) of subdivision (i) of  
 24 Section 11166 of the Penal Code.

25     (c) For purposes of this section, a foster family agency is define  
 26 in paragraph (4) of subdivision (a) of Section 1502.

27     ~~SEC. 2. Section 1558 of the Health and Safety Code is amended~~  
 28 ~~to read:~~

29     1558. (a) The department may prohibit any person from being  
 30 a member of the board of directors, an executive director, or an  
 31 officer of a licensee, or a licensee from employing, or continuing  
 32 the employment of, or allowing in a licensed facility or certifie  
 33 family home, or allowing contact with clients of a licensed facility  
 34 or certified family home by, any employee, prospective employee,  
 35 or person who is not a client who has:

36     (1) Violated, or aided or permitted the violation by any other  
 37 person of, any provisions of this chapter or of any rules or  
 38 regulations promulgated under this chapter.

1 (2) Engaged in conduct that is inimical to the health, morals,  
2 welfare, or safety of either the people of this state or an individual  
3 in or receiving services from the facility or certified family home.

4 (3) Been denied an exemption to work or to be present in a  
5 facility or certified family home, when that person has been  
6 convicted of a crime as defined in Section 1522

7 (4) Engaged in any other conduct that would constitute a basis  
8 for disciplining a licensee or certified family home.

9 (5) Engaged in acts of financial malfeasance concerning the  
10 operation of a facility or certified family home, including, but not  
11 limited to, improper use or embezzlement of client moneys and  
12 property or fraudulent appropriation for personal gain of facility  
13 moneys and property, or willful or negligent failure to provide  
14 services.

15 (b) The excluded person, the facility or certified family home,  
16 and the licensee shall be given written notice of the basis of the  
17 department's action and of the excluded person's right to an appeal.  
18 The notice shall be served either by personal service or by  
19 registered mail. Within 15 days after the department serves the  
20 notice, the excluded person may file with the department a written  
21 appeal of the exclusion order. If the excluded person fails to file  
22 a written appeal within the prescribed time, the department's action  
23 shall be final

24 (c) (1) The department may require the immediate removal of  
25 a member of the board of directors, an executive director, or an  
26 officer of a licensee or exclusion of an employee, prospective  
27 employee, or person who is not a client from a facility or certified  
28 family home pending a final decision of the matter, when, in the  
29 opinion of the director, the action is necessary to protect residents  
30 or clients from physical or mental abuse, abandonment, or any  
31 other substantial threat to their health or safety.

32 (2) If the department requires the immediate removal of a  
33 member of the board of directors, an executive director, or an  
34 officer of a licensee or exclusion of an employee, prospective  
35 employee, or person who is not a client from a facility or certified  
36 family home, the department shall serve an order of immediate  
37 exclusion upon the excluded person that shall notify the excluded  
38 person of the basis of the department's action and of the excluded  
39 person's right to a hearing.

1 (3) Within 15 days after the department serves an order of  
2 immediate exclusion, the excluded person may file a written appeal  
3 of the exclusion with the department. The department's action  
4 shall be final if the excluded person does not appeal the exclusion  
5 within the prescribed time. The department shall do the following  
6 upon receipt of a written appeal:

7 (A) Within 30 days of receipt of the appeal, serve an accusation  
8 upon the excluded person.

9 (B) Within 60 days of receipt of a notice of defense pursuant  
10 to Section 11506 of the Government Code by the excluded person  
11 to conduct a hearing on the accusation.

12 (4) An order of immediate exclusion of the excluded person  
13 from the facility or certified family home shall remain in effect  
14 until the hearing is completed and the director has made a final  
15 determination on the merits. However, the order of immediate  
16 exclusion shall be deemed vacated if the director fails to make a  
17 final determination on the merits within 60 days after the original  
18 hearing has been completed.

19 (d) An excluded person who files a written appeal with the  
20 department pursuant to this section shall, as part of the written  
21 request, provide his or her current mailing address. The excluded  
22 person shall subsequently notify the department in writing of any  
23 change in mailing address, until the hearing process has been  
24 completed or terminated.

25 (e) Hearings held pursuant to this section shall be conducted in  
26 accordance with Chapter 5 (commencing with Section 11500) of  
27 Division 3 of Title 2 of the Government Code. The standard of  
28 proof shall be the preponderance of the evidence and the burden  
29 of proof shall be on the department.

30 (f) The department may institute or continue a disciplinary  
31 proceeding against a member of the board of directors, an executive  
32 director, or an officer of a licensee or an employee, prospective  
33 employee, or person who is not a client upon any ground provided  
34 by this section. The department may enter an order prohibiting  
35 any person from being a member of the board of directors, an  
36 executive director, or an officer of a licensee or prohibiting the  
37 excluded person's employment or presence in the facility or  
38 certified family home, or otherwise take disciplinary action against  
39 the excluded person, notwithstanding any resignation, withdrawal  
40 of employment application, or change of duties by the excluded



1 person, or any discharge, failure to hire, or reassignment of the  
2 excluded person by the licensee or that the excluded person no  
3 longer has contact with clients at the facility or certified family  
4 home.

5 (g) A licensee's or certified family home's failure to comply  
6 with the department's exclusion order after being notified of the  
7 order shall be grounds for disciplining the licensee pursuant to  
8 Section 1550.

9 (h) (1) (A) In cases where the excluded person appealed the  
10 exclusion order, the person shall be prohibited from working in  
11 any facility or being licensed to operate any facility licensed by  
12 the department or from being a certified foster parent for the  
13 remainder of the excluded person's life, unless otherwise ordered  
14 by the department.

15 (B) The excluded individual may petition for reinstatement one  
16 year after the effective date of the decision and order of the  
17 department upholding the exclusion order pursuant to Section  
18 11522 of the Government Code. The department shall provide the  
19 excluded person with a copy of Section 11522 of the Government  
20 Code with the decision and order.

21 (2) (A) In cases where the department informed the excluded  
22 person of his or her right to appeal the exclusion order and the  
23 excluded person did not appeal the exclusion order, the person  
24 shall be prohibited from working in any facility or being licensed  
25 to operate any facility licensed by the department or a certifie  
26 foster parent for the remainder of the excluded person's life, unless  
27 otherwise ordered by the department.

28 (B) The excluded individual may petition for reinstatement after  
29 one year has elapsed from the date of the notification of the  
30 exclusion order pursuant to Section 11522 of the Government  
31 Code. The department shall provide the excluded person with a  
32 copy of Section 11522 of the Government Code with the exclusion  
33 order.

34 *(i) Notwithstanding paragraph (2) of subdivision (a) or*  
35 *subdivision (c) of Section 1550, the department shall take*  
36 *reasonable action, including, but not limited to, prohibiting a*  
37 *person from being a member of the board of directors, an executive*  
38 *director, or an officer of a licensee of a licensed facility or certifie*  
39 *family home, or denying an application for, or suspending or*  
40 *revoking, a license, special permit, certificate of approval, or*

1 administrator certificat , issued under this chapter, or denying a  
2 transfer of a license pursuant to paragraph (2) of subdivision (c)  
3 of Section 1524, upon a finding of a violation of subdivision (i) of  
4 Section 11166 of the Penal Code.

5 ~~SEC. 4.~~

6 SEC. 3. Section 10605.5 of the Welfare and Institutions Code  
7 is amended to read:

8 10605.5. (a) (1) The department, in consultation with counties  
9 and labor organizations, shall establish, no later than January 1,  
10 2016, a process to receive voluntary disclosures from social  
11 workers, if a social worker has reasonable cause to believe that a  
12 policy, procedure, or practice, related to the provision of child  
13 welfare services by a county child welfare agency, meets any of  
14 the following conditions:

- 15 (A) Endangers the health or well-being of a child or children.
- 16 (B) Is contrary to existing statute or regulation.
- 17 (C) Is contrary to public policy.

18 (2) Notwithstanding any other law, the department shall not  
19 disclose to any person or entity the identity of a social worker  
20 making a disclosure described in paragraph (1), unless (A) the  
21 social worker has consented to the disclosure or (B) there is an  
22 immediate risk to the health and safety of a child.

23 (b) The department shall make available a description of the  
24 process established pursuant to subdivision (a) to counties and  
25 labor organizations.

26 (c) For purposes of this section, “county child welfare agency”  
27 includes a county welfare department, child welfare department,  
28 and any other county agency that employs social workers and is  
29 responsible for the placement and supervision of children and  
30 youth in foster care, including department social workers contracted  
31 by counties to perform direct adoption services.

32 (d) (1) No later than January 1, 2018, the department shall  
33 report to the Legislature only the following information:

34 (A) The total number of relevant disclosures received from  
35 social workers, including the month and year the disclosure was  
36 received.

37 (B) A summary description of both of the following:

38 (i) The issues raised in the disclosures received from a social  
39 worker.

- 1 (ii) The actions taken by the department in response to the  
2 disclosures.
- 3 (2) No later than January 1, 2018, the department shall post on  
4 its Internet Web site the information described in paragraph (1).
- 5 (3) The report required pursuant to paragraph (1) shall be  
6 submitted in compliance with Section 9795 of the Government  
7 Code.
- 8 (e) (1) Effective January 1, 2018, all of the duties imposed on  
9 the department pursuant to subdivisions (a) and (b) shall apply  
10 with respect to the receipt of voluntary disclosures from social  
11 workers employed at a foster family agency, as defined in Section  
12 1502 of the Health and Safety Code, including, but not limited to,  
13 disclosures from social workers who have reasonable cause to  
14 believe that a policy, procedure, or practice violates paragraph (1)  
15 or (2) of subdivision (i) of Section 11166 of the Penal Code.
- 16 (2) No later than July 1, 2019, the department shall report to  
17 the Legislature only the following information:
- 18 (A) The total number of relevant disclosures received from  
19 social workers employed at foster family agencies, including the  
20 month and year the disclosure was received.
- 21 (B) A summary description of both of the following:
- 22 (i) The issues raised in the disclosures received from a social  
23 worker.
- 24 (ii) The actions taken by the department in response to the  
25 disclosures.
- 26 (3) No later than July 1, 2019, the department shall post on its  
27 Internet Web site the information described in paragraph (1).
- 28 (4) The report required pursuant to paragraph (2) shall be  
29 submitted in compliance with Section 9795 of the Government  
30 Code.

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**PENAL CODE - PEN**

**PART 4. PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS [11006 - 14315]** ( Part 4 added by Stats. 1953, Ch. 1385. )

**TITLE 1. INVESTIGATION AND CONTROL OF CRIMES AND CRIMINALS [11006 - 11460]** ( Title 1 added by Stats. 1953, Ch. 1385. )

**CHAPTER 2. Control of Crimes and Criminals [11150 - 11199.5]** ( Chapter 2 added by Stats. 1953, Ch. 70. )

**ARTICLE 2.5. Child Abuse and Neglect Reporting Act [11164 - 11174.3]** ( Heading of Article 2.5 amended by Stats. 1987, Ch. 1444, Sec. 1. )

**11166.** (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If, after reasonable efforts, a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the State Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse and that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) (1) A commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall, immediately or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

(2) A commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or materials are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (43) of subdivision (a) of Section 11165.7.

- (4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.
- (5) As used in this subdivision, "sexual conduct" means any of the following:
- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.
- (B) Penetration of the vagina or rectum by any object.
- (C) Masturbation for the purpose of sexual stimulation of the viewer.
- (D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
- (E) Exhibition of the genitals, pubic, or rectal areas of a person for the purpose of sexual stimulation of the viewer.
- (f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).
- (g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, "any other person" includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.
- (h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.
- (i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.
- (2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.
- (3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.
- (j) (1) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.
- (2) A county probation or welfare department shall immediately, and in no case in more than 24 hours, report to the law enforcement agency having jurisdiction over the case after receiving information that a child or youth who is receiving child welfare services has been identified as the victim of commercial sexual exploitation, as defined in subdivision (d) of Section 11165.1.
- (3) When a child or youth who is receiving child welfare services and who is reasonably believed to be the victim of, or is at risk of being the victim of, commercial sexual exploitation, as defined in Section 11165.1, is missing or has been abducted, the county probation or welfare department shall immediately, or in no case later than 24 hours from receipt of the information, report the incident to the appropriate law enforcement authority for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children.
- (k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse

or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

*(Amended by Stats. 2015, Ch. 425, Sec. 4. Effective January 1, 2016.)*



# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER: AB 1808**

**VERSION: AMENDED APRIL 4, 2016**

**AUTHOR: WOOD**

**SPONSOR:**

- CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS (CAMFT)
- CALIFORNIA ASSOCIATION FOR LICENSED PROFESSIONAL CLINICAL COUNSELORS (CALPCC)

**RECOMMENDED POSITION: SUPPORT**

**SUBJECT: MINORS: MENTAL HEALTH SERVICES**

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### **Summary:**

This bill includes marriage and family therapist trainees and clinical counselor trainees in the list of professional persons who may perform mental health treatment or residential shelter services with a consenting minor 12 years of age or older under certain defined circumstances.

### **Existing Law:**

- 1) Allows a minor who is 12 years of age or older to consent to mental health services on an outpatient basis or to residential shelter services, under the following circumstances (FC §6924(b), HSC 124260(b)):
  - a) In the opinion of the attending professional person, if the minor is mature enough to participate intelligently in the services; and
  - b) The minor would present a danger of serious physical or mental harm to self or others without treatment, or the minor is allegedly a victim of incest or child abuse.
- 2) Defines a “professional person” related to mental health treatment or counseling services in the treatment of minors on an outpatient basis as including the following: (Family Code (FC) §6924 (a), Health and Safety Code (HSC) §124260(a))
  - a) A marriage and family therapist;
  - b) A marriage and family therapist intern, if under proper supervision as specified by law;
  - c) A licensed professional clinical counselor;
  - d) A clinical counselor intern, if under proper supervision as specified by law.

- 3) Defines “mental health treatment or counseling services” as the provision of mental health treatment or counseling on an outpatient basis by any of the following: (FC §6924 (a))
  - a) A governmental agency;
  - b) A person or agency having a contract with a governmental agency to provide those services;
  - c) An agency that receives funding from community united funds;
  - d) A runaway house or crisis resolution center; or,
  - e) A professional person, as defined.
- 4) Defines a “residential shelter service” as any of the following: (FC §6924 (a))
  - a) A provision of residential and other support services to minors on a temporary emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.
  - b) The provision of other support services on a temporary or emergency basis by any professional person, as defined.
- 5) Requires a professional person offering residential shelter services to make his or her best efforts to notify the parent or guardian of the provision of services. (Family Code §6924 (c))
- 6) Requires the mental health treatment or counseling of a minor authorized by this section of law to include the involvement of the minor’s parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. (FC §6924 (d), HSC §124260(c))
- 7) Defines a “marriage and family therapist trainee” as an unlicensed person who is currently enrolled in a master’s or doctoral degree program designed to qualify for licensure as a marriage and family therapist. The person must have completed at least 12 semester or 18 quarter units in his or her degree program. (Business and Professions Code (BPC) §4980.03(c))
- 8) Defines a “clinical counselor trainee” as an unlicensed person who is currently enrolled in a master’s or doctoral degree program designed to qualify for licensure as a professional clinical counselor. The person must have completed at least 12 semester or 18 quarter units in his or her degree program. (BPC §4999.12(g))
- 9) Prohibits marriage and family therapist trainees and clinical counselor trainees from working in a private practice. (BPC §§4980.43(e), 4999.34(c))

10) Defines marriage and family therapist trainees and clinical counselor trainees as mandated reporters under the Child Abuse and Neglect Reporting Act. (Penal Code §11165.7(a)(24) and (39))

**This Bill:**

- 1) Includes marriage and family therapist trainees and clinical counselor trainees in the list of professional persons who may perform mental health treatment or residential shelter services with a consenting minor 12 years of age or older under certain defined circumstances. (FC §6924(a)(2)(G) and (I), HSC §124260(a)(2)(G) and (J))
- 2) Requires marriage and family therapist trainees and clinical counselor trainees conducting such treatment to be supervised by a person who meets the Board's requirements as a supervisor. (FC §6924(a)(2)(G) and (I), HSC §124260(a)(2)(G) and (J))
- 3) Requires the trainee, when assessing whether the minor is mature enough to participate intelligently in the mental health services, to consult with his or her supervisor as soon as reasonably possible. (FC §6924(c), HSC §124260(b)(2))

**Comment:**

**1) Author's Intent.** The author's office states that leaving trainees off the list of eligible providers to treat consenting minors limits the number of providers available to treat minors, and limits MFT trainees' opportunities to gain experience hours toward licensure.

They state that trainees already routinely work with a variety of diagnoses and specialties, including PTSD, child abuse, and suicide. In addition, trainees must follow the same supervision requirements as interns, except that they are required to have more weekly supervision than interns.

**2) Trainee Qualifications to Treat Minors.** Under the law, a minor may consent to mental health treatment or residential shelter services if he or she is age 12 or older, and if the attending professional person determines the minor is mature enough to participate intelligently in the process.

This bill was recently amended to require the trainee to consult with his or her supervisor when making this determination.

**3) Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider a "support" position on this bill. The Committee also asked the sponsors to consider adding LCSWs and ASWs to the list of designated professional persons who may provide mental health treatment services to consenting minors. The sponsors expressed willingness to consider this amendment.

**4) Support and Opposition.**

**Support:**

- California Association of Marriage and Family Therapists (co-sponsor)

- California Association for Licensed Professional Clinical Counselors (co-sponsor)
- Community Clinic Association of Los Angeles County

Opposition:

- California Right to Life Committee

## 5) History

### 2016

04/21/16 In Senate. Read first time. To Com. on RLS. for assignment.

04/21/16 Read third time. Passed. Ordered to the Senate.

04/05/16 Read second time. Ordered to third reading.

04/04/16 Read second time and amended. Ordered returned to second reading.

03/31/16 From committee: Amend, and do pass as amended. (Ayes 14. Noes 0.)  
(March 29).

02/25/16 Referred to Com. on B. & P.

02/09/16 From printer. May be heard in committee March 10.

02/08/16 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1808**

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**Introduced by Assembly Member Wood**

February 8, 2016

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An act to amend Section 6924 of the Family Code, and to amend Section 124260 of the Health and Safety Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1808, as amended, Wood. Minors: mental health services.

Existing law authorizes a minor who is 12 years of age or older to consent to mental health treatment or counseling services on an outpatient basis, or to residential shelter services, ~~under when~~ certain circumstances, ~~where those services are provided by any one of specific professionals, including~~ requirements are satisfied, including a determination that the minor, in the opinion of the attending professional person, as specified, is mature enough to participate intelligently in those services. Existing law defines "professional person," for the purposes of those provisions, to include, among others, a marriage and family therapist, a marriage and family therapist intern, a professional clinical counselor, and a clinical counselor intern.

This bill would additionally authorize a marriage and family therapist trainee and a clinical counselor trainee, while working under the supervision of certain licensed professionals, to provide those services. *The bill would require the marriage and family therapist trainee or the clinical counselor trainee to consult with his or her supervisor, as soon as reasonably possible, when assessing the maturity of the minor.* The bill would also make technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6924 of the Family Code is amended to  
 2 read:  
 3 6924. (a) As used in this section:  
 4 (1) “Mental health treatment or counseling services” means the  
 5 provision of mental health treatment or counseling on an outpatient  
 6 basis by any of the following:  
 7 (A) A governmental agency.  
 8 (B) A person or agency having a contract with a governmental  
 9 agency to provide the services.  
 10 (C) An agency that receives funding from community united  
 11 funds.  
 12 (D) A runaway house or crisis resolution center.  
 13 (E) A professional person, as defined in paragraph (2)  
 14 (2) “Professional person” means any of the following:  
 15 (A) A person designated as a mental health professional in  
 16 Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of  
 17 Chapter 1 of Title 9 of the California Code of Regulations.  
 18 (B) A marriage and family therapist as defined in Chapter 13  
 19 (commencing with Section 4980) of Division 2 of the Business  
 20 and Professions Code.  
 21 (C) A licensed educational psychologist as defined in Chapter  
 22 13.5 (commencing with Section 4989.10) of Division 2 of the  
 23 Business and Professions Code.  
 24 (D) A credentialed school psychologist as described in Section  
 25 49424 of the Education Code.  
 26 (E) A clinical psychologist as defined in Section 1316.5 of th  
 27 Health and Safety Code.  
 28 (F) The chief administrator of an agency referred to in paragraph  
 29 (1) or (3).  
 30 (G) A person registered as a marriage and family therapist intern,  
 31 or a marriage and family therapist trainee, as defined in Chapter  
 32 13 (commencing with Section 4980) of Division 2 of the Business  
 33 and Professions Code, while working under the supervision of a  
 34 licensed professional specified in subdivision (g) of Section  
 35 4980.03 of the Business and Professions Code.

1 (H) A licensed professional clinical counselor, as defined in  
2 Chapter 16 (commencing with Section 4999.10) of Division 2 of  
3 the Business and Professions Code.

4 (I) A person registered as a clinical counselor intern, or a clinical  
5 counselor trainee, as defined in Chapter 16 (commencing with  
6 Section 4999.10) of Division 2 of the Business and Professions  
7 Code, while working under the supervision of a licensed  
8 professional specified in subdivision (h) of Section 4999.12 of the  
9 Business and Professions Code.

10 (3) “Residential shelter services” means any of the following:

11 (A) The provision of residential and other support services to  
12 minors on a temporary or emergency basis in a facility that services  
13 only minors by a governmental agency, a person or agency having  
14 a contract with a governmental agency to provide these services,  
15 an agency that receives funding from community funds, or a  
16 licensed community care facility or crisis resolution center.

17 (B) The provision of other support services on a temporary or  
18 emergency basis by any professional person as defined in paragraph  
19 (2).

20 (b) A minor who is 12 years of age or older may consent to  
21 mental health treatment or counseling on an outpatient basis, or  
22 to residential shelter services, if both of the following requirements  
23 are satisfied

24 (1) The minor, in the opinion of the attending professional  
25 person, is mature enough to participate intelligently in the  
26 outpatient services or residential shelter services.

27 (2) The minor (A) would present a danger of serious physical  
28 or mental harm to self or to others without the mental health  
29 treatment or counseling or residential shelter services, or (B) is  
30 the alleged victim of incest or child abuse.

31 *(c) A marriage and family therapist trainee or a clinical*  
32 *counselor trainee, as specified in paragraph (2) of subdivision (a),*  
33 *shall consult with his or her supervisor, as soon as reasonably*  
34 *possible, when assessing the maturity of the minor pursuant to*  
35 *paragraph (1) of subdivision (b).*

36 (e)

37 (d) A professional person offering residential shelter services,  
38 whether as an individual or as a representative of an entity specific  
39 in paragraph (3) of subdivision (a), shall make his or her best  
40 efforts to notify the parent or guardian of the provision of services.

1     ~~(d)~~  
 2     (e) The mental health treatment or counseling of a minor  
 3 authorized by this section shall include involvement of the minor’s  
 4 parent or guardian unless, in the opinion of the professional person  
 5 who is treating or counseling the minor, the involvement would  
 6 be inappropriate. The professional person who is treating or  
 7 counseling the minor shall state in the client record whether and  
 8 when the person attempted to contact the minor’s parent or  
 9 guardian, and whether the attempt to contact was successful or  
 10 unsuccessful, or the reason why, in the professional person’s  
 11 opinion, it would be inappropriate to contact the minor’s parent  
 12 or guardian.

13     ~~(e)~~  
 14     (f) The minor’s parents or guardian are not liable for payment  
 15 for mental health treatment or counseling services provided  
 16 pursuant to this section unless the parent or guardian participates  
 17 in the mental health treatment or counseling, and then only for  
 18 services rendered with the participation of the parent or guardian.  
 19 The minor’s parents or guardian are not liable for payment for any  
 20 residential shelter services provided pursuant to this section unless  
 21 the parent or guardian consented to the provision of those services.

22     ~~(f)~~  
 23     (g) This section does not authorize a minor to receive convulsive  
 24 treatment or psychosurgery as defined in subdivisions (f) and (g)  
 25 of Section 5325 of the Welfare and Institutions Code, or  
 26 psychotropic drugs without the consent of the minor’s parent or  
 27 guardian.

28     SEC. 2. Section 124260 of the Health and Safety Code is  
 29 amended to read:

30     124260. (a) As used in this section:

31     (1) “Mental health treatment or counseling services” means the  
 32 provision of outpatient mental health treatment or counseling by  
 33 a professional person, as defined in paragraph (2)

34     (2) “Professional person” means any of the following:

35     (A) A person designated as a mental health professional in  
 36 Sections 622 to 626, inclusive, of Title 9 of the California Code  
 37 of Regulations.

38     (B) A marriage and family therapist, as defined in Chapter 13  
 39 (commencing with Section 4980) of Division 2 of the Business  
 40 and Professions Code.



1 (C) A licensed educational psychologist, as defined in Chapter  
2 13.5 (commencing with Section 4989.10) of Division 2 of the  
3 Business and Professions Code.

4 (D) A credentialed school psychologist, as described in Section  
5 49424 of the Education Code.

6 (E) A clinical psychologist, as defined in Section 1316.5 of the  
7 Health and Safety Code.

8 (F) A licensed clinical social worker, as defined in Chapter 14  
9 (commencing with Section 4991) of Division 2 of the Business  
10 and Professions Code.

11 (G) A person registered as a marriage and family therapist intern,  
12 or a marriage and family therapist trainee, as defined in Chapter  
13 13 (commencing with Section 4980) of Division 2 of the Business  
14 and Professions Code, while working under the supervision of a  
15 licensed professional specified in subdivision (g) of Section  
16 4980.03 of the Business and Professions Code.

17 (H) A board certified, or board eligible, psychiatrist

18 (I) A licensed professional clinical counselor, as defined in  
19 Chapter 16 (commencing with Section 4999.10) of Division 2 of  
20 the Business and Professions Code.

21 (J) A person registered as a clinical counselor intern, or a clinical  
22 counselor trainee, as defined in Chapter 16 (commencing with  
23 Section 4999.10) of Division 2 of the Business and Professions  
24 Code, while working under the supervision of a licensed  
25 professional specified in subdivision (h) of Section 4999.12 of the  
26 Business and Professions Code.

27 (b) (1) Notwithstanding any provision of law to the contrary,  
28 a minor who is 12 years of age or older may consent to mental  
29 health treatment or counseling services if, in the opinion of the  
30 attending professional person, the minor is mature enough to  
31 participate intelligently in the mental health treatment or counseling  
32 services.

33 (2) *A marriage and family therapist trainee or a clinical*  
34 *counselor trainee, as specified in paragraph (2) of subdivision (a),*  
35 *shall consult with his or her supervisor, as soon as reasonably*  
36 *possible, when assessing the maturity of the minor pursuant to*  
37 *paragraph (1).*

38 (c) Notwithstanding any provision of law to the contrary, the  
39 mental health treatment or counseling of a minor authorized by  
40 this section shall include involvement of the minor's parent or

1 guardian, unless the professional person who is treating or  
2 counseling the minor, after consulting with the minor, determines  
3 that the involvement would be inappropriate. The professional  
4 person who is treating or counseling the minor shall state in the  
5 client record whether and when the person attempted to contact  
6 the minor's parent or guardian, and whether the attempt to contact  
7 was successful or unsuccessful, or the reason why, in the  
8 professional person's opinion, it would be inappropriate to contact  
9 the minor's parent or guardian.

10 (d) The minor's parent or guardian is not liable for payment for  
11 mental health treatment or counseling services provided pursuant  
12 to this section unless the parent or guardian participates in the  
13 mental health treatment or counseling, and then only for services  
14 rendered with the participation of the parent or guardian.

15 (e) This section does not authorize a minor to receive convulsive  
16 treatment or psychosurgery, as defined in subdivisions (f) and (g)  
17 of Section 5325 of the Welfare and Institutions Code, or  
18 psychotropic drugs without the consent of the minor's parent or  
19 guardian.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 1863                      **VERSION:** INTRODUCED FEBRUARY 10, 2016

**AUTHOR:** WOOD                              **SPONSOR:**

- CALIFORNIA PRIMARY CARE ASSOCIATION
- CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS (CAMFT)

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** MEDI-CAL: FEDERALLY QUALIFIED HEALTH CENTERS: RURAL HEALTH CENTERS

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### **Summary:**

This bill would allow Medi-Cal reimbursement for covered mental health services provided by a marriage and family therapist employed by a federally qualified health center or a rural health clinic.

### **Existing Law:**

- 1) Establishes that federally qualified health center services (FQHCs) and rural health clinic (RHC) services are covered Medi-Cal benefits that are reimbursed on a per-visit basis. (Welfare and Institutions Code (WIC) §14132.100(c))
- 2) Allows an FQHC or RHC to apply for an adjustment to its per-visit rate based on a change in the scope of services that it provides. (WIC §14132.100(e))
- 3) Defines a FQHC or RHC “visit” as a face-to-face encounter between an FQHC or RHC patient and one of the following (WIC §14132.100(g))
  - A physician;
  - physician assistant;
  - nurse practitioner;
  - certified nurse-midwife;
  - clinical psychologist;
  - licensed clinical social worker;
  - visiting nurse; or
  - dental hygienist.

### **This Bill:**

- 1) Adds a marriage and family therapist to the list of health care professionals included in the definition of a visit to a FQHC or RHC that is eligible for Medi-Cal reimbursement. (WIC §14132.100(g)(2)(A))
- 2) Adds technical procedures for how an FQHC or RHC that employs marriage and family therapists can apply for a rate adjustment and bill for services. (WIC §14132.100(g)(2)(B) and (C))

## Comments:

- 1) **Background.** Currently, there are approximately 600 FQHCs and 350 RHCs in California. These clinics serve the uninsured and underinsured, and are reimbursed by Medi-Cal on a “per visit” basis. Generally, the cost of a visit is calculated by the Department of Health Care Services for each clinic, by determining the annual cost of care provided by the clinic, divided by the annual number of visits to the clinic.
- 2) **Intent.** The intent of this legislation is to allow FQHCs and RHCs to be able to hire a marriage and family therapist and be reimbursed through Medi-Cal for covered mental health services. Under current law, a clinic may hire a marriage and family therapist. However, only clinical psychologists or licensed clinical social workers may receive Medi-Cal reimbursement for covered services in such settings. According to the author’s office, the inability to receive Medi-Cal reimbursement serves as a disincentive for a FQHC or a RHC to consider hiring a marriage and family therapist. Allowing services provided by LMFTs to be reimbursed will maximize the availability of mental health services in rural areas.
- 3) **Suggested Amendment.** Staff suggests an amendment be made to include the word “licensed” in front of the term “marriage and family therapist” throughout WIC §14132.100. This will clarify that the marriage and family therapist must be licensed by the Board, and it is consistent with the use of the term “licensed clinical social worker” in that code section. In addition, it is also consistent with the Board’s August 18, 2011 decision that the title “Licensed Marriage and Family Therapist” be utilized in all new regulatory and legislative proposals.
- 4) **Previous Legislation.** This bill was run as AB 1785 (B. Lowenthal) in 2012. The Board took a “support” position on AB 1785. However, the bill died in the Assembly Appropriations Committee.

This bill was run again as AB 690 (Wood) in 2015. The Board took a “support” position on the bill; however, it died when it was held in committee. Its provisions were amended into AB 858 (Wood), also in 2015. AB 858 was part of a series of six Medi-Cal related bills that were all vetoed by the Governor. In a combined veto message for all six bills, the Governor stated that the bills would require expansion or development of new benefits and procedures in the Medi-Cal program, and that he could not support any of them until the fiscal outlook for Medi-Cal is stabilized.

- 5) **Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider taking a “support” position on this bill.
- 6) **Support and Opposition.**

### Support:

- California Primary Care Association (sponsor)
- California Association of Marriage and Family Therapists (sponsor)
- AIDS Project Los Angeles
- Association of California Healthcare Districts
- Community Clinic Association of Los Angeles County
- County Health Executives Association of California

- North Coast Clinic Network
- Open Door Community Health Centers

Oppose:

- California Psychological Association
- National Association of Social Workers, California Chapter

## 7) History

### 2016

04/06/16 In committee: Set, first hearing. Referred to APPR. suspense file.

03/30/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 18. Noes 0.) (March 29). Re-referred to Com. on APPR.

02/25/16 Referred to Com. on HEALTH.

02/11/16 From printer. May be heard in committee March 12.

02/10/16 Read first time. To print.

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**ASSEMBLY BILL**

**No. 1863**

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**Introduced by Assembly Member Wood**

February 10, 2016

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An act to amend Section 14132.100 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1863, as introduced, Wood. Medi-Cal: federally qualified health centers: rural health centers.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides that federally qualified health center (FQHC) services and rural health clinic (RHC) services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis. "Visit" is defined as a face-to-face encounter between a patient of an FQHC or RHC and specified health care professionals. Existing law allows an FQHC or RHC to apply for an adjustment to its per-visit rate based on a change in the scope of services it provides.

This bill would include a marriage and family therapist within those health care professionals covered under that definition. The bill would require an FQHC or RHC that currently includes the cost of services of a marriage and family therapist for the purposes of establishing its FQHC or RHC rate to apply to the department for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the

department, would require the FQHC or RHC to bill these services as a separate visit, as specified. The bill would require an FQHC or RHC that does not provide the services of a marriage and family therapist, and later elects to add these services, to process the addition of these services as a change in scope of service.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 14132.100 of the Welfare and Institutions  
2 Code is amended to read:  
3 14132.100. (a) The federally qualified health center services  
4 described in Section 1396d(a)(2)(C) of Title 42 of the United States  
5 Code are covered benefits  
6 (b) The rural health clinic services described in Section  
7 1396d(a)(2)(B) of Title 42 of the United States Code are covered  
8 benefits  
9 (c) Federally qualified health center services and rural health  
10 clinic services shall be reimbursed on a per-visit basis in  
11 accordance with the definition of “visit” set forth in subdivision  
12 (g).  
13 (d) Effective October 1, 2004, and on each October 1, thereafter,  
14 until no longer required by federal law, federally qualified health  
15 center (FQHC) and rural health clinic (RHC) per-visit rates shall  
16 be increased by the Medicare Economic Index applicable to  
17 primary care services in the manner provided for in Section  
18 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to  
19 January 1, 2004, FQHC and RHC per-visit rates shall be adjusted  
20 by the Medicare Economic Index in accordance with the  
21 methodology set forth in the state plan in effect on October 1,  
22 2001.  
23 (e) (1) An FQHC or RHC may apply for an adjustment to its  
24 per-visit rate based on a change in the scope of services provided  
25 by the FQHC or RHC. Rate changes based on a change in the  
26 scope of services provided by an FQHC or RHC shall be evaluated  
27 in accordance with Medicare reasonable cost principles, as set  
28 forth in Part 413 (commencing with Section 413.1) of Title 42 of  
29 the Code of Federal Regulations, or its successor.



1 (2) Subject to the conditions set forth in subparagraphs (A) to  
2 (D), inclusive, of paragraph (3), a change in scope of service means  
3 any of the following:

4 (A) The addition of a new FQHC or RHC service that is not  
5 incorporated in the baseline prospective payment system (PPS)  
6 rate, or a deletion of an FQHC or RHC service that is incorporated  
7 in the baseline PPS rate.

8 (B) A change in service due to amended regulatory requirements  
9 or rules.

10 (C) A change in service resulting from relocating or remodeling  
11 an FQHC or RHC.

12 (D) A change in types of services due to a change in applicable  
13 technology and medical practice utilized by the center or clinic.

14 (E) An increase in service intensity attributable to changes in  
15 the types of patients served, including, but not limited to,  
16 populations with HIV or AIDS, or other chronic diseases, or  
17 homeless, elderly, migrant, or other special populations.

18 (F) Any changes in any of the services described in subdivision  
19 (a) or (b), or in the provider mix of an FQHC or RHC or one of  
20 its sites.

21 (G) Changes in operating costs attributable to capital  
22 expenditures associated with a modification of the scope of any  
23 of the services described in subdivision (a) or (b), including new  
24 or expanded service facilities, regulatory compliance, or changes  
25 in technology or medical practices at the center or clinic.

26 (H) Indirect medical education adjustments and a direct graduate  
27 medical education payment that reflects the costs of providing  
28 teaching services to interns and residents.

29 (I) Any changes in the scope of a project approved by the federal  
30 Health Resources and ~~Service~~ *Services* Administration (HRSA).

31 (3) No change in costs shall, in and of itself, be considered a  
32 scope-of-service change unless all of the following apply:

33 (A) The increase or decrease in cost is attributable to an increase  
34 or decrease in the scope of services defined in subdivisions (a) and  
35 (b), as applicable.

36 (B) The cost is allowable under Medicare reasonable cost  
37 principles set forth in Part 413 (commencing with Section 413) of  
38 Subchapter B of Chapter 4 of Title 42 of the Code of Federal  
39 Regulations, or its successor.

1 (C) The change in the scope of services is a change in the type,  
 2 intensity, duration, or amount of services, or any combination  
 3 thereof.

4 (D) The net change in the FQHC’s or RHC’s rate equals or  
 5 exceeds 1.75 percent for the affected FQHC or RHC site. For  
 6 FQHCs and RHCs that filed consolidated cost reports for multiple  
 7 sites to establish the initial prospective payment reimbursement  
 8 rate, the 1.75-percent threshold shall be applied to the average  
 9 per-visit rate of all sites for the purposes of calculating the cost  
 10 associated with a scope-of-service change. “Net change” means  
 11 the per-visit rate change attributable to the cumulative effect of all  
 12 increases and decreases for a particular fiscal year .

13 (4) An FQHC or RHC may submit requests for scope-of-service  
 14 changes once per fiscal year, only within 90 days following the  
 15 beginning of the FQHC’s or RHC’s fiscal year. Any approved  
 16 increase or decrease in the provider’s rate shall be retroactive to  
 17 the beginning of the FQHC’s or RHC’s fiscal year in which the  
 18 request is submitted.

19 (5) An FQHC or RHC shall submit a scope-of-service rate  
 20 change request within 90 days of the beginning of any FQHC or  
 21 RHC fiscal year occurring after the effective date of this section,  
 22 if, during the FQHC’s or RHC’s prior fiscal year, the FQHC or  
 23 RHC experienced a decrease in the scope of services provided that  
 24 the FQHC or RHC either knew or should have known would have  
 25 resulted in a significantly lower per-visit rate. If an FQHC or RHC  
 26 discontinues providing onsite pharmacy or dental services, it shall  
 27 submit a scope-of-service rate change request within 90 days of  
 28 the beginning of the following fiscal year. The rate change shall  
 29 be effective as provided for in paragraph (4). As used in this  
 30 paragraph, “significantly lower” means an average per-visit rate  
 31 decrease in excess of 2.5 percent.

32 (6) Notwithstanding paragraph (4), if the approved  
 33 scope-of-service change or changes were initially implemented  
 34 on or after the first day of an FQHC’s or RHC’s fiscal year ending  
 35 in calendar year 2001, but before the adoption and issuance of  
 36 written instructions for applying for a scope-of-service change,  
 37 the adjusted reimbursement rate for that scope-of-service change  
 38 shall be made retroactive to the date the scope-of-service change  
 39 was initially implemented. Scope-of-service changes under this  
 40 paragraph shall be required to be submitted within the later of 150

1 days after the adoption and issuance of the written instructions by  
2 the department, or 150 days after the end of the FQHC's or RHC's  
3 fiscal year ending in 2003

4 (7) All references in this subdivision to "fiscal year" shall be  
5 construed to be references to the fiscal year of the individual FQHC  
6 or RHC, as the case may be.

7 (f) (1) An FQHC or RHC may request a supplemental payment  
8 if extraordinary circumstances beyond the control of the FQHC  
9 or RHC occur after December 31, 2001, and PPS payments are  
10 insufficient due to these extraordinary circumstances. Supplemental  
11 payments arising from extraordinary circumstances under this  
12 subdivision shall be solely and exclusively within the discretion  
13 of the department and shall not be subject to subdivision (l). These  
14 supplemental payments shall be determined separately from the  
15 scope-of-service adjustments described in subdivision (e).  
16 Extraordinary circumstances include, but are not limited to, acts  
17 of nature, changes in applicable requirements in the Health and  
18 Safety Code, changes in applicable licensure requirements, and  
19 changes in applicable rules or regulations. Mere inflation of costs  
20 alone, absent extraordinary circumstances, shall not be grounds  
21 for supplemental payment. If an FQHC's or RHC's PPS rate is  
22 sufficient to cover its overall costs, including those associated with  
23 the extraordinary circumstances, then a supplemental payment is  
24 not warranted.

25 (2) The department shall accept requests for supplemental  
26 payment at any time throughout the prospective payment rate year.

27 (3) Requests for supplemental payments shall be submitted in  
28 writing to the department and shall set forth the reasons for the  
29 request. Each request shall be accompanied by sufficient  
30 documentation to enable the department to act upon the request.  
31 Documentation shall include the data necessary to demonstrate  
32 that the circumstances for which supplemental payment is requested  
33 meet the requirements set forth in this section. Documentation  
34 shall include all of the following:

35 (A) A presentation of data to demonstrate reasons for the  
36 FQHC's or RHC's request for a supplemental payment.

37 (B) Documentation showing the cost implications. The cost  
38 impact shall be material and significant, two hundred thousand  
39 dollars (\$200,000) or 1 percent of a facility's total costs, whichever  
40 is less.

1 (4) A request shall be submitted for each affected year.

2 (5) Amounts granted for supplemental payment requests shall  
3 be paid as lump-sum amounts for those years and not as revised  
4 PPS rates, and shall be repaid by the FQHC or RHC to the extent  
5 that it is not expended for the specified purposes

6 (6) The department shall notify the provider of the department's  
7 discretionary decision in writing.

8 (g) (1) An FQHC or RHC "visit" means a face-to-face  
9 encounter between an FQHC or RHC patient and a physician,  
10 physician assistant, nurse practitioner, certified nurse-midwife,  
11 clinical psychologist, licensed clinical social worker, or a visiting  
12 nurse. For purposes of this section, "physician" shall be interpreted  
13 in a manner consistent with the Centers for Medicare and Medicaid  
14 Services' Medicare Rural Health Clinic and Federally Qualifie  
15 Health Center Manual (Publication 27), or its successor, only to  
16 the extent that it defines the professionals whose services are  
17 reimbursable on a per-visit basis and not as to the types of services  
18 that these professionals may render during these visits and shall  
19 include a physician and surgeon, *osteopath*, podiatrist, dentist,  
20 optometrist, and chiropractor. A visit shall also include a  
21 face-to-face encounter between an FQHC or RHC patient and a  
22 comprehensive perinatal-services practitioner, as defined in Section  
23 ~~51179.1~~ 51179.7 of Title 22 of the California Code of Regulations,  
24 providing comprehensive perinatal services, a four-hour day of  
25 attendance at an adult day health care center, and any other provider  
26 identified in the state plan s definition of an FQHC or RHC visit

27 (2) (A) A visit shall also include a face-to-face encounter  
28 between an FQHC or RHC patient and a dental-hygienist or  
29 *hygienist*, a dental hygienist in alternative-practice: *practice, or a*  
30 *marriage and family therapist*.

31 (B) Notwithstanding subdivision (e), an FQHC or RHC that  
32 currently includes the cost of the services of a dental hygienist in  
33 alternative-practice *practice, or a marriage and family therapist*  
34 for the purposes of establishing its FQHC or RHC rate shall apply  
35 for an adjustment to its per-visit rate, and, after the rate adjustment  
36 has been approved by the department, shall bill these services as  
37 a separate visit. However, multiple encounters with dental  
38 professionals *or marriage and family therapists* that take place on  
39 the same day shall constitute a single visit. The department shall  
40 develop the appropriate forms to determine which FQHC's or-RHC

1 RHC's rates shall be adjusted and to facilitate the calculation of  
2 the adjusted rates. An FQHC's or RHC's application for, or the  
3 department's approval of, a rate adjustment pursuant to this  
4 subparagraph shall not constitute a change in scope of service  
5 within the meaning of subdivision (e). An FQHC or RHC that  
6 applies for an adjustment to its rate pursuant to this subparagraph  
7 may continue to bill for all other FQHC or RHC visits at its existing  
8 per-visit rate, subject to reconciliation, until the rate adjustment  
9 for visits between an FQHC or RHC patient and a dental hygienist  
10 ~~or hygienist~~, a dental hygienist in alternative practice, or  
11 a marriage and family therapist has been approved. Any approved  
12 increase or decrease in the provider's rate shall be made within  
13 six months after the date of receipt of the department's rate  
14 adjustment forms pursuant to this subparagraph and shall be  
15 retroactive to the beginning of the fiscal year in which the FQHC  
16 or RHC submits the request, but in no case shall the effective date  
17 be earlier than January 1, 2008.

18 (C) An FQHC or RHC that does not provide dental hygienist  
19 ~~or hygienist~~, dental hygienist in alternative practice, or  
20 marriage and family therapist services, and later elects to add these  
21 services, shall process the addition of these services as a change  
22 in scope of service pursuant to subdivision (e).

23 (h) If FQHC or RHC services are partially reimbursed by a  
24 third-party payer, such as a managed care entity (as defined in  
25 Section 1396u-2(a)(1)(B) of Title 42 of the United States Code),  
26 the Medicare Program, or the Child Health and Disability  
27 Prevention (CHDP) program, the department shall reimburse an  
28 FQHC or RHC for the difference between its per-visit PPS rate  
29 and receipts from other plans or programs on a contract-by-contract  
30 basis and not in the aggregate, and may not include managed care  
31 financial incentive payments that are required by federal law to  
32 be excluded from the calculation.

33 (i) (1) An entity that first qualifies as an FQHC or RHC in the  
34 year 2001 or later, a newly licensed facility at a new location added  
35 to an existing FQHC or RHC, and any entity that is an existing  
36 FQHC or RHC that is relocated to a new site shall each have its  
37 reimbursement rate established in accordance with one of the  
38 following methods, as selected by the FQHC or RHC:

39 (A) The rate may be calculated on a per-visit basis in an amount  
40 that is equal to the average of the per-visit rates of three comparable

1 FQHCs or RHCs located in the same or adjacent area with a similar  
2 caseload.

3 (B) In the absence of three comparable FQHCs or RHCs with  
4 a similar caseload, the rate may be calculated on a per-visit basis  
5 in an amount that is equal to the average of the per-visit rates of  
6 three comparable FQHCs or RHCs located in the same or an  
7 adjacent service area, or in a reasonably similar geographic area  
8 with respect to relevant social, health care, and economic  
9 characteristics.

10 (C) At a new entity’s one-time election, the department shall  
11 establish a reimbursement rate, calculated on a per-visit basis, that  
12 is equal to 100 percent of the projected allowable costs to the  
13 FQHC or RHC of furnishing FQHC or RHC services during the  
14 first 12 months of operation as an FQHC or RHC. After the first  
15 12-month period, the projected per-visit rate shall be increased by  
16 the Medicare Economic Index then in effect. The projected  
17 allowable costs for the first 12 months shall be cost settled and the  
18 prospective payment reimbursement rate shall be adjusted based  
19 on actual and allowable cost per visit.

20 (D) The department may adopt any further and additional  
21 methods of setting reimbursement rates for newly qualified FQHCs  
22 or RHCs as are consistent with Section 1396a(bb)(4) of Title 42  
23 of the United States Code.

24 (2) In order for an FQHC or RHC to establish the comparability  
25 of its caseload for purposes of subparagraph (A) or (B) of paragraph  
26 (1), the department shall require that the FQHC or RHC submit  
27 its most recent annual utilization report as submitted to the Office  
28 of Statewide Health Planning and Development, unless the FQHC  
29 or RHC was not required to file an annual utilization report. FQHCs  
30 or RHCs that have experienced changes in their services or  
31 caseload subsequent to the filing of the annual utilization report  
32 may submit to the department a completed report in the format  
33 applicable to the prior calendar year. FQHCs or RHCs that have  
34 not previously submitted an annual utilization report shall submit  
35 to the department a completed report in the format applicable to  
36 the prior calendar year. The FQHC or RHC shall not be required  
37 to submit the annual utilization report for the comparable FQHCs  
38 or RHCs to the department, but shall be required to identify the  
39 comparable FQHCs or RHCs.

1 (3) The rate for any newly qualified entity set forth under this  
2 subdivision shall be effective retroactively to the later of the date  
3 that the entity was first qualified by the applicable federal agency  
4 as an FQHC or RHC, the date a new facility at a new location was  
5 added to an existing FQHC or RHC, or the date on which an  
6 existing FQHC or RHC was relocated to a new site. The FQHC  
7 or RHC shall be permitted to continue billing for Medi-Cal covered  
8 benefits on a fee-for-service basis *under its existing provider*  
9 *number* until it is informed of its ~~enrollment as an FQHC or RHC,~~  
10 *RHC enrollment approval*, and the department shall reconcile the  
11 difference between the fee-for-service payments and the FQHC's  
12 or RHC's prospective payment rate at that time.

13 (j) Visits occurring at an intermittent clinic site, as defined in  
14 subdivision (h) of Section 1206 of the Health and Safety Code, of  
15 an existing FQHC or RHC, or in a mobile unit as defined by  
16 paragraph (2) of subdivision (b) of Section 1765.105 of the Health  
17 and Safety Code, shall be billed by and reimbursed at the same  
18 rate as the FQHC or RHC establishing the intermittent clinic site  
19 or the mobile unit, subject to the right of the FQHC or RHC to  
20 request a scope-of-service adjustment to the rate.

21 (k) An FQHC or RHC may elect to have pharmacy or dental  
22 services reimbursed on a fee-for-service basis, utilizing the current  
23 fee schedules established for those services. These costs shall be  
24 adjusted out of the FQHC's or RHC's clinic base rate as  
25 scope-of-service changes. An FQHC or RHC that reverses its  
26 election under this subdivision shall revert to its prior rate, subject  
27 to an increase to account for all ~~MEI~~ *Medicare Economic Index*  
28 increases occurring during the intervening time period, and subject  
29 to any increase or decrease associated with applicable  
30 ~~scope-of-services~~ *scope-of-service* adjustments as provided in  
31 subdivision (e).

32 (l) FQHCs and RHCs may appeal a grievance or complaint  
33 concerning ratesetting, scope-of-service changes, and settlement  
34 of cost report audits, in the manner prescribed by Section 14171.  
35 The rights and remedies provided under this subdivision are  
36 cumulative to the rights and remedies available under all other  
37 provisions of law of this state.

38 (m) The department shall, ~~by~~ no later than March 30, 2008,  
39 promptly seek all necessary federal approvals in order to implement  
40 this section, including any amendments to the state plan. To the

1 extent that any element or requirement of this section is not  
2 approved, the department shall submit a request to the federal  
3 Centers for Medicare and Medicaid Services for any waivers that  
4 would be necessary to implement this section.

5 (n) The department shall implement this section only to the  
6 extent that federal financial participation is obtained

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 2083                      **VERSION:** INTRODUCED FEBRUARY 17, 2016

**AUTHOR:** CHU                                      **SPONSOR:** COUNTY OF SANTA CLARA

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** INTERAGENCY CHILD DEATH REVIEW

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**Summary:** This bill would, at the discretion of the provider, allow medical and mental health information to be disclosed to an interagency child death review team.

### **Existing Law:**

- 1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and must submit a report to specified agencies when in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code (PC) § 11165.7(a)(21) and 11166(a))
- 2) Requires that all mental health records be confidential and only subject to disclosure under certain specified circumstances. (Welfare and Institutions Code (WIC) §5328)
- 3) Allows counties to establish interagency child death review teams in order to review suspicious child deaths and to help identify incidents of child abuse or neglect. (PC §11174.32(a))
- 4) Requires that records that are exempt from disclosure to third parties by law remain exempt from disclosure when they are in possession of a child death review team. (PC §11174.32(d))
- 5) Establishes interagency elder and dependent adult death review teams, and permits certain confidential information, including medical and mental health information, to be disclosed to the team, at the discretion of the person who has the information. (PC §§11174.5, 11174.8)
- 6) Establishes interagency domestic violence death review teams, and permits certain confidential information, including medical and mental health information, to be disclosed to the team, at the discretion of the person who has the information. (PC §11163.3)

### **This Bill:**

- 1) Permits certain confidential information to be disclosed to a child death review team. This includes medical information and mental health information. (PC §11174.32(e))
- 2) States that if such confidential information is requested by a child death review team, the person who has the information is not required to disclose it. (PC §11174.32(e))

### **Comment:**

- 1) **Author's Intent.** The author's office notes that while the law provides domestic violence and elder and dependent adult death review teams the ability to review mental health information, it is silent about whether or not child death review teams may obtain this information. Allowing child death review teams to obtain this information could help with investigation and detection of child abuse and neglect, and could help identify trends to reduce incidents of child death.
- 2) **Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider a "support" position on this legislation.

### **Support and Opposition:**

#### Support:

- County of Santa Clara (Sponsor)
- County Health Executives Association of California

#### Oppose:

- California Public Defenders Association

### **History:**

#### **2016**

04/28/16 In Senate. Read first time. To Com. on RLS. for assignment.

04/28/16 Read third time. Passed. Ordered to the Senate.

04/21/16 Read second time. Ordered to third reading.

04/20/16 From committee: Do pass. (Ayes 7. Noes 0.) (April 19).

02/29/16 Referred to Com. on PUB. S.

02/18/16 From printer. May be heard in committee March 19.

02/17/16 Read first time. To print.

### **Attachments:**

**Attachment A:** Relevant Code Sections

**ASSEMBLY BILL**

**No. 2083**

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**Introduced by Assembly Member Chu**

February 17, 2016

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An act to amend Section 11174.32 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2083, as introduced, Chu. Interagency child death review.

Existing law authorizes a county to establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Existing law requires records that are exempt from disclosure to 3rd parties pursuant to state or federal law to remain exempt from disclosure when they are in the possession of a child death review team.

This bill would authorize the voluntary disclosure of specific information, including mental health records, criminal history information, and child abuse reports, by an individual or agency to an interagency child death review team.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11174.32 of the Penal Code is amended  
2 to read:

1 11174.32. (a) Each county may establish an interagency child  
2 death review team to assist local agencies in identifying and  
3 reviewing suspicious child deaths and facilitating communication  
4 among persons who perform autopsies and the various persons  
5 and agencies involved in child abuse or neglect cases. Interagency  
6 child death review teams have been used successfully to ensure  
7 that incidents of child abuse or neglect are recognized and other  
8 siblings and nonoffending family members receive the appropriate  
9 services in cases where a child has expired.

10 (b) Each county may develop a protocol that may be used as a  
11 guideline by persons performing autopsies on children to assist  
12 coroners and other persons who perform autopsies in the  
13 identification of child abuse or neglect, in the determination of  
14 whether child abuse or neglect contributed to death or whether  
15 child abuse or neglect had occurred prior to but was not the actual  
16 cause of death, and in the proper written reporting procedures for  
17 child abuse or neglect, including the designation of the cause and  
18 mode of death.

19 (c) In developing an interagency child death review team and  
20 an autopsy protocol, each county, working in consultation with  
21 local members of the California State Coroner's Association and  
22 county child abuse prevention coordinating councils, may solicit  
23 suggestions and final comments from persons, including, but not  
24 limited to, the following:

- 25 (1) Experts in the field of forensic patholog .
- 26 (2) Pediatricians with expertise in child abuse.
- 27 (3) Coroners and medical examiners.
- 28 (4) Criminologists.
- 29 (5) District attorneys.
- 30 (6) Child protective services staff.
- 31 (7) Law enforcement personnel.
- 32 (8) Representatives of local agencies which are involved with  
33 child abuse or neglect reporting.
- 34 (9) County health department staff who deals with children's  
35 health issues.
- 36 (10) Local professional associations of persons described in  
37 paragraphs (1) to (9), inclusive.

38 (d) Records exempt from disclosure to third parties pursuant to  
39 state or federal law shall remain exempt from disclosure when  
40 they are in the possession of a child death review team.

1 (e) *Written and oral information may be disclosed to a child*  
2 *death review team established pursuant to this section. The team*  
3 *may make a request, in writing, for the information sought and*  
4 *any person with information of the kind described in paragraph*  
5 *(2) may rely on the request in determining whether information*  
6 *may be disclosed to the team.*

7 (1) *An individual or agency that has information governed by*  
8 *this subdivision shall not be required to disclose information. The*  
9 *intent of this subdivision is to allow the voluntary disclosure of*  
10 *information by the individual or agency that has the information.*

11 (2) *The following information may be disclosed pursuant to this*  
12 *subdivision:*

13 (A) *Notwithstanding Section 56.10 of the Civil Code, medical*  
14 *information, unless disclosure is prohibited by federal law.*

15 (B) *Notwithstanding Section 5328 of the Welfare and Institutions*  
16 *Code, mental health information.*

17 (C) *Notwithstanding Section 11167.5, information from child*  
18 *abuse reports and investigations, except the identity of the person*  
19 *making the report, which shall not be disclosed.*

20 (D) *State summary criminal history information, criminal*  
21 *offender record information, and local summary criminal history*  
22 *information, as defined in Sections 11105, 11075, and 13300,*  
23 *respectively.*

24 (E) *Notwithstanding Section 11163.2, information pertaining*  
25 *to reports by health practitioners of persons suffering from physical*  
26 *injuries inflicted by means of a firearm or of persons suffering*  
27 *physical injury where the injury is a result of assaultive or abusive*  
28 *conduct.*

29 (F) *Notwithstanding Section 10850 of the Welfare and*  
30 *Institutions Code, records of in-home supportive services, unless*  
31 *disclosure is prohibited by federal law.*

32 (e)

33 (f) (1) *No less than once each year, each child death review*  
34 *team shall make available to the public findings, conclusions an*  
35 *recommendations of the team, including aggregate statistical data*  
36 *on the incidences and causes of child deaths.*

37 (2) *In its report, the child death review team shall withhold the*  
38 *last name of the child that is subject to a review or the name of the*  
39 *deceased child's siblings unless the name has been publicly*

- 1 disclosed or is required to be disclosed by state law, federal law,
- 2 or court order.

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**Attachment A**  
**Relevant Code Sections**

**Elder and Dependent Adult Death Review Teams**

**Penal Code (PC) §11174.5.**

(a) Each county may establish an interagency elder and dependent adult death review team to assist local agencies in identifying and reviewing suspicious elder and dependent adult deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in elder and dependent adult abuse or neglect cases.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on elders and dependent adults to assist coroners and other persons who perform autopsies in the identification of elder and dependent adult abuse or neglect, in the determination of whether elder or dependent adult abuse or neglect contributed to death or whether elder or dependent adult abuse or neglect had occurred prior to, but was not the actual cause of, death, and in the proper written reporting procedures for elder and dependent adult abuse or neglect, including the designation of the cause and mode of death.

(c) As used in this section, the term “dependent adult” has the same meaning as in Section 368, and applies regardless of whether the person lived independently.

**PC §11174.8.**

(a) Each organization represented on an elder death review team may share with other members of the team information in its possession concerning the decedent who is the subject of the review or any person who was in contact with the decedent and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential. The intent of this subdivision is to permit the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other provision of law.

(b) (1) Written and oral information may be disclosed to an elder death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (3) may rely on the request in determining whether information may be disclosed to the team.

(2) No individual or agency that has information governed by this subdivision shall be required to disclose information. The intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.

(3) The following information may be disclosed pursuant to this subdivision:

(A) Notwithstanding Section 56.10 of the Civil Code, medical information.

(B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental health information.

(C) Notwithstanding Section 15633.5 of the Welfare and Institutions Code, information from elder abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(D) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in Sections 11075, 11105, and 13300.

(E) Notwithstanding Section 11163.2, information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct.

(F) Information provided to probation officers in the course of the performance of their duties, including, but not limited to, the duty to prepare reports pursuant to Section 1203.10, as well as the information on which these reports are based.

(G) Notwithstanding Section 10825 of the Welfare and Institutions Code, records relating to in-home supportive services, unless disclosure is prohibited by federal law.

(c) Written and oral information may be disclosed under this section notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, the lawyer-client privilege protected by Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the physician-patient privilege protected by Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, and the psychotherapist-patient privilege protected by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

### **Domestic Violence Death Review Teams**

#### **PC §11163.3.**

(a) A county may establish an interagency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases. Interagency domestic violence death review teams have been used successfully to ensure that incidents of domestic violence and abuse are recognized and that agency involvement is reviewed to develop recommendations for policies and protocols for community prevention and intervention initiatives to reduce and eradicate the incidence of domestic violence.

(b) For purposes of this section, “abuse” has the meaning set forth in Section 6203 of the Family Code and “domestic violence” has the meaning set forth in Section 6211 of the Family Code.

(c) A county may develop a protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on domestic violence victims in the identification of domestic violence, in the determination of whether domestic violence



contributed to death or whether domestic violence had occurred prior to death, but was not the actual cause of death, and in the proper written reporting procedures for domestic violence, including the designation of the cause and mode of death.

(d) County domestic violence death review teams shall be comprised of, but not limited to, the following:

- (1) Experts in the field of forensic pathology.
- (2) Medical personnel with expertise in domestic violence abuse.
- (3) Coroners and medical examiners.
- (4) Criminologists.
- (5) District attorneys and city attorneys.
- (6) Domestic violence shelter service staff and battered women's advocates.
- (7) Law enforcement personnel.
- (8) Representatives of local agencies that are involved with domestic violence abuse reporting.
- (9) County health department staff who deal with domestic violence victims' health issues.
- (10) Representatives of local child abuse agencies.
- (11) Local professional associations of persons described in paragraphs (1) to (10), inclusive.

(e) An oral or written communication or a document shared within or produced by a domestic violence death review team related to a domestic violence death review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic violence death review team, or between a third party and a domestic violence death review team, is confidential and not subject to disclosure or discoverable by a third party. Notwithstanding the foregoing, recommendations of a domestic violence death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the domestic violence death review team.

(f) Each organization represented on a domestic violence death review team may share with other members of the team information in its possession concerning the victim who is the subject of the review or any person who was in contact with the victim and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential. This provision shall permit the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other statute.

(g) Written and oral information may be disclosed to a domestic violence death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (2) may rely on the request in determining whether information may be disclosed to the team.

(1) An individual or agency that has information governed by this subdivision shall not be required to disclose information. The intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.

(2) The following information may be disclosed pursuant to this subdivision:

(A) Notwithstanding Section 56.10 of the Civil Code, medical information.

(B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental health

(C) Notwithstanding Section 15633.5 of the Welfare and Institutions Code, information from elder abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(D) Notwithstanding Section 11167.5 of the Penal Code, information from child abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(E) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in Sections 11075, 11105, and 13300 of the Penal Code.

(F) Notwithstanding Section 11163.2 of the Penal Code, information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct, and information relating to whether a physician referred the person to local domestic violence services as recommended by Section 11161 of the Penal Code.

(G) Notwithstanding Section 827 of the Welfare and Institutions Code, information in any juvenile court proceeding.

(H) Information maintained by the Family Court, including information relating to the Family Conciliation Court Law pursuant to Section 1818 of the Family Code, and Mediation of Custody and Visitation Issues pursuant to Section 3177 of the Family Code.

(I) Information provided to probation officers in the course of the performance of their duties, including, but not limited to, the duty to prepare reports pursuant to Section 1203.10 of the Penal Code, as well as the information on which these reports are based.

(J) Notwithstanding Section 10850 of the Welfare and Institutions Code, records of in-home supportive services, unless disclosure is prohibited by federal law.

(3) The disclosure of written and oral information authorized under this subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, or the lawyer-client privilege protected by Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the physician-patient privilege protected by Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, the psychotherapist-patient privilege protected by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the

sexual assault counselor-victim privilege protected by Article 8.5 (commencing with Section 1035) of Chapter 4 of Division 8 of the Evidence Code, the domestic violence counselor-victim privilege protected by Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the Evidence Code, and the human trafficking caseworker-victim privilege protected by Article 8.8 (commencing with Section 1038) of Chapter 4 of Division 8 of the Evidence Code.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 2191                      **VERSION:** AMENDED APRIL 6, 2016

**AUTHOR:** SALAS                              **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** BOARD OF BEHAVIORAL SCIENCES

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### Summary

This bill would extend the Board's sunset date until January 1, 2021.

### Existing Law

- 1) Provides for the licensure and regulation of educational psychologists, clinical social workers, professional clinical counselors, and marriage and family therapists by the Board of Behavioral Sciences (Board) within the Department of Consumer Affairs until January 1, 2017.
- 2) Specifies the composition of the Board and authorizes the Board to employ an Executive Officer (Business and Professions Code (BPC) §§4990, 4990.04)

### This Bill:

- 1) Extends the operation of the Board until January 1, 2021. (BPC §§4990, 4990.04)

### Comment:

- 1) **Background.** In 1994, the legislature enacted the "sunset review" process, which permits the periodic review of the need for licensing and regulation of a profession and the effectiveness of the administration of the law by the licensing board. The Joint Legislative Sunset Review Committee (Joint Committee) was tasked with performing the sunset reviews. The sunset review process was in part built on an assumption in law that if a board is operating poorly and lesser measures have been ineffective in rectifying the problems, the board should be allowed to sunset.

Boards notified by the Joint Committee were requested to provide a detailed report regarding the board's operations and programs. Following submission of the report to the Joint Committee, a hearing was scheduled with the Joint Committee to discuss the report and any recommendations of the Joint Committee. If it was determined that a board should not continue to regulate the profession, the board would sunset. Boards within the Department of Consumer Affairs (DCA) that were required to sunset became a bureau under DCA, reporting directly to the DCA

director. The last time the Board of Behavioral Sciences went through sunset review was in 2012.

- 2) March 2016 Sunset Review Hearing.** The Board submitted its Sunset Review Report to the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business and Professions on December 1, 2015.

The Board's sunset hearing was held on March 14, 2016. Based on the findings of the Committee it was recommended that the Board's sunset date be extended for four years, to January 1, 2021.

- 3) Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider taking a "support" position on this legislation.

**4) Previous Legislation.**

- SB 294 (Chapter 695, Statutes of 2010) extended the Board's sunset date from January 1, 2011 until January 1, 2013.
- SB 1236 (Chapter 332, Statutes of 2012) extended the Board's sunset date from January 1, 2013 until January 1, 2017.

**5) Support and Opposition.**

**Support:**

- California Association of Marriage and Family Therapists (CAMFT)

**Opposition:**

- None on File.

**6) History.**

**2016**

04/20/16 In committee: Set, first hearing. Referred to APPR. suspense file.

04/12/16 From committee: Do pass and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 16. Noes 0.) (April 12). Re-referred to Com. on APPR.

04/07/16 Re-referred to Com. on B. & P.

04/06/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.

03/03/16 Referred to Com. on B. & P.

02/19/16 From printer. May be heard in committee March 20.

02/18/16 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2191**

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**Introduced by ~~Committee on Business and Professions (Assembly Members Bonilla (Chair), Jones (Vice Chair), Baker, Bloom, Campos, Chang, Dodd, Mullin, Ting, Wilk, and Wood)~~ Assembly Member Salas**

*(Principal coauthor: Senator Hill)*

February 18, 2016

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An act to amend Sections 4990 and 4990.04 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2191, as amended, ~~Committee on Business and Professions~~ *Salas*. Board of Behavioral Sciences.

Existing law provides for the licensure and regulation of educational psychologists, clinical social workers, marriage and family therapists, and professional clinical counselors by the Board of Behavioral Sciences within the Department of Consumer Affairs. Existing law specifies the composition of the board and requires the board to employ an executive office . Existing law repeals these provisions on January 1, 2017. Under existing law, the repeal of the provision establishing the board renders the board subject to review by the appropriate policy committees of the Legislature.

This bill would extend the operation of these provisions until January 1, 2021.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 4990 of the Business and Professions  
2 Code is amended to read:
- 3 4990. (a) There is in the Department of Consumer Affairs, a  
4 Board of Behavioral Sciences that consists of the following  
5 members:
- 6 (1) Two state licensed clinical social workers.
  - 7 (2) One state licensed educational psychologist.
  - 8 (3) Two state licensed marriage and family therapists.
  - 9 (4) One state licensed professional clinical counselor.
  - 10 (5) Seven public members.
- 11 (b) Each member, except the seven public members, shall have  
12 at least two years of experience in *her or his* ~~or her~~ profession.
- 13 (c) Each member shall reside in the State of California.
- 14 (d) The Governor shall appoint fi e of the public members and  
15 the six licensed members with the advice and consent of the Senate.  
16 The Senate Committee on Rules and the Speaker of the Assembly  
17 shall each appoint a public member.
- 18 (e) Each member of the board shall be appointed for a term of  
19 four years. A member appointed by the Speaker of the Assembly  
20 or the Senate Committee on Rules shall hold office until the  
21 appointment and qualification of his or her successor or until one  
22 year from the expiration date of the term for which *she or he* ~~or~~  
23 ~~she~~ was appointed, whichever first occurs. Pursuant to Section  
24 1774 of the Government Code, a member appointed by the  
25 Governor shall hold office until the appointment and qualificatio  
26 of *her or his* ~~or her~~ successor or until 60 days from the expiration  
27 date of the term for which he or she was appointed, whichever firs  
28 occurs.
- 29 (f) A vacancy on the board shall be filled by appointment for  
30 the unexpired term by the authority who appointed the member  
31 whose membership was vacated.
- 32 (g) Not later than the first of June of each calendar year, the  
33 board shall elect a chairperson and a vice chairperson from its  
34 membership.
- 35 (h) Each member of the board shall receive a per diem and  
36 reimbursement of expenses as provided in Section 103.
- 37 (i) This section shall remain in effect only until January 1, 2021,  
38 and as of that date is repealed.



1 (j) Notwithstanding any other provision of law, the repeal of  
2 this section renders the board subject to review by the appropriate  
3 policy committees of the Legislature.

4 SEC. 2. Section 4990.04 of the Business and Professions Code  
5 is amended to read:

6 4990.04. (a) The board shall appoint an executive office . This  
7 position is designated as a confidential position and is exempt from  
8 civil service under subdivision (e) of Section 4 of Article VII of  
9 the California Constitution.

10 (b) The executive officer serves at the pleasure of the board.

11 (c) The executive officer shall exercise the powers and perform  
12 the duties delegated by the board and vested in *her or him* ~~or her~~  
13 by this chapter.

14 (d) With the approval of the director, the board shall fix the  
15 salary of the executive office .

16 (e) The chairperson and executive officer may call meetings of  
17 the board and any duly appointed committee at a specified time  
18 and place. For purposes of this section, “call meetings” means  
19 setting the agenda, time, date, or place for any meeting of the board  
20 or any committee.

21 (f) This section shall remain in effect only until January 1, 2021,  
22 and as of that date is repealed.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 2199

**VERSION:** AMENDED APRIL 25, 2016

**AUTHOR:** CAMPOS

**SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** SEXUAL OFFENSES AGAINST MINORS: PERSONS IN A POSITION OF AUTHORITY

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**Summary:** This bill would subject persons who engage in specified acts of a sexual nature with minor to additional jail terms if they held a position of authority over the minor. Persons in a position of authority include the minor's counselor or therapist.

### **Existing Law:**

- 1) Specifies that a person age 21 or older who engages in unlawful sexual intercourse with a minor under age 16 is guilty of either a misdemeanor or a felony that is punishable by imprisonment for a term ranging from one to four years. (Penal Code (PC) §261.5(d))
- 2) States that a person over age 21 who participates in an act of sodomy with a minor under age 16 is guilty of a felony. (PC §286(b)(2))
- 3) Specifies that a person who commits a lewd or lascivious act upon a child of age 14 or 15 that is at least 10 years older than the child is guilty of public offense punishable by imprisonment for a term ranging from one to three years. (PC §288(c)(1))
- 4) States that a person over age 21 who participates in an act of oral copulation with a minor under age 16 is guilty of a felony. (PC §288a(b)(2))
- 5) States that a person over age 21 who participates in an act of sexual penetration with a person under age 16 is guilty of a felony. (PC §289(i))

### **This Bill:**

- 1) Requires a person who commits any of the crimes listed in the "Existing Law" section above to be punished by an additional two years of imprisonment if they held a position of authority over the minor (PC §§261.5(e), 287)
- 2) Defines a person in a "position of authority" as including the child's counselor or therapist, among others. (PC §§ 261.5(e), 287(b))

## Comment:

- 1) Author's Intent.** The author is concerned about this issue due to learning of a case where the perpetrator received only a minor punishment despite being in a position of authority over the victim. The author believes it is unacceptable for persons in authority who commit the crimes listed above to only receive a minor punishment for their conduct. They state the following:

*“People in a position of authority know their victims ages as well as their vulnerability. Therefore, when perpetrators are in a position of authority, they should be punished accordingly. AB 2199 would assist in this effort by providing prosecutors the discretion of a sentence enhancement for adults charged with felony statutory rape.”*

- 2) Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider taking a “support” position on this legislation.

### **3) Support and Opposition.**

#### Support

- California Police Chiefs Association
- Child Abuse Prevention Center
- Crime Victims United of California

#### Opposition

- American Civil Liberties Union
- Legal Services for Prisoners with Children

### **4) History**

#### **2016**

04/26/16 Re-referred to Com. on APPR.

04/25/16 Read second time and amended.

04/21/16 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 19).

04/12/16 In committee: Hearing postponed by committee.

04/11/16 Re-referred to Com. on PUB. S.

04/07/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.

04/05/16 In committee: Set, second hearing. Hearing canceled at the request of author.

03/31/16 Re-referred to Com. on PUB. S.

03/30/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.

03/29/16 In committee: Set, first hearing. Hearing canceled at the request of author.

03/03/16 Referred to Com. on PUB. S.

02/19/16 From printer. May be heard in committee March 20.

02/18/16 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 25, 2016

AMENDED IN ASSEMBLY APRIL 7, 2016

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2199**

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**Introduced by Assembly Member Campos  
(Coauthor: Assembly Member Lackey)**

February 18, 2016

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An act to amend Section 261.5 of, and to add Section 287 to, the Penal Code, relating to sexual offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2199, as amended, Campos. Sexual offenses against minors: persons in a position of authority.

(1) Existing law provides various circumstances that constitute rape, which are punishable by imprisonment in the state prison for 3, 6, or 8 years, except as specified

Existing law also prescribes circumstances that constitute unlawful sexual intercourse, some of which involve an adult perpetrator who engages in that unlawful intercourse with a minor, as specified. Unlawful sexual intercourse under those circumstances is punishable by imprisonment for 2, 3, or 4 years, and also may be subject to designated civil penalties or fines. Under existing law, any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to a specified provision of law for 2, 3, or 4 years.

This bill would subject any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age and is convicted of a felony to a sentence enhancement of 2 years, if the perpetrator holds a position of authority over the minor with whom he or she engaged in the act of unlawful sexual intercourse. By changing the penalty for the commission of unlawful sexual intercourse under the above circumstances, ~~this~~ *the* bill would impose a state-mandated local program.

(2) Existing law makes it a crime for a person to engage in specific acts of a sexual nature with a minor, including lewd and lascivious conduct when the victim is a child of 14 or 15 years *of age* and the person is at least 10 years older, and sodomy, oral copulation, or ~~digital~~ *sexual* penetration of a minor under 16 years of age when the person is 21 years of age or older.

This bill would impose an additional term of 2 years when a person who is convicted of a felony violation of the above crimes is a person ~~in~~ *who holds* a position of authority, ~~as defined~~ *defined, over the minor victim*. By increasing the penalty for a crime, ~~this~~ *the* bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 261.5 of the Penal Code is amended to  
2 read:  
3 261.5. (a) Unlawful sexual intercourse is an act of sexual  
4 intercourse accomplished with a person who is not the spouse of  
5 the perpetrator, if the person is a minor. For the purposes of this  
6 section, a “minor” is a person under 18 years of age and an “adult”  
7 is a person who is at least 18 years of age.  
8 (b) Any person who engages in an act of unlawful sexual  
9 intercourse with a minor who is not more than three years older  
10 or three years younger than the perpetrator, is guilty of a  
11 misdemeanor.

1 (c) Any person who engages in an act of unlawful sexual  
2 intercourse with a minor who is more than three years younger  
3 than the perpetrator is guilty of either a misdemeanor or a felony,  
4 and shall be punished by imprisonment in a county jail not  
5 exceeding one year, or by imprisonment pursuant to subdivision  
6 (h) of Section 1170.

7 (d) Any person 21 years of age or older who engages in an act  
8 of unlawful sexual intercourse with a minor who is under 16 years  
9 of age is guilty of either a misdemeanor or a felony, and shall be  
10 punished by imprisonment in a county jail not exceeding one year,  
11 or by imprisonment pursuant to subdivision (h) of Section 1170  
12 for two, three, or four years.

13 (e) Notwithstanding any other provision of this section, a person  
14 who is guilty of a felony pursuant to subdivision (d) who holds a  
15 position of authority over the minor with whom he or she has  
16 engaged in an act of unlawful sexual intercourse, shall be punished  
17 by an additional term of imprisonment in a county jail for two  
18 years.

19 (1) For purposes of this subdivision, a person is in a “position  
20 of authority” if he or she, by reason of that position, is able to  
21 exercise undue influence over a minor. A “position of authority”  
22 includes, but is not limited to, a stepparent, foster parent, partner  
23 of the parent, caretaker, youth leader, recreational director, athletic  
24 manager, coach, teacher, counselor, therapist, religious leader,  
25 doctor, employer, or employee of one of those aforementioned  
26 persons.

27 (2) For purposes of this subdivision, “undue influence” has the  
28 same meaning as that term is defined in Section 15610.70 of the  
29 Welfare and Institutions Code.

30 (f) (1) Notwithstanding any other provision of this section, an  
31 adult who engages in an act of sexual intercourse with a minor in  
32 violation of this section may be liable for civil penalties in the  
33 following amounts:

34 (A) An adult who engages in an act of unlawful sexual  
35 intercourse with a minor less than two years younger than the adult  
36 is liable for a civil penalty not to exceed two thousand dollars  
37 (\$2,000).

38 (B) An adult who engages in an act of unlawful sexual  
39 intercourse with a minor at least two years younger than the adult

1 is liable for a civil penalty not to exceed fi e thousand dollars  
2 (\$5,000).

3 (C) An adult who engages in an act of unlawful sexual  
4 intercourse with a minor at least three years younger than the adult  
5 is liable for a civil penalty not to exceed ten thousand dollars  
6 (\$10,000).

7 (D) An adult over the age of 21 years who engages in an act of  
8 unlawful sexual intercourse with a minor under 16 years of age is  
9 liable for a civil penalty not to exceed twenty-fi e thousand dollars  
10 (\$25,000).

11 (2) The district attorney may bring actions to recover civil  
12 penalties pursuant to this subdivision. From the amounts collected  
13 for each case, an amount equal to the costs of pursuing the action  
14 shall be deposited with the treasurer of the county in which the  
15 judgment was entered, and the remainder shall be deposited in the  
16 Underage Pregnancy Prevention Fund, which is hereby created in  
17 the State Treasury. Amounts deposited in the Underage Pregnancy  
18 Prevention Fund may be used only for the purpose of preventing  
19 underage pregnancy upon appropriation by the Legislature.

20 (3) In addition to any punishment imposed under this section,  
21 the judge may assess a fine not to exceed seventy dollars (\$70)  
22 against any person who violates this section with the proceeds of  
23 this fine to be used in accordance with Section 1463.23. The court  
24 shall, however, take into consideration the defendant’s ability to  
25 pay, and no defendant shall be denied probation because of his or  
26 her inability to pay the fine permitted under this subd vision.

27 SEC. 2. Section 287 is added to the Penal Code, to read:

28 287. (a) A person who is guilty of a felony violation of  
29 paragraph (2) of subdivision (b) of Section 286, paragraph (1) of  
30 subdivision (c) of Section 288, paragraph (2) of subdivision (b) of  
31 Section 288a, or subdivision-~~(h)~~ (i) of Section 289, and who holds  
32 a position of authority over the minor victim, shall be punished by  
33 an additional term of imprisonment for two years.

34 (b) For purposes of this section, a person is in a “position of  
35 authority” if he or she, by reason of that position, is able to exercise  
36 undue influence over a minor. A “position of authority” includes,  
37 but is not limited to, a stepparent, foster parent, partner of the  
38 parent, youth leader, recreational director, athletic manager, coach,  
39 teacher, counselor, therapist, religious leader, doctor, employer,  
40 or employee of one of those aforementioned persons.



1 (c) For purposes of this section, “undue influence” has the same  
2 meaning as that term is defined in Section 15610.70 of the Welfare  
3 and Institutions Code.

4 SEC. 3. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 2507                      **VERSION:** AMENDED APRIL 26, 2016

**AUTHOR:** GORDON                              **SPONSOR:** STANFORD HEALTH CARE

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** TELEHEALTH: ACCESS

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**Summary:** This bill requires that a health care service plan or health insurer must cover patient services provided via telehealth to the same extent as services provided in-person. It also specifies the communications platforms that are acceptable for telehealth.

### **Existing Law:**

- 1) Defines “telehealth” as a mode of delivering health care via information and communication technologies. The patient’s location is the originating site, and the health care provider’s location is the distant site. (Business and Professions Code (BPC) §2290.5)
- 2) States that prior to providing health care via telehealth, the health care provider shall inform the patient about the use of telehealth and obtain verbal or written consent. (BPC §2290.5)
- 3) Defines an “originating site” as the site where the patient is located at the time health care services are provided. (BPC §2290.5)
- 4) Defines “distant site” as the site where the health care provider is located while providing the telehealth services. (BPC §2290.5)
- 5) States that this section shall not prevent patients from receiving in-person treatment after agreeing to receive services via telehealth. (BPC §2290.5)
- 6) States that a health care service plan or health insurer shall not require in-person contact between a health care provider and a patient before payment is made for covered services that are appropriately provided through telehealth. (This provision is subject to the terms and conditions of the contract with the health care service plan.) (Health and Safety Code (HSC) §1374.13(c), Insurance Code (IC) §10123.85(c))
- 7) States that a health care service plan or health insurer shall not limit the type of setting where services are provided before payment is made for covered services that are appropriately provided through telehealth. (This provision is subject to the terms and conditions of the contract with the health care service plan.) (HSC §1374.13(d), IC §10123.85(d))

- 8) States that a health care service plan or health insurer shall not require the use of telehealth when the health care provider has determined that it is not appropriate. (HSC §1374.13(f), IC §10123.85(e))

### **This Bill:**

- 1) Specifies that telehealth includes communication via video and telephone. (BPC §2290.5(a)(6))
- 2) Allows that patient consent for telehealth can be oral, written, or digital. (BPC §2290.5(b))
- 3) States that the law does not authorize a health care provider to require telehealth when it is not appropriate. (HSC §1374.13(g), IC §10123.85(f))
- 4) States that a health care service plan or health insurer must cover patient services provided via telehealth to the same extent as services provided in-person. (HSC §1374.13(h), IC §10123.85(g))
- 5) Prohibits a health care service plan or health insurer from altering the provider-patient relationship based on the modality used for appropriately provided services through telehealth. (HSC §1374.13(i), IC §10123.85(h))

### **Comments:**

- 1) **Author's Intent.** This bill aims to provide a viable telehealth reimbursement infrastructure in California in order to improve patient access.

The author notes that while a health insurer cannot limit the types of settings where services are provided, the law does not require health plans to include coverage and reimbursement for services provided via telehealth. Currently, these must be negotiated separately into each plan contract. They note that many other states require health plans to provide coverage for telehealth services to the same extent as in-person services. This is not currently the case in California.

Under this bill, providers will be able to offer telehealth services with a guarantee that they will receive health plan reimbursement.

- 2) **Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider taking a “support” position on this bill. It also directed staff to provide technical assistance to the author’s office, requesting that the term “physician-patient relationship” used in HSC §1374.13(i) and IC §10123.85(h) be replaced with the term “provider-patient relationship” or “practitioner-patient relationship.” This amendment has now been made.

- 3) **Support and Opposition.**

#### **Support:**

- Stanford Health Care (Sponsor)
- AARP California

- Adventist Health
- ALS Association Golden West Chapter
- American Association for Marriage and Family Therapy
- Association of California Healthcare Districts
- California Academy of Family Physicians
- California Association of Health Plans
- California Children's Hospital
- California Life Sciences Association
- California Medical Association
- California Primary Care Association
- Center for Information Technology Research in the Interest of Society
- Center for Technology and Aging
- The Children's Partnership
- El Camino Hospital
- Health Care Interpreters Network
- John Muir Health
- Lucile Packard Children's Hospital
- National Multiple Sclerosis Society
- Occupational Therapy Association of California
- Providence Health & Services
- Sutter Health

**Oppose:**

- America's Health Insurance Plans
- Association of California Life and Health Insurance Companies
- California Association of Health Plans
- California Chamber of Commerce
- California Right to Life Committee, Inc.

**4) History**

**2016**

04/27/16 Re-referred to Com. on APPR.

04/26/16 Read second time and amended.

04/25/16 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 11. Noes 1.) (April 19).

03/08/16 Referred to Com. on HEALTH.

02/22/16 Read first time.

02/21/16 From printer. May be heard in committee March 22.

02/19/16 Introduced. To print.

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AMENDED IN ASSEMBLY APRIL 26, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2507**

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**Introduced by Assembly Member Gordon**

February 19, 2016

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An act to amend Section 2290.5 of the Business and Professions Code, to amend Section 1374.13 of the Health and Safety Code, and to amend Section 10123.85 of the Insurance Code, relating to telehealth.

LEGISLATIVE COUNSEL'S DIGEST

AB 2507, as amended, Gordon. Telehealth: access.

(1) Existing law defines “telehealth” as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site, and that facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers. Existing law requires that prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth inform the patient about the use of telehealth and obtain documented verbal or written consent from the patient for the use of telehealth.

This bill would add video—~~communications,~~ telephone ~~communications,~~ email ~~communications,~~ and ~~synchrous text or chat conferencing~~ *communications and telephone communications* to the definition of telehealth. The bill would also provide that the required prior consent for telehealth services may be digital as well as oral or written.

(2) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits health care service plans and health insurers from limiting the type of setting where services are provided for the patient or by the health care provider before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee, insured, subscriber, or policyholder and the plan or insurer, and between the plan or insurer and its participating providers or provider groups.

This bill would also prohibit a health care provider from requiring the use of telehealth when a patient prefers to receive health care services in person *it is not appropriate* and would require health care service plans and health insurers to include coverage and reimbursement for services provided to a patient through telehealth to the same extent as though provided in person or by some other means, as specified. The bill would prohibit a health care service plan or health insurer from limiting coverage or reimbursement based on a contract entered into between the plan or insurer and an independent telehealth provider. The bill would prohibit a health care service plan or a health insurer from ~~interfering with the physician-patient~~ *altering the provider-patient* relationship based on the modality utilized for services appropriately provided through telehealth. *The bill would provide that all laws regarding the confidentiality of health care information and a patient's right to his or her medical information shall apply to telehealth services.*

Because a willful violation of the bill's provisions by a health care service plan would be a crime, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.



*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2290.5 of the Business and Professions  
2 Code is amended to read:

3 2290.5. (a) For purposes of this division, the following  
4 definitions apply

5 (1) “Asynchronous store and forward” means the transmission  
6 of a patient’s medical information from an originating site to the  
7 health care provider at a distant site without the presence of the  
8 patient.

9 (2) “Distant site” means a site where a health care provider who  
10 provides health care services is located while providing these  
11 services via a telecommunications system.

12 (3) “Health care provider” means either of the following:

13 (A) A person who is licensed under this division.

14 (B) A marriage and family therapist intern or trainee functioning  
15 pursuant to Section 4980.43.

16 (4) “Originating site” means a site where a patient is located at  
17 the time health care services are provided via a telecommunications  
18 system or where the asynchronous store and forward service  
19 originates.

20 (5) “Synchronous interaction” means a real-time interaction  
21 between a patient and a health care provider located at a distant  
22 site.

23 (6) “Telehealth” means the mode of delivering health care  
24 services and public health via information and communication  
25 technologies to facilitate the diagnosis, consultation, treatment,  
26 education, care management, and self-management of a patient’s  
27 health care while the patient is at the originating site and the health  
28 care provider is at a distant site. Telehealth facilitates patient  
29 self-management and caregiver support for patients and includes  
30 synchronous interactions and asynchronous store and forward  
31 transfers, ~~including, but not limited to, including~~ video  
32 ~~communications, telephone communications, email~~  
33 ~~communications, and synchronous text or chat conferencing.~~  
34 *communications and telephone communications.*

35 (b) Prior to the delivery of health care via telehealth, the health  
36 care provider initiating the use of telehealth shall inform the patient  
37 about the use of telehealth and obtain oral, written, or digital  
38 consent from the patient for the use of telehealth as an acceptable

1 mode of delivering health care services and public health. The  
2 consent shall be documented.

3 (c) Nothing in this section shall preclude a patient from receiving  
4 in-person health care delivery services during a specified course  
5 of health care and treatment after agreeing to receive services via  
6 telehealth.

7 (d) The failure of a health care provider to comply with this  
8 section shall constitute unprofessional conduct. Section 2314 shall  
9 not apply to this section.

10 (e) This section shall not be construed to alter the scope of  
11 practice of any health care provider or authorize the delivery of  
12 health care services in a setting, or in a manner, not otherwise  
13 authorized by law.

14 (f) All laws regarding the confidentiality of health care  
15 information and a patient’s rights to his or her medical information  
16 shall apply to telehealth interactions.

17 (g) This section shall not apply to a patient under the jurisdiction  
18 of the Department of Corrections and Rehabilitation or any other  
19 correctional facility.

20 (h) (1) Notwithstanding any other provision of law and for  
21 purposes of this section, the governing body of the hospital whose  
22 patients are receiving the telehealth services may grant privileges  
23 to, and verify and approve credentials for, providers of telehealth  
24 services based on its medical staff recommendations that rely on  
25 information provided by the distant-site hospital or telehealth  
26 entity, as described in Sections 482.12, 482.22, and 485.616 of  
27 Title 42 of the Code of Federal Regulations.

28 (2) By enacting this subdivision, it is the intent of the Legislature  
29 to authorize a hospital to grant privileges to, and verify and approve  
30 credentials for, providers of telehealth services as described in  
31 paragraph (1).

32 (3) For the purposes of this subdivision, “telehealth” shall  
33 include “telemedicine” as the term is referenced in Sections 482.12,  
34 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

35 SEC. 2. Section 1374.13 of the Health and Safety Code is  
36 amended to read:

37 1374.13. (a) For the purposes of this section, the definition  
38 in subdivision (a) of Section 2290.5 of the Business and Professions  
39 Code apply.

1 (b) It is the intent of the Legislature to recognize the practice  
2 of telehealth as a legitimate means by which an individual may  
3 receive health care services from a health care provider without  
4 in-person contact with the health care provider.

5 (c) A health care service plan shall not require that in-person  
6 contact occur between a health care provider and a patient before  
7 payment is made for the covered services appropriately provided  
8 through telehealth, subject to the terms and conditions of the  
9 contract entered into between the enrollee or subscriber and the  
10 health care service plan, and between the health care service plan  
11 and its participating providers or provider groups.

12 (d) A health care service plan shall not limit the type of setting  
13 where services are provided for the patient or by the health care  
14 provider before payment is made for the covered services  
15 appropriately provided through telehealth, subject to the terms and  
16 conditions of the contract entered into between the enrollee or  
17 subscriber and the health care service plan, and between the health  
18 care service plan and its participating providers or provider groups.

19 (e) The requirements of this section shall also apply to health  
20 care service plan and Medi-Cal managed care plan contracts with  
21 the State Department of Health Care Services pursuant to Chapter  
22 7 (commencing with Section 14000) or Chapter 8 (commencing  
23 with Section 14200) of Part 3 of Division 9 of the Welfare and  
24 Institutions Code.

25 (f) Notwithstanding any law, this section shall not be interpreted  
26 to authorize a health care service plan to require the use of  
27 telehealth when the health care provider has determined that it is  
28 not appropriate.

29 (g) Notwithstanding any law, this section shall not be interpreted  
30 to authorize a health care provider to require the use of telehealth  
31 when ~~a patient prefers to be treated in an in-person setting.~~  
32 ~~Telehealth services should be physician- or practitioner-guided~~  
33 ~~and patient-preferred. it is not appropriate. Nothing in this section~~  
34 ~~shall preclude a patient from receiving in-person health care~~  
35 ~~delivery services.~~

36 (h) A health care service plan shall include in its plan contract  
37 coverage and reimbursement for services provided to a patient  
38 through telehealth to the same extent as though provided in person  
39 or by some other means.

1 (1) A health care service plan shall reimburse the health care  
 2 provider for the diagnosis, consultation, or treatment of the enrollee  
 3 when the service is delivered through telehealth at a rate that is at  
 4 least as favorable to the health care provider as those established  
 5 for the equivalent services when provided in person or by some  
 6 other means.

7 (2) A health care service plan may subject the coverage of  
 8 services delivered via telehealth to copayments, coinsurance, or  
 9 deductible provided that the amounts charged are at least as  
 10 favorable to the enrollee as those established for the equivalent  
 11 services when provided in person or by some other means.

12 (i) A health care service plan shall not limit coverage or  
 13 reimbursement based on a contract entered into between the health  
 14 care service plan and an independent telehealth provider or ~~interfere~~  
 15 ~~with the physician-patient~~ *alter the provider-patient* relationship  
 16 based on the modality utilized for services appropriately provided  
 17 through telehealth.

18 (j) *Notwithstanding any other law, this section shall not be*  
 19 *interpreted to prohibit a health care service plan from undertaking*  
 20 *a utilization review of telehealth services, provided that the*  
 21 *utilization review is made in the same manner as a utilization*  
 22 *review for equivalent services when provided in person or by other*  
 23 *means.*

24 (k) *This section shall not be construed to alter the scope of*  
 25 *practice of any health care provider or authorize the delivery of*  
 26 *health care services in a setting, or in a manner, not otherwise*  
 27 *authorized by law.*

28 (l) *All laws regarding the confidentiality of health care*  
 29 *information and a patient's right to his or her medical information*  
 30 *shall apply to telehealth services.*

31 SEC. 3. Section 10123.85 of the Insurance Code is amended  
 32 to read:

33 10123.85. (a) For purposes of this section, the definitions in  
 34 subdivision (a) of Section 2290.5 of the Business and Professions  
 35 Code shall apply.

36 (b) It is the intent of the Legislature to recognize the practice  
 37 of telehealth as a legitimate means by which an individual may  
 38 receive health care services from a health care provider without  
 39 in-person contact with the health care provider.

1 (c) No health insurer shall require that in-person contact occur  
2 between a health care provider and a patient before payment is  
3 made for the services appropriately provided through telehealth,  
4 subject to the terms and conditions of the contract entered into  
5 between the policyholder or contractholder and the insurer, and  
6 between the insurer and its participating providers or provider  
7 groups.

8 (d) No health insurer shall limit the type of setting where  
9 services are provided for the patient or by the health care provider  
10 before payment is made for the covered services appropriately  
11 provided by telehealth, subject to the terms and conditions of the  
12 contract between the policyholder or contract holder and the  
13 insurer, and between the insurer and its participating providers or  
14 provider groups.

15 (e) Notwithstanding any other provision, this section shall not  
16 be interpreted to authorize a health insurer to require the use of  
17 telehealth when the health care provider has determined that it is  
18 not appropriate.

19 (f) Notwithstanding any law, this section shall not be interpreted  
20 to authorize a health care provider to require the use of telehealth  
21 when a patient prefers to be treated in an in-person setting.  
22 ~~Telehealth services should be physician- or practitioner-guided~~  
23 ~~and patient-preferred. it is not appropriate. Nothing in this section~~  
24 ~~shall preclude a patient from receiving in-person health care~~  
25 ~~delivery services.~~

26 (g) A health insurer shall include in its policy coverage and  
27 reimbursement for services provided to a patient through telehealth  
28 to the same extent as though provided in person or by some other  
29 means.

30 (1) A health insurer shall reimburse the health care provider for  
31 the diagnosis, consultation, or treatment of the insured when the  
32 service is delivered through telehealth at a rate that is at least as  
33 favorable to the health care provider as those established for the  
34 equivalent services when provided in person or by some other  
35 means.

36 (2) A health insurer may subject the coverage of services  
37 delivered via telehealth to copayments, coinsurance, or deductible  
38 provided that the amounts charged are at least as favorable to the  
39 insured as those established for the equivalent services when  
40 provided in person or by some other means.

1 (h) A health insurer shall not limit coverage or reimbursement  
 2 based on a contract entered into between the health insurer and an  
 3 independent telehealth provider or ~~interfere with the~~  
 4 ~~physician-patient~~ alter the provider-patient relationship based on  
 5 the modality utilized for services appropriately provided through  
 6 telehealth.

7 (i) Notwithstanding any other law, this section shall not be  
 8 interpreted to prohibit a health insurer from undertaking a  
 9 utilization review of telehealth services, provided that the  
 10 utilization review is made in the same manner as a utilization  
 11 review for equivalent services when provided in person or by other  
 12 means.

13 (j) This section shall not be construed to alter the scope of  
 14 practice of any health care provider or authorize the delivery of  
 15 health care services in a setting, or in a manner, not otherwise  
 16 authorized by law.

17 (k) All laws regarding the confidentiality of health care  
 18 information and a patient's right to his or her medical information  
 19 shall apply to telehealth services.

20 SEC. 4. No reimbursement is required by this act pursuant to  
 21 Section 6 of Article XIII B of the California Constitution because  
 22 the only costs that may be incurred by a local agency or school  
 23 district will be incurred because this act creates a new crime or  
 24 infraction, eliminates a crime or infraction, or changes the penalty  
 25 for a crime or infraction, within the meaning of Section 17556 of  
 26 the Government Code, or changes the definition of a crime within  
 27 the meaning of Section 6 of Article XIII B of the California  
 28 Constitution.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 2606                      **VERSION:** INTRODUCED FEBRUARY 19, 2016

**AUTHOR:** GROVE                                      **SPONSOR:**

- THE ARC
- UNITED CEREBRAL PALSY CALIFORNIA COLLABORATION

**RECOMMENDED POSITION:** NEUTRAL

**SUBJECT:** CRIMES AGAINST CHILDREN, ELDERS, DEPENDENT ADULTS, AND PERSONS WITH DISABILITIES

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**Summary:** This bill would require a law enforcement agency to inform a state licensing agency if it receives or makes a report that one of the licensing agencies' licensees has allegedly committed certain specified crimes.

### **Existing Law:**

- 1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and must submit a report whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code (PC) §§11165.7 and 11166(a))
- 2) States that any mandated reporter who fails to report child abuse or neglect, or any person who impedes such a report is subject to specified fines and jail sentences. (PC §§11166(c), 11166.01)
- 3) Specifies the mandated reporting requirements for elder and dependent adult abuse, and specifies fines and jail sentences for those who fail to report or impede a report. (Welfare and Institutions Code (WIC) §15630)
- 4) Makes it unprofessional conduct for a Board licensee or registrant to fail to comply with child abuse reporting requirements. (Business and Professions Code (BPC) §§4982(w), 4989.54(v), 4992.3(u), 4999.90(w))
- 5) Makes it unprofessional conduct for a Board licensee or registrant to fail to comply with elder and dependent adult abuse reporting requirements. (BPC §§4982(x), 4989.54(w), 4992.3(v), 4999.90(x))

### **This Bill:**

- 1) Requires a law enforcement agency to report to a state licensing agency if the law enforcement agency receives or makes a report that one of the licensing agency's licensees has allegedly committed certain crimes. These crimes include the following (PC §368.7):

- a. Sexual exploitation by a physician or a psychotherapist;
- b. Rape;
- c. Elder or dependent adult abuse;
- d. Failure to report elder or dependent adult abuse, or impeding or interfering with such a report;**
- e. A hate crime;
- f. Sexual abuse;
- g. Child abuse; and
- h. Failure to report child abuse, or interfering with such a report.**

**Comment:**

- 1) Author's Intent.** The author's office is seeking to strengthen enforcement of laws that prohibit impeding or retaliating against mandated reporters of elder and dependent adult abuse and child abuse.

The author states that people with disabilities, elders, and children are victimized by violent crimes at a high rate, and the perpetrators are often not convicted, in part due to lack of mandated reporting. They also note that mandated reporters who fail to report, and supervisors who impede such reports, are rarely prosecuted.

There is currently no requirement for law enforcement to cross-report to licensing agencies, and because of this, licensing agencies do not learn of many of these cases and therefore cannot pursue them.

- 2) Current Board Enforcement Process.** Currently, the Board would learn of instances of the crimes listed above if an arrest was made, or if a complaint was received.

In the case of an arrest, the Board would receive notification of the arrest, would obtain the police report, and would follow the progress of the case and take action if there were sufficient evidence to do so.

- 3) Effects of this Bill on Board Enforcement Process.** Under this bill, law enforcement would report to the Board if it receives or makes a report of one of the above specified crimes.

If there were no other evidence to the claim, other than that a complaint was received, the Board would need to contact the client to obtain a release of records in order to investigate the case. The ability of the investigation to proceed would depend on the patient's willingness to consent to releasing the records to the Board. In a case of child abuse, a parent or guardian would need to provide consent. If the case involved elder or dependent adult abuse, the patient may have a conservator, who would need to provide consent.



The Board would likely rely on DCA's Division of Investigation in order to track down clients and their guardians for consent, and to conduct an investigation.

- 4) Fiscal Impact to the Board.** The Board does not have a high volume of child or elder abuse cases or cases where the licensee failed to make a mandated report. Typically, these cases number only a few per year.

It is likely that this bill would lead to an increase in mandated reporting violation cases. Such an increase could have a fiscal impact due to the Board's need to utilize the Division of Investigation for additional investigations. However, at this time, the quantity of these cases, and the extent of investigative resources they would require, is unknown.

- 5) Inclusion of Registrants.** This bill requires law enforcement to make a report to the issuing state agency if the holder of state credential, license, or permit is alleged to have committed a crime.

Business and Professions Code Section 23.7 defines a "license" as a license, certificate, registration, or other means to engage in a business or profession, for purposes of the Business and Professions Code.

However, this definition does not apply to the Penal Code, which is where the reporting requirement imposed by this bill is located. To avoid confusion about whether or not the reporting requirement includes registrants, it may be helpful to amend the bill to either reference the definition in BPC Section 23.7, or to specifically include registrants.

- 6) Recommended Position.** At its April 15, 2016, the Policy and Advocacy Committee recommended that the Board consider taking a "neutral" position on this bill.

**7) Support and Opposition.**

Support

- The Arc & United Cerebral Palsy California Collaboration (Sponsor)
- The Arc of Riverside County
- Association of Regional Center Agencies
- California Advocates for Nursing Home Reform
- California Long-Term Care Ombudsman Association
- California State Retirees
- Disability Rights California
- The Alliance

Opposition

- California Association of Psychiatric Technicians
- California Attorneys for Criminal Justice
- California Public Defenders Association
- California State Sheriffs' Association
- Legal Services for Prisoners with Children

## 8) History

### 2016

04/21/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 4. Noes 2.) (April 20). Re-referred to Com. on APPR.

04/12/16 In committee: Set, first hearing. Failed passage. Reconsideration granted.

03/10/16 Referred to Com. on PUB. S.

02/22/16 Read first time.

02/21/16 From printer. May be heard in committee March 22.

02/19/16 Introduced. To print.

**ASSEMBLY BILL**

**No. 2606**

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**Introduced by Assembly Member Grove**

February 19, 2016

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An act to add Chapter 14 (commencing with Section 368.7) to Title 9 of Part 1 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2606, as introduced, Grove. Crimes against children, elders, dependent adults, and persons with disabilities.

The Child Abuse and Neglect Reporting Act requires a law enforcement agency that receives a report of child abuse to report to an appropriate licensing agency every known or suspected instance of child abuse or neglect that occurs while the child is being cared for in a child day care facility or community care facility or that involves a licensed staff person of the facility.

Existing law proscribes the commission of certain crimes against elders and dependent adults, including, but not limited to, inflicting upon an elder or dependent adult unjustifiable physical pain or mental suffering, as specified. Existing law proscribes the commission of a hate crime, as defined, against certain categories of persons, including disabled persons.

Existing law provides for the licensure of various healing arts professionals, and specifies that the commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action against the licensee. Existing law also establishes that the crime of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has occurred when the licensee

engages in specified sexual acts with a patient, client, or former patient or client.

This bill would require, if a law enforcement agency receives a report, or if a law enforcement officer makes a report, that a person who holds a state professional or occupational credential, license, or permit that allows the person to provide services to children, elders, dependent adults, or persons with disabilities is alleged to have committed one or more of specified crimes, the law enforcement agency to promptly send a copy of the report to the state licensing agency that issued the credential, license, or permit. By imposing additional duties on law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 14 (commencing with Section 368.7) is  
2 added to Title 9 of Part 1 of the Penal Code, to read:

3  
4 CHAPTER 14. REPORTING CRIMES AGAINST CHILDREN, ELDERS,  
5 DEPENDENT ADULTS, AND PERSONS WITH DISABILITIES

6  
7 368.7. If a law enforcement agency receives a report, or if a  
8 law enforcement officer makes a report, that a person who holds  
9 a state professional or occupational credential, license, or permit  
10 that allows the person to provide services to children, elders,  
11 dependent adults, or persons with disabilities is alleged to have  
12 committed one or more of the crimes described in subdivisions (a)  
13 to (f), inclusive, the law enforcement agency shall promptly send  
14 a copy of the report to the state agency that issued the credential,  
15 license, or permit.

1 (a) Sexual exploitation by a physician and surgeon,  
2 psychotherapist, or drug or alcohol abuse counselor, as described  
3 in Section 729 of the Business and Professions Code.

4 (b) Rape or other crimes described in Chapter 1 (commencing  
5 with Section 261).

6 (c) Elder or dependent adult abuse, failure to report elder or  
7 dependent adult abuse, interfering with a report of elder or  
8 dependent adult abuse or other crimes, as described in Chapter 13.

9 (d) A hate crime motivated by antidisability bias, as described  
10 in Chapter 1 (commencing with Section 422.55) of Title 11.6.

11 (e) Sexual abuse, as defined in Section 11165.1

12 (f) Child abuse, failure to report child abuse, or interfering with  
13 a report of child abuse.

14 SEC. 2. If the Commission on State Mandates determines that  
15 this act contains costs mandated by the state, reimbursement to  
16 local agencies and school districts for those costs shall be made  
17 pursuant to Part 7 (commencing with Section 17500) of Division  
18 4 of Title 2 of the Government Code.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 614                      **VERSION:** AMENDED AUGUST 31, 2015

**AUTHOR:** LENO                              **SPONSOR:** COUNTY BEHAVIORAL HEALTH  
DIRECTORS ASSOCIATION

**RECOMMENDED POSITION:** OPPOSE UNLESS AMENDED

**SUBJECT:** MEDI-CAL: MENTAL HEALTH SERVICES: PEER, PARENT, TRANSITION-AGE, AND  
FAMILY SUPPORT SPECIALIST CERTIFICATION

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### Overview:

This bill requires the State Department of Health Care Services to develop a peer, parent, transition-age, and family support specialist certification program.

### Existing Law:

- 1) States that certain essential mental health and substance use disorder services are covered Medi-Cal benefits effective January 1, 2014. (Welfare and Institutions Code (WIC) §14132.03)

### This Bill:

- 1) Establishes the Peer, Parent, Transition-Age, and Family Support Specialist Certification Program Act of 2015. (WIC Article 1.4, §§ 14045.10 – 14045.27))
- 2) Defines “peer support specialist services” as culturally competent services that promote engagement, socialization, recovery, self-sufficiency, self-advocacy, development of natural supports, identification of strengths, and maintenance of skills learned in other support services. These services can include support, coaching, facilitation, and education to Medi-Cal beneficiaries. (WIC §14045.13(k))
- 3) By July 1, 2017, requires the State Department of Health Care Services (DHCS) to establish a certification body and to provide statewide certification for adult peer support specialists, transition-age youth peer support specialists, family peer support specialists, and parent peer support specialists (WIC §14045.14)
- 4) Requires DHCS to establish the following for the various categories of peer support specialists (WIC §14045.14):
  - a) The range of responsibilities and practice guidelines;
  - b) Curriculum and core competencies, including areas of specialization;

- c) Training requirements allowing for multiple qualified training entities, and that requires training to include individuals with lived experience as consumers and family members;
  - d) Continuing education requirements;
  - e) Clinical supervision requirements;
  - f) A code of ethics and a process for revocation of certification;
  - g) A process for certification renewal;
  - h) A process for revocation of certification; and
  - i) A process to allow those currently employed in the peer support field to obtain certification.
- 5) Requires applicants for each type of certification to pass an exam approved by DHCS. (WIC §§14045.15, 14045.16, 14045.17, 14045.18)
  - 6) Requires DHCS to collaborate with the Office of Statewide Health Planning and Development (OSHPD), the County Behavioral Health Director’s Association of California, the California Mental Health Planning Council, health plans participating in the Medi-Cal program, and other interested parties, when developing, implementing, and administering the peer, parent, transition-age, and family support specialist certification program. (WIC §14045.20)
  - 7) Requires DHCS to amend its Medicaid state plan to include each category of peer support specialist as a provider type, and to include peer support specialists as a distinct service type. (WIC §14045.22)
  - 8) Allows DHCS to use Mental Health Services Act Funds, as well as funds from certain other specified programs, to develop and administer the peer support specialist certification program. (WIC §14045.25)
  - 9) Allows DHCS to establish fees to fund the department’s administration of the peer support specialist certification program. (WIC §14045.251)
  - 10) Allows DHCS to implement this law via plan letters, bulletins, or similar instructions, without regulations, until regulations are adopted. Regulations must be adopted by July 1, 2019. (WIC §14045.27)

**Comments:**

- 1) **Background.** The author’s office defines a peer provider as someone who “uses his or her lived experience with mental illness and recovery, plus skills learned in formal training, to deliver services in a behavioral health setting to promote mind-body recovery and resiliency.” (SB 614 fact sheet, March 2015) The author’s office



notes that peers can be persons with experience as clients, family members, or caretakers.

The author cites benefits of peer certification including establishing a standard of practice and code of ethics, providing peer support employees with a professional voice, and qualifying peer services for federal financial participation.

**2) Intent of This Bill.** According to the author's office, the goal of this bill is twofold:

- Require DHCS to establish a peer support specialist certification program; and
- Authorize DHCS to add peer support providers as a provider type within the Medi-Cal program.

**3) Peer Certification in Other States.** In 2013, 31 states and the federal Department of Veteran's Affairs certified and employed peer specialists. The services peer specialists provide in these states are Medicaid billable.<sup>1</sup>

In 2007, the federal Centers for Medicare and Medicaid released guidance for states to establish a certification program for peers to enable the use of federal Medicaid.

California has not established a peer certification program at this time. There is a stakeholder group, the "Working Well Together Statewide Technical Assistance Center" which in 2013 released a report of recommendations about certification. The Executive Summary of this report is in **Attachment B**.

**4) Examples of Requirements in Other States.**

Several other states recognize certified peer counselors.

#### Washington

The state of Washington allows peer counselors to work in various settings, such as community clinics, hospitals, and crisis teams. Peer counselors must be supervised by a mental health professional. Examples of things they may do include assisting an individual in identifying services that promote recovery, share their own recovery stories, advocacy, and modeling skills in recovery and self-management.

In order to become a peer counselor in Washington, a person must be accepted as a training applicant. They must complete a 40 hour training program and pass a state exam.

#### Tennessee

According to the State of Tennessee's Department of Mental Health and Substance Abuse Services, Certified Peer Recovery Specialists must complete an extensive application. If accepted, they complete an intensive 40 hour training program. They

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<sup>1</sup> "Peer Certification: What are we Waiting For?," by the California Mental Health Planning Council, February 2015

must be supervised by a mental health professional or a substance use disorder professional.

### New Mexico

The State of New Mexico offers peer support worker certification. Applicants must demonstrate 2 years of sustained recovery, complete a written application and phone interview, complete a 40 hour training program, and pass an examination.

**5) Previous Position.** This bill is a two-year bill. At its May 2015 meeting, the Board took an “oppose unless amended” position on a previous version of this bill. Below are the amendments the Board requested at that time, and the status of each:

**a) Requested Amendment #1: Include in statute a clear definition of a peer and family support specialist and a clearly defined scope of practice.**

HSC §14045.13(k) now defines “peer support specialist services.” Although it is not labeled as a scope of practice, it might be construed as one. In addition, the current version of this bill specifies four types of peer support specialists (adult, family, parent, and transition-age youth), and provides a definition of each.

**b) Requested Amendment #2: Specify the required hours of supervision for a peer and family support specialist, and identify who may provide this supervision.**

The bill is silent on the amount of required supervision required for peer support specialists; it leaves the task to DHCS to establish via regulations.

The bill does now state who may supervise a peer support specialist. Supervisors can be a mental health rehabilitation specialist, a substance use disorder professional, or a licensed mental health professional as defined in Title 9, Section 782.26 of the California Code of Regulations (CCR).

Although the bill now allows some Board licensees to supervise peer support specialists, it is important to note that 9 CCR §782.26 lists psychologists, physicians, LMFTs, and LCSWs as licensed mental health professionals. LPCCs are not included in the list, which means that, as this bill is currently written, LPCCs would not be able to supervise peer support specialists.

**c) Requested Amendment #3: Specify training requirements for a peer and family support specialist.**

The bill delegates the task of establishing specific education and training requirements to regulation. However, it does now list several minimum core competencies that must be included in the required curriculum to become a certified peer support specialist.

The Board may want to discuss whether some of the curriculum areas, such as psychiatric rehabilitation skills and trauma-informed care, overlap with the scope of practice of the Board's licenses.

WIC Section 14045.19 of the bill has been added to state that it is not the intent of the law to imply that a peer support specialist provide clinical services. However a statement such as the following may provide more clarity:

*“Any services that fall under the scope of practice of the Licensed Marriage and Family Therapist Act (Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code), the Educational Psychologist Practice Act (Chapter 13.5 (commencing with Section 4989.10) of Division 2 of the Business and Professions Code), the Clinical Social Worker Practice Act (Chapter 14 (commencing with Section 4991) of Division 2 of the Business and Professions Code), and the Licensed Professional Clinical Counselor Act (Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code), which are not performed in an exempt setting as defined in Sections 4980.01, 4996.14, and 4999.22 of the Business and Professions Code, shall only be performed by a licensee or a registrant of the Board of Behavioral Sciences or other appropriately licensed professional, such as a licensed psychologist or board certified psychiatrist.”*

**d) Requested Amendment #4: Add a fingerprinting requirement for peer and family support specialists.**

The bill still does not contain a fingerprinting requirement.

**6) Requirements Not Established in Legislation.** This bill requires DHCS to establish many of the requirements of certified peer support specialists, including responsibilities and practice guidelines, curriculum, required training, continuing education, supervision, and renewal, via regulation. Assuming this bill was to pass, it would become effective January 1, 2017, and the certification program must be established by July 1, 2017. Regulations must be adopted by July 1, 2019. However, the bill leaves discretion to DHCS to implement the program via various instructions, until regulations are adopted.

**7) Recommended Action.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider taking an “oppose unless amended” position on this bill. They noted that the following of the Board's previous amendment requests (detailed in Item 5 above) had not been resolved:

- Requested Amendment #2
- Requested Amendment #3 – suggested language should be included
- Requested Amendment #4

**8) Support and Opposition. (July 6, 2015 Bill Version)**

Support:

- County Behavioral Health Directors Association of California (sponsor)
- American Federation of State, County and Municipal Employees
- Association of California Healthcare Districts

- California Alliance of Child and Family Services
- California Association of Alcohol and Drug Program Executives
- California Association of Social Rehabilitation Agencies
- California Coalition for Mental Health
- California Council of Community Mental Health Agencies
- California State Association of Counties
- California Youth Empowerment Network
- Children NOW
- Common Sense Kids Action
- Disability Rights California
- Los Angeles County Board of Supervisors
- Mental Health America of California
- Mental Health America of Los Angeles
- NAMI Alameda County South
- NAMI California
- San Bernardino County
- Service Employees International Union
- Steinberg Institute
- Telecare Corporation
- Urban Counties Caucus
- Western Center on Law & Poverty
- Women's Policy Foundation of California
- Women's Policy Institute

Concerns:

- African-American Health Institute of San Bernardino County
- Connections: a Counseling Center Affirming Spirituality and Diversity
- Council of Sacramento Valley Islamic Organizations
- Cyrus Urban Inter-Church Sustainability Network
- Diversity in Health Training Institute
- Hmong Health Collaborative
- La Familia
- MAS Social Services Foundation
- Multi-Ethnic Collaborative of Community Agencies
- Muslim Wellness Foundation-Atlanta
- National Association of Social Workers, California Chapter
- Native American Health Center
- Native Directions, Inc.
- Racial and Ethnic Mental Health Disparities Coalition
- Tarbiya Institute
- Village Project, Inc.
- 4 Individuals

Oppose Unless Amended:

- California Consortium of Addiction Programs and Professionals

## 9) History.

### 2015

09/03/15 Ordered to inactive file on request of Assembly Member Cristina Garcia.  
09/01/15 Read second time. Ordered to third reading.  
08/31/15 Read second time and amended. Ordered to second reading.  
08/28/15 From committee: Do pass as amended. (Ayes 12. Noes 0.) (August 27).  
08/27/15 Joint Rule 62(a) suspended.  
08/26/15 August 26 set for first hearing. Placed on APPR. suspense file.  
07/16/15 Read second time and amended. Re-referred to Com. on APPR.  
07/15/15 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 18. Noes 0.) (July 14).  
07/06/15 From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.  
06/18/15 Referred to Com. on HEALTH.  
06/02/15 In Assembly. Read first time. Held at Desk.  
06/01/15 Read third time. Passed. (Ayes 40. Noes 0. Page 1191.) Ordered to the Assembly.  
05/28/15 Read second time. Ordered to third reading.  
05/28/15 From committee: Do pass. (Ayes 7. Noes 0. Page 1157.) (May 28).  
05/23/15 Set for hearing May 28.  
04/27/15 April 27 hearing: Placed on APPR. suspense file.  
04/17/15 Set for hearing April 27.  
04/16/15 From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0. Page 651.) (April 15). Re-referred to Com. on APPR.  
04/06/15 From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.  
03/20/15 Set for hearing April 15.  
03/12/15 Referred to Com. on HEALTH.  
03/02/15 Read first time.  
03/02/15 From printer. May be acted upon on or after April 1.  
02/27/15 Introduced. To Com. on RLS. for assignment. To print.

## 10) Attachments.

**Attachment A:** *“Peer Certification: What are we Waiting For?”* by the California Mental Health Planning Council, February 2015

**Attachment B:** Executive Summary from *“Final Report: Recommendations from the Statewide Summit on Certification of Peer Providers,”* Working Well Together, 2013

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AMENDED IN ASSEMBLY AUGUST 31, 2015

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JULY 6, 2015

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 614**

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**Introduced by Senator Leno  
(Coauthor: Senator Anderson)**

February 27, 2015

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An act to add Article 1.4 (commencing with Section 14045.10) to Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 614, as amended, Leno. Medi-Cal: mental health services: peer, parent, transition-age, and family support specialist certification

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions. Existing law provides for a schedule of benefits under the Medi-Cal program and provides for various services, including various behavioral and mental health services.

Existing law, the Mental Health Services Act (MHSA), an initiative measure enacted by the voters as Proposition 63 at the November 2, 2004, statewide general election, establishes the continuously appropriated Mental Health Services Fund to fund various county mental health programs. The act also requires funds to be reserved for the costs for the State Department of Health Care Services, the California Mental

Health Planning Council, the Office of Statewide Health Planning and Development (OSHPD), the Mental Health Services Oversight and Accountability Commission, the State Department of Public Health, and any other state agency to implement all duties pursuant to certain programs provided for by the act, subject to appropriation in the annual Budget Act. The act provides that it may be amended by the Legislature by a  $\frac{2}{3}$  vote of each house as long as the amendment is consistent with and furthers the intent of the act, and that the Legislature may also clarify procedures and terms of the act by majority vote.

This bill would require the State Department of Health Care Services to establish, by July 1, 2017, a statewide peer, parent, transition-age, and family support specialist certification program, as a part of the state's comprehensive mental health and substance use disorder delivery system and the Medi-Cal program. The bill would include 4 certification categories: adult peer support specialists, transition-age youth peer support specialists, family peer support specialists, and parent peer support specialists. The certification program's components would include, among others, defining responsibilities and practice guidelines, determining curriculum and core competencies, specifying training and continuing education requirements, and establishing a code of ethics and certification revocation processes. The bill would require an applicant for the certification as a peer, parent, transition-age, and family support specialist to meet specified requirements, including successful completion of the curriculum and training requirements.

This bill would require the department to collaborate with OSHPD and interested stakeholders in developing the certification program, and to obtain technical assistance pursuant to a specified joint state-county decisionmaking process. The bill would authorize the department to use funding provided through the MHSA and designated funds administered by OSHPD, to develop and administer the program, and would authorize the use of these MHSA funds to serve as the state's share of funding to develop and administer the program for the purpose of claiming federal financial participation under the Medicaid Program.

*This bill would authorize the department to establish a certification fee schedule and require remittance of fees as contained in the schedule, for the purpose of supporting the department's activities associated with the ongoing state administration of the peer, parent, transition-age, and family support specialist certification program. The bill would require the department to utilize the other funding resources made available under the bill before determining the need for the certificatio*



*fee schedule and requiring the remittance of fees. The bill would declare legislative intent that the certification fees be reasonable and reflect the expenditures directly applicable to the ongoing state administration of the program.*

This bill would require the department to amend the Medicaid state plan to include a certified peer, parent, transition-age, and family support specialist as a provider type for purposes of the Medi-Cal program, but would implement this provision only if and to the extent that federal financial participation is available and the department obtains all necessary federal approvals. The bill would authorize the department to enter into exclusive or nonexclusive contracts on a bid or nonbid basis, as specified, on a statewide or more limited geographic basis. This bill also would authorize the department to implement, interpret, or make specific its provisions by various informational documents until regulations are adopted.

This bill would declare that it clarifies terms and procedures under the Mental Health Services Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 1.4 (commencing with Section 14045.10)  
2 is added to Chapter 7 of Part 3 of Division 9 of the Welfare and  
3 Institutions Code, to read:

4  
5 Article 1.4. Peer, Parent, Transition-Age, and Family Support  
6 Specialist Certification Progra  
7

8 14045.10. This article shall be known, and may be cited, as  
9 the Peer, Parent, Transition-Age, and Family Support Specialist  
10 Certification Program Act of 2015.

11 14045.11. The Legislature finds and declares all of the  
12 following:

13 (a) With the enactment of the Mental Health Services Act in  
14 2004, support to include peer providers identified as consumers,  
15 parents, and family members for the provision of services has been  
16 on the rise.

17 (b) There are over 6,000 peer providers in California who  
18 provide individualized support, coaching, facilitation, and

1 education to clients with mental health care needs and substance  
2 use disorder, in a variety of settings, yet no statewide scope of  
3 practice, standardized curriculum, training standards, supervision  
4 standards, or certification protocol is available.

5 (c) The United States Department of Veterans Affairs and over  
6 30 states utilize standardized curricula and certification protocols  
7 for peer support services.

8 (d) The federal Centers for Medicare and Medicaid Services  
9 (CMS) recognizes peer support services as an evidence-based  
10 model of care and notes it is an important component in a state's  
11 delivery of effective mental health and substance use disorder  
12 treatment. The CMS encourages states to offer peer support  
13 services as a component of a comprehensive mental health and  
14 substance use disorder delivery system and federal financial  
15 participation is available for this purpose.

16 (e) A substantial number of research studies demonstrate that  
17 peer supports improve client functioning, increase client  
18 satisfaction, reduce family burden, alleviate depression and other  
19 symptoms, reduce hospitalizations and hospital days, increase  
20 client activation, and enhance client self-advocacy.

21 (f) Certification at the state level can incentivize the public  
22 mental health system and the Medi-Cal program, including the  
23 Drug Medi-Cal program, to increase the number, diversity, and  
24 availability of peer providers and peer-driven services.

25 14045.12. It is the intent of the Legislature that the peer, parent,  
26 transition-age, and family support specialist certification program,  
27 established under this article, achieve all of the following:

28 (a) Establish the ongoing provision of peer support services for  
29 beneficiaries experiencing mental health care needs, substance use  
30 disorder needs, or both by certified peer support specialists

31 (b) Provide support, coaching, facilitation, and education to  
32 beneficiaries with mental health needs, substance use disorder  
33 needs, or both, and to families or significant support persons

34 (c) Provide increased family support, building on the strengths  
35 of families and helping them achieve desired outcomes.

36 (d) Provide a part of a wraparound continuum of services, in  
37 conjunction with other community mental health services and other  
38 substance use disorder services.

39 (e) Collaborate with others providing care or support to the  
40 beneficiary or family.

1 (f) Assist parents, when applicable, in developing coping  
2 mechanisms and problem-solving skills.

3 (g) Provide an individualized focus on the beneficiar , the  
4 family, or both, as needed.

5 (h) Encourage employment under the peer, parent, transition-age,  
6 and family support specialist certification program to reflect the  
7 culture, ethnicity, sexual orientation, gender identity, mental health  
8 service experiences, and substance use disorder experiences of the  
9 people whom they serve.

10 (i) Promote socialization, recovery, self-sufficiency,  
11 self-advocacy, development of natural supports, and maintenance  
12 of skills learned in other support services.

13 14045.13. For purposes of this article, the following definition  
14 shall apply:

15 (a) “Adult peer support specialist” means a person who is 18  
16 years of age or older and who has self-identified as having lived  
17 experience of recovery from mental illness, substance use disorder,  
18 or both, and the skills learned in formal trainings to deliver peer  
19 support services in a behavioral setting to promote mind-body  
20 recovery and resiliency for adults.

21 (b) “Certification” means, as it pertains to the peer, parent,  
22 transition-age, and family support specialist certification program,  
23 all federal and state requirements have been satisfied, federal  
24 financial participation under Title XIX of the federal Social  
25 Security Act (42 U.S.C. Sec. 1396 et seq.) is available, and all  
26 necessary federal approvals have been obtained.

27 (c) “Certified” means all federal and state requirements have  
28 been satisfied by an individual who is seeking designation under  
29 this article, including completion of curriculum and training  
30 requirements, testing, and agreement to uphold and abide by the  
31 code of ethics.

32 (d) “Certification examination” means the competency testing  
33 requirements, as approved by the department, an individual is  
34 required to successfully complete as a condition of becoming  
35 certified under this article. Each training program approved by the  
36 department may develop a unique competency examination for  
37 each category of peer, parent, transition-age, and family support  
38 specialist listed in subdivision (b) of Section 14045.14. Each  
39 certification examination shall include core curriculum elements.

1 (e) “Code of ethics” means the professional standards each  
2 certified peer, parent, transition-age, and family support specialist  
3 listed in subdivision (b) of Section 14045.14 is required to agree  
4 to uphold and abide by. These professional standards shall include  
5 principles, expected behavior and conduct of the certificate holder  
6 in an agreed-upon statement that is required to be provided to the  
7 applicant and acknowledged by signing with his or her personal  
8 signature prior to being granted certification under this article

9 (f) “Core competencies” are the foundational and essential  
10 competencies required by each category of peer, parent,  
11 transition-age, and family support specialists listed in subdivision  
12 (b) of Section 14045.14 who provide peer support services.

13 (g) “Cultural competence” means a set of congruent behaviors,  
14 attitudes, and policies that come together in a system or agency  
15 that enables that system or agency to work effectively in  
16 cross-cultural situations. A culturally competent system of care  
17 acknowledges and incorporates, at all levels, the importance of  
18 language and culture, intersecting identities, assessment of  
19 cross-cultural relations, knowledge and acceptance of dynamics  
20 of cultural differences, expansion of cultural knowledge, and  
21 adaptation of services to meet culturally unique needs to provide  
22 services in a culturally competent manner.

23 (h) “Family peer support specialist” means a person with lived  
24 experience as a self-identified family member of an individual  
25 experiencing mental illness, substance use disorder, or both, and  
26 the skills learned in formal trainings to assist and empower families  
27 of individuals experiencing mental illness, substance use disorder,  
28 or both. For the purposes of this subdivision, “family member”  
29 includes a sibling or kinship caregiver, and their partners.

30 (i) “Parent” means a person who is parenting or has parented a  
31 child or individual experiencing mental illness, substance use  
32 disorder, or both, and who can articulate his or her understanding  
33 of his or her experience with another parent or caregiver. This  
34 person may be a birth parent, adoptive parent, or family member  
35 standing in for an absent parent.

36 (j) “Parent peer support specialist” means a parent with formal  
37 training to assist and empower families parenting a child or  
38 individual experiencing mental illness, substance use disorder, or  
39 both.

1 (k) “Peer support specialist services” means culturally competent  
2 services that promote engagement, socialization, recovery,  
3 self-sufficiency, self-advocacy, development of natural supports,  
4 identification of strengths, and maintenance of skills learned in  
5 other support services. Peer support specialist services shall  
6 include, but are not limited to, support, coaching, facilitation, and  
7 education to Medi-Cal beneficiaries that is individualized to the  
8 beneficiary and is conducted by a certified adult peer support  
9 specialist, a certified transition-age youth peer support specialist,  
10 a certified family peer support specialist, or a certified parent peer  
11 support specialist.

12 (l) “Recovery” means a process of change through which an  
13 individual improves his or her health and wellness, lives a  
14 self-directed life, and strives to reach his or her full potential. This  
15 process of change recognizes cultural diversity and inclusion, and  
16 honors the different routes to resilience and recovery based on the  
17 individual and his or her cultural community.

18 (m) “Transition-age youth peer support specialist” means a  
19 person who is 18 years of age or older and who has self-identified  
20 as having lived experience of recovery from mental illness,  
21 substance use disorder, or both, and the skills learned in formal  
22 trainings to deliver peer support services in a behavioral setting to  
23 promote mind-body recovery and resiliency for transition-age  
24 youth, including adolescents and young adults.

25 14045.14. No later than July 1, 2017, the department, as the  
26 sole state Medicaid agency, shall establish a peer, parent,  
27 transition-age, and family support specialist certification program  
28 that, at a minimum, shall do all of the following:

29 (a) Establish a certifying body, either within the department,  
30 through contract, or through an interagency agreement, to provide  
31 for the certification of peer, parent, transition-age, and family  
32 support specialists as described in this article.

33 (b) Provide for a statewide certification for each of the following  
34 categories of peer support specialists, as contained in federal  
35 guidance issued by the Centers for Medicare and Medicaid  
36 Services, State Medicaid Director Letter (SMDL) #07-011:

37 (1) Adult peer support specialists, who may serve individuals  
38 across the lifespan.

39 (2) Transition-age youth peer support specialists.

40 (3) Family peer support specialists.

- 1 (4) Parent peer support specialists.
- 2 (c) Define the range of responsibilities and practice guidelines
- 3 for the categories of peer support specialists listed in subdivision
- 4 ~~(b)~~: (b), *by utilizing best practice materials published by the federal*
- 5 *Substance Abuse and Mental Health Services Administration, the*
- 6 *federal Department of Veterans Affairs, and related notable experts*
- 7 *in the field as a basis for development.*
- 8 (d) Determine curriculum and core competencies, including
- 9 curriculum that may be offered in areas of specialization, such as
- 10 older adults, veterans, family support, forensics, whole health,
- 11 juvenile justice, youth in foster care, sexual orientation, gender
- 12 identity, and any other areas of specialization identified by the
- 13 department. Specialized curriculum shall be determined for each
- 14 of the categories of peer, parent, transition-age, and family support
- 15 specialists listed in subdivision (b). Core competencies-based
- 16 curriculum shall include, at a minimum, all of the following
- 17 elements:
  - 18 (1) The concepts of hope, recovery, and wellness.
  - 19 (2) The role of advocacy.
  - 20 (3) The role of consumers and family members.
  - 21 (4) Psychiatric rehabilitation skills and service delivery, and
  - 22 addiction recovery principles, including defined practices
  - 23 (5) Cultural competence training.
  - 24 (6) Trauma-informed care.
  - 25 (7) Group facilitation skills.
  - 26 (8) Self-awareness and self-care.
  - 27 (9) Cooccurring disorders of mental health and substance use.
  - 28 (10) Conflict resolution
  - 29 (11) Professional boundaries and ethics.
  - 30 (12) Safety and crisis planning.
  - 31 (13) Navigation of, and referral to, other services.
  - 32 (14) Documentation skills and standards.
  - 33 (15) Study and test-taking skills.
- 34 (e) Specify training requirements, including
- 35 core-competencies-based training and specialized training
- 36 necessary to become certified under this article, allowing for
- 37 multiple qualified training entities, and requiring training to include
- 38 people with lived experience as consumers and family members.
- 39 (f) Specify required continuing education requirements for
- 40 certification

1 (g) Determine clinical supervision requirements for personnel  
2 certified under this article, that shall require, at a minimum,  
3 personnel certified pursuant to this article to work under the  
4 direction of a mental health rehabilitation ~~specialist~~ *specialist, as*  
5 *defined in Section 782.35 of Title 9 of the California Code of*  
6 *Regulations, or substance use disorder professional. A licensed*  
7 *mental health professional, as defined in Section 782.26 of Title*  
8 *9 of the California Code of Regulations, may also provide*  
9 *supervision.*

10 (h) Establish a code of ethics.

11 (i) Determine the process for certification renewal.

12 (j) Determine a process for revocation of certification

13 (k) Determine a process for allowing existing personnel  
14 employed in the peer support field to obtain certification under  
15 this article, at their option.

16 14045.15. In order to be certified as an adult peer support  
17 specialist, an individual shall, at a minimum, satisfy all of the  
18 following requirements:

19 (a) Be at least 18 years of age.

20 (b) Have or have had a primary diagnosis of mental illness,  
21 substance use disorder, or both, which is self-disclosed.

22 (c) Have received or is receiving mental health services,  
23 substance use disorder services, or both.

24 (d) Be willing to share his or her experience of recovery.

25 (e) Demonstrate leadership and advocacy skills.

26 (f) Have a strong dedication to recovery.

27 (g) Agree to uphold and abide by a code of ethics. A copy of  
28 the code of ethics shall be signed by the applicant.

29 (h) Successful completion of the curriculum and training  
30 requirements for an adult peer support specialist.

31 (i) Pass a certification examination approved by the department  
32 for an adult peer support specialist.

33 (j) Successful completion of any required continuing education,  
34 training, and recertification requirements

35 14045.16. In order to be certified as a transition-age youth peer  
36 support specialist, an individual shall, at a minimum, satisfy all of  
37 the following requirements:

38 (a) Be at least 18 years of age.

39 (b) Have or have had a primary diagnosis of mental illness,  
40 substance use disorder, or both, which is self-disclosed.

- 1 (c) Have received or is receiving mental health services,
- 2 substance use disorder addiction services, or both.
- 3 (d) Be willing to share his or her experience of recovery.
- 4 (e) Demonstrate leadership and advocacy skills.
- 5 (f) Have a strong dedication to recovery.
- 6 (g) Agree to uphold and abide by a code of ethics. A copy of
- 7 the code of ethics shall be signed by the applicant.
- 8 (h) Successful completion of the curriculum and training
- 9 requirements for a transition-age youth peer support specialist.
- 10 (i) Pass a certification examination approved by the department
- 11 for a transition-age youth peer support specialist.
- 12 (j) Successful completion of any required continuing education,
- 13 training, and recertification requirements
- 14 14045.17. In order to be certified as a family peer support
- 15 specialist, an individual shall, at a minimum, satisfy all of the
- 16 following requirements:
- 17 (a) Be at least 18 years of age.
- 18 (b) Be self-identified as a family member of an individual
- 19 experiencing mental illness, substance use disorder, or both.
- 20 (c) Be willing to share his or her experience.
- 21 (d) Demonstrate leadership and advocacy skills.
- 22 (e) Have a strong dedication to recovery.
- 23 (f) Agree to uphold and abide by a code of ethics. A copy of
- 24 the code of ethics shall be signed by the applicant.
- 25 (g) Successful completion of the curriculum and training
- 26 requirements for a family peer support specialist.
- 27 (h) Pass a certification examination approved by the department
- 28 for a family peer support specialist.
- 29 (i) Successful completion of any required continuing education,
- 30 training, and recertification requirements
- 31 14045.18. In order to be certified as a parent peer support
- 32 specialist, an individual shall, at a minimum, satisfy all of the
- 33 following requirements:
- 34 (a) Be at least 18 years of age.
- 35 (b) Be self-identified as a parent, as defined in Section 14045.13.
- 36 (c) Be willing to share his or her experience.
- 37 (d) Demonstrate leadership and advocacy skills.
- 38 (e) Have a strong dedication to recovery.
- 39 (f) Agree to uphold and abide by a code of ethics. A copy of
- 40 the code of ethics shall be signed by the applicant.



1 (g) Successful completion of the curriculum and training  
2 requirements for a parent peer support specialist.

3 (h) Pass a certification examination approved by the department  
4 for a parent peer support specialist.

5 (i) Successful completion of any required continuing education,  
6 training, and recertification requirements

7 14045.19. This article shall not be construed to imply that an  
8 individual who is certified pursuant to this article is qualified to,  
9 or authorize that individual to, diagnose an illness, prescribe  
10 medication, or provide clinical services.

11 14045.20. The department shall closely collaborate with the  
12 Office of Statewide Health Planning and Development (OSHPD)  
13 and its associated workforce collaborative, and regularly consult  
14 with interested stakeholders, including peer support and family  
15 organizations, mental health and substance use disorder services  
16 providers and organizations, the County Behavioral Health  
17 Directors Association of California, health plans participating in  
18 the Medi-Cal managed care program, the California Mental Health  
19 Planning Council, and other interested parties in developing,  
20 implementing, and administering the peer, parent, transition-age,  
21 and family support specialist certification program established  
22 pursuant to this article. This consultation shall initially include, at  
23 a minimum, bimonthly stakeholder meetings, which may also  
24 include technical workgroup meetings. The department may seek  
25 private funds from a nonprofit organization or foundation for this  
26 purpose.

27 14045.21. The department may contract to obtain technical  
28 assistance for the development of the peer, parent, transition-age,  
29 and family support specialist certification program, as provided  
30 in Section 4061.

31 14045.22. (a) The department shall amend its Medicaid state  
32 plan to do both of the following:

33 (1) Include each category of peer, parent, transition-age, and  
34 family support specialist listed in subdivision (b) of Section  
35 14045.14 certified pursuant to this article as a provider type for  
36 purposes of this chapter.

37 (2) Include peer support specialist services as a distinct service  
38 type for purposes of this chapter, which may be provided to eligible  
39 Medi-Cal beneficiaries who are enrolled in either a Medi-Cal

1 managed mental health care plan or a Medi-Cal managed care  
2 health plan.

3 (b) The department may seek any federal waivers or other state  
4 plan amendments as necessary to implement the certificatio  
5 program provided for under this article.

6 (c) ~~This article—~~*Medi-Cal reimbursement for peer support*  
7 *services* shall be implemented only if and to the extent that federal  
8 financial participation under Title XIX of the federal Social  
9 Security Act (42 U.S.C. Sec. 1396 et seq.) is available and all  
10 necessary federal approvals have been obtained.

11 14045.23. To facilitate early intervention for mental health  
12 services, community health workers may partner with peer, parent,  
13 transition-age, and family support specialists for engagement,  
14 outreach, and education.

15 14045.24. It is not the intent of the Legislature in enacting this  
16 article to modify the Medicaid state plan in any manner that would  
17 otherwise change or nullify the requirements, billing, or  
18 reimbursement of the “other qualified provider” provider type, as  
19 currently authorized by the Medicaid state plan.

20 14045.25. The department may utilize Mental Health Services  
21 Act funds, as authorized in subdivision (d) of Section 5892, and  
22 any designated Workforce Education and Training Program  
23 resources, including funding, as administered by OSHPD pursuant  
24 to Section 5820, to develop and administer the peer, parent,  
25 transition-age, and family support specialist certification program.  
26 ~~These~~ *Further, these* Mental Health Service Act funds may *then*  
27 serve as the state’s share of funding to develop and administer the  
28 peer, parent, transition-age, and family support specialist  
29 certification program and shall be available for purposes of  
30 claiming federal financial participation under Title XIX of the  
31 federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) once all  
32 necessary federal approvals have been obtained.

33 *14045.251. The department may establish a certification fee*  
34 *schedule and may require remittance as contained in the*  
35 *certification fee schedule for the purpose of supporting the*  
36 *department’s activities associated with the ongoing state*  
37 *administration of the peer, parent, transition-age, and family*  
38 *support specialist certification program. The department shall*  
39 *utilize all funding resources as made available in Section 14045.25*  
40 *fi st, prior to determining the need for the certification fee schedule*

1 *and requiring the remittance of fees. It is the intent of the*  
2 *Legislature that any certification fees charged by the department*  
3 *be reasonable and reflect the expenditures directly applicable to*  
4 *the ongoing state administration of the peer, parent, transition-age*  
5 *and family support specialist certification program.*

6 14045.26. For the purposes of implementing this article, the  
7 department may enter into exclusive or nonexclusive contracts on  
8 a bid or negotiated basis, including contracts for the purpose of  
9 obtaining subject matter expertise or other technical assistance.  
10 Contracts may be statewide or on a more limited geographic basis.

11 14045.27. Notwithstanding Chapter 3.5 (commencing with  
12 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
13 Code, the department may implement, interpret, or make specific  
14 this article by means of plan letters, plan or provider bulletins, or  
15 similar instructions, without taking regulatory action, until the  
16 time regulations are adopted. The department shall adopt  
17 regulations by July 1, 2019, in accordance with the requirements  
18 of Chapter 3.5 (commencing with Section 11340) of Part 1 of  
19 Division 3 of Title 2 of the Government Code. Notwithstanding  
20 Section 10231.5 of the Government Code, beginning six months  
21 after the effective date of this article, the department shall provide  
22 semiannual status reports to the Legislature, in compliance with  
23 Section 9795 of the Government Code, until regulations have been  
24 adopted.

25 SEC. 2. The Legislature finds and declares that this act clarifies  
26 procedures and terms of the Mental Health Services Act within  
27 the meaning of Section 18 of the Mental Health Services Act.

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**CHAIRPERSON**  
Cindy Clafin

**EXECUTIVE OFFICER**  
Jane Adcock

## PEER CERTIFICATION:

### WHAT ARE WE WAITING FOR?

- **Advocacy**
- **Evaluation**
- **Inclusion**

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*Examining the Opportunities, Barriers, and Precedents for the Official  
Recognition and Certification of Peer Specialists in California.*

February 2015

*<sup>1</sup> “When you talk to people who have been through these programs and ask them what helped them, it is not the drugs, not the diagnosis. It’s the lasting, one-on-one relationships with adults who listen....”*

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<sup>1</sup> <http://www.npr.org/blogs/health/2014/10/20/356640026/halting-schizophrenia-before-it-starts>

## ***Leading the Way, yet Lagging Behind:***

California is accustomed to being at the forefront of progressive, compassionate policy and legislation. Voters passed the Mental Health Services Act because they couldn't stand to see the misery of unaddressed mental illness and the state was an early adopter of parity laws and Medicaid expansion. As a state, we have been proud of our leadership. So, where has California lagged behind? California has yet to follow the example of 31 other states and the Veterans Administration in establishing and utilizing a standardized curriculum and certification protocol for Peer Specialists' services.

Peers are persons with lived experience as consumers and family members or caretakers of individuals living with mental illness. Their experiences make Peer Specialists invaluable members of a service team. Employment and certification simultaneously bridges the gap between those that need it and those that can best provide it while reinforcing the peer provider's own wellness and sense of purpose.

Right now, more than half of the United States has a Peer Certification Program in place – people practicing, producing, and billing. Making a difference in the lives of people they intimately understand because they have already staved off the same potential devastation. Because if you ask somebody struggling with a life-altering, all-consuming episode of any type of mental distress if they have sought help yet, the response - more often than not - would be *“they don't understand”* or *“I just can't deal with the process of getting that help”*. California has not been able to summon up the political will it would take to make the most basic and meaningful connection with somebody who needs it the most.

*“A leader is not someone who stands before you, but someone who stands with you”<sup>2</sup>*

## ***What are Peer Specialists?***

Peer Specialists are empathetic guides and coaches who understand and model the process of recovery and healing while offering moral support and encouragement to people who need it. Moral support and encouragement have proven to result in greater compliance with treatment/services, better health function, lower usage of emergency departments, fewer medications and prescriptions, and a higher sense of purpose and connectedness on the part of the consumer.

Peer Specialists also model and train on communication between health care provider and consumer in order to educate both on potential barriers or side effects of existing medications or treatment plans. In a world where primary care intersects with mental health care, but

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<sup>2</sup> Native American Proverb

medical records are not necessarily shared, this alone is huge. Bridging that gap becomes one of the single highest predictors of effective treatment plans and positive outcomes. In a population with mortality rates that average 25 years sooner than non-SMI groups - for conditions that could be easily managed or cured - this one benefit alone is worth the investment.

It might be easier to describe Peer specialists by defining what they are NOT. Peer Specialists differ from Case Managers in that they do not identify resources, arrange for social or supportive services, or facilitate job trainings, educational opportunities, or living arrangements. They are not certified to offer medical advice or diagnoses, psychiatric or otherwise, or suggest, prescribe, or manage medications. Their function is not to “do for” but rather to “do with” and ultimately model and train wellness principles and self-sufficiency.

### ***What is Peer Specialist Certification?***

Peer Specialist Certification is an official recognition by a certifying body that the practitioner has met qualifications that include lived experience and training from a standardized curriculum on mental health issues. The standardized curriculum has been approved by the certifying body and includes a mandatory number of hours of training in various topics pertaining to mental health care, coaching, and ethics. The “specialist” designation is conferred when additional hours of training specific to special populations or age groups has been completed and the candidate has demonstrated thorough knowledge, skills, and ability within that subgroup.

The standardized curriculum includes topics such as documentation, boundaries and ethics, communication skills, working with specific populations, developing wellness plans, systems of care, principles of practices (i.e., engagement, strength-based planning, WRAP plans, case management); and advocacy, to name a few. At this time, there are several courses available through the community college system, but not on a statewide basis. Working Well Together has compiled an excellent comprehensive report - *Certification of Consumer, Youth, Family, and Parent Providers; A Review of the Research* – which provides detailed information, background, and context.<sup>3</sup>

### ***Why Certification?***

*“Regardless of the means selected to demonstrate competency, it is critical that the core competencies of a peer (knowledge, skills, job tasks, and performance domains of the profession) are identified according to a recognized process, such as a job task analysis or role delineation study. **This is because –all other program requirements, policies, and standards must tie back to the core competencies of the profession being credentialed.**”<sup>4</sup>*

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<sup>3</sup> [http://www.inspiredatwork.net/uploads/WWT\\_Peer\\_Certification\\_Research\\_Report\\_FINAL\\_6.20.12\\_\\_1\\_.pdf](http://www.inspiredatwork.net/uploads/WWT_Peer_Certification_Research_Report_FINAL_6.20.12__1_.pdf)

<sup>4</sup> Hendry, P., Hill, T., Rosenthal, H. Peer Services Toolkit: A Guide to Advancing and Implementing Peer-run Behavioral Health Services. ACMHA: The College for Behavioral Health Leadership and Optum, 2014



Defining and standardizing the classification of Peer Specialist through certification prevents engagement outside one's expertise. Like any other profession, the certification defines the level of care and services so that the parameters established by the standardized curriculum and certification requirements are respected and understood statewide. Any hiring organization can expect these levels of qualifications, training, and expertise in the person they hire and can plan their organizational functions around the duties encompassed by that expertise. It also provides guidance to the peer practitioner through an established code of ethics. This means that roles and functions of other providers will not be usurped or second-guessed by the Peer Specialists.

The role of the certified peer specialist is to encourage partners and lead through example on the best ways to advocate for oneself. Sometimes it is not enough to suggest resources and make recommendations for services – sometimes you have to walk the walk along with the person for the first few steps, or even the first few miles. In this respect, the Peer Specialist is the Sherpa of the mental health care world. As partners, they teach participants how to communicate with care providers, navigate insurance companies and bureaucracies, and lessen the anxieties that arise from these various interactions. As models, they demonstrate that recovery *is* possible.

### ***The Time is Now***

First and foremost, the time is now because Affordable Health Care, Mental Health Parity, Coordinated Care Initiative, and potentially even the Public Safety Realignment create workforce shortages, particularly in the area of rehabilitative services. The time is now because recognizing the value of Peer Specialists does not translate into standardized training, skill sets, duties, or pay scales. This will make it difficult to operationalize and maintain utilization on a scale sufficient to meet the workforce needs or government standards and requirements for reimbursement. In other words “failing to plan is planning to fail”.

The Center for Medicaid Services gave California permission to amend its State Plan to include Peer Providers in 2007, stating “*We encourage States to consider comprehensive programs but note that regardless of how a State models its mental health and substance use disorder service delivery system, the State Medicaid agency continues to have the authority to determine the service delivery system, medical necessity criteria, and to define the amount, duration, and scope of the service*”<sup>5</sup>.

The time is now because the state is starting to fully understand the concept and value of peer services as part of both mental health care and the larger arena of primary care. Examples of this are their inclusion in the SB 82 (Steinberg) Investment in Mental Health and Wellness Act

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<sup>5</sup> Center for Medicare and Medicaid Services; SMDL #07-011; August 15, 2007

grant requirements for mobile crisis teams; the intent in the original Prop 63 language to include peers, family members, and parent providers as part of the MHSA workforce; and a one-time dedicated state budget allocation of training funds to the Office of Statewide Health Planning and Development for peers to be trained as mobile crisis team members. All of these components will be working together as part of the larger mental health network of care, but run the risk of operating at disparate training levels, scope of work, code of ethics, and pay levels from county to county.

Finally, the time is now because trying to standardize the classification after a piecemeal acceptance is put into place is inefficient and uninformative to potential employers. Moreover, it is unfair to people who are willing to share their expertise and demonstrate their commitment to this important and effective aspect of care and services.

To draw a timely comparison, the classification of drug and alcohol counselors, which often has a strong peer component as part of the qualifications for employment, received an early welcome into the workforce. However, this acceptance was unaccompanied by any defined training, experience, or education requirements. There has been an attempt to retroactively achieve some standardization across the lines, but proponents are finding that, due to the unstructured engagement of their services, there is no uniform requirement or skill level across treatment sites. Worse, there is a reluctance to champion a certification process, due to potential hardships and setbacks created for current successful peer employees who might not meet certification standards after the fact.

### ***Is it Cost-Effective?***

In Alameda County, a Peer Mentoring pilot project provided 40 hours of training to 26 peers called “The Art of Facilitating Self-Determination” and matched them with people recently released from psychiatric hospitals. Those accepting a peer mentor experienced a 72% reduction in readmissions to the hospital. The cost savings for Alameda County was over a million dollars with an initial investment of \$238K- making a 470% return on investment<sup>6</sup>.

The Pew Trusts reported recently “In Georgia, a 2003 study compared patients diagnosed with schizophrenia, bipolar disorder and major depression whose treatment had included peer support, with patients who received traditional day treatment services without peers. The patients who had peer support had better health outcomes—and at a lower cost. The average annual cost of day treatment services is \$6,400 per person, while support services cost about \$1,000.”<sup>7</sup>

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<sup>6</sup> <http://www.oshpd.ca.gov/HWDD/pdfs/wet/PowerPoint-Peer-Support-Specialist-A-Galvez-S-Kuehn.pdf>

<sup>7</sup> <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/09/11/peers-seen-easing-mental-health-worker-shortage>; last accessed 11/5/2014

## ***Who Employs Peer Specialists?***

Between October 2013 and January 2015, the Advocacy Committee of the California Mental Health Planning Council (CMHPC) heard presentations from Peer Specialist Advocates and Peer-run programs throughout the state. The programs represented different models ranging from peer-run respite to peer partners in health care, but all of them reported positive outcomes for the participants, cost savings for their respective counties, and a bolstering of their own wellness commitment. Here is a brief review of a few of the models the Advocacy Committee heard from.

### ***Health Navigators USC***

The Peer Health navigator connects consumers to mental health, primary care, substance use, and specialty health care services; teaches them how to advocate for themselves and effectively communicate their needs; create a follow-up plan and other self-management skills through a “modeling, coaching, fading”. They differ from Case Managers or care coordinators in that the health navigator will ultimately step away from the participant once the modeling/coaching/fading process is successful.

Typically a full-time navigator will have 12 – 15 clients at any one time, and averages 30-40 clients annually, depending on how quickly the clients moves into full self-management. Many of the services are Medicaid billable under Targeted Case Management or Rehabilitation providing the documentation reflects justification for the services rendered. Participants are trained on billing codes and documentation. The program has developed its own curriculum and provides its own training and certification.

### ***2nd Story, Santa Cruz***

2nd Story is a SAMHSA-funded program that is an entirely Peer-Run Crisis Center in Santa Cruz. All staff are trained in “Intentional Peer Support” and all wellness class topics are determined by the guests. The program provides its own training. The length of stay is no longer than two weeks, and guests are encouraged to maintain their “normal” life (school, work) during their stay. Outreach is conducted by staff posted at County mental health departments telling potential guests about the program. Referrals are also made by psychiatrists, care managers, and Telecare, a county mental health services provider/contractor, sometimes diverts people to 2nd Story rather than enrolling them in a longer term, more structured social rehabilitation facility. The program is proving to be a key preventative service in Santa Cruz that forestalls or reduces the need for crisis residential and sub-acute stabilization programs.

### ***In-Home Outreach Team (IHOT), San Diego***

As Assisted Outpatient Treatment steadily gains ground in more California counties, a small program in San Diego is providing an effective and legitimate alternative at promoting and facilitating voluntary access to services. IHOT teams consist of a Peer Specialist, family member, personal service coordinator and team lead. They provide in-home outreach to adults with serious mental illness (SMI) who are reluctant or resistant to receiving mental health services. IHOT also provides support and education to family members and/or caretakers of IHOT participants. They work with individuals living with severe mental illness and who may also be dually diagnosed with a substance use disorder or drug dependency. Teams serve a combined 240-300 consumers per year (80-100 per team).

A 2013 San Diego Health and Human Services report notes that the average cost per IHOT participant amounts to \$8,100, compared to an annual cost per individual in a Full Service Partnership (\$20,000 including housing) and Assisted Outpatient Treatment (\$34,000). Staff ratios are similarly proportionate: IHOT = 1:25 staff to client ratio; FSP and AOT each have a 1:10 staff to client ratio.

### ***What Other States Employ and Certify Peer Specialists?***

As of 2013, Certified Peer Specialists were certified and employed in 31 states and the federal Department of Veteran's Affairs. The extent of engagement and responsibility varies from state to state, but all services are Medicaid billable. These 31 states are consistent in their belief and trust in Peer Specialists – when will California join them?

### ***What is Stopping California?***

Despite all of the merits, fiscal and clinical, of Certified Peer Specialists, California has not been able to match its actions to its talk in this area. California embraces the concept of recovery, wellness, and resilience – and recognizes the essential components of both employment and inclusion as part of those processes – but it has failed to turn those concepts to tangible actions.

No State Department feels that it is in their purview to establish, implement or oversee a state certification process. Education may approve a curriculum, but it is not empowered to grant certification. Department of Health Care Services may be able to approve billable services, but is not empowered to establish curriculum or gage mastery of the subject matter. The Office of Statewide Health Planning and Development (OSHPD) has a Workforce Development Division, and is specifically charged with mental health workforce development issues, but without specific language or policy permitting OSHPD to include or pursue the specific classification of Peer Specialist, OSHPD does not felt comfortable facilitating it. In short, the single, largest barrier has been the identification of a lead agency or organization that can be charged with facilitation, implementation, and identification of a certification and oversight

body. There may be philosophical or conceptual agreement on the importance of Peer Specialists, but no policy or political direction to move it forward.

### ***How Can California Catch Up?***

Peer Specialist Certification is a cross-cutting, inclusive, and cost-saving classification that has applications across all vulnerable and at-risk populations in the state – veterans, homeless, Transition Age Youth, elderly, and criminal justice populations to name a few - and has particular utility in integrated services for the dually diagnosed and co-morbid conditions in health care.

The California Mental Health Planning Council (CMHPC) recommends that the Legislature continue and solidify its mission to create a seamless, comprehensive, continuum of mental health services and care by:

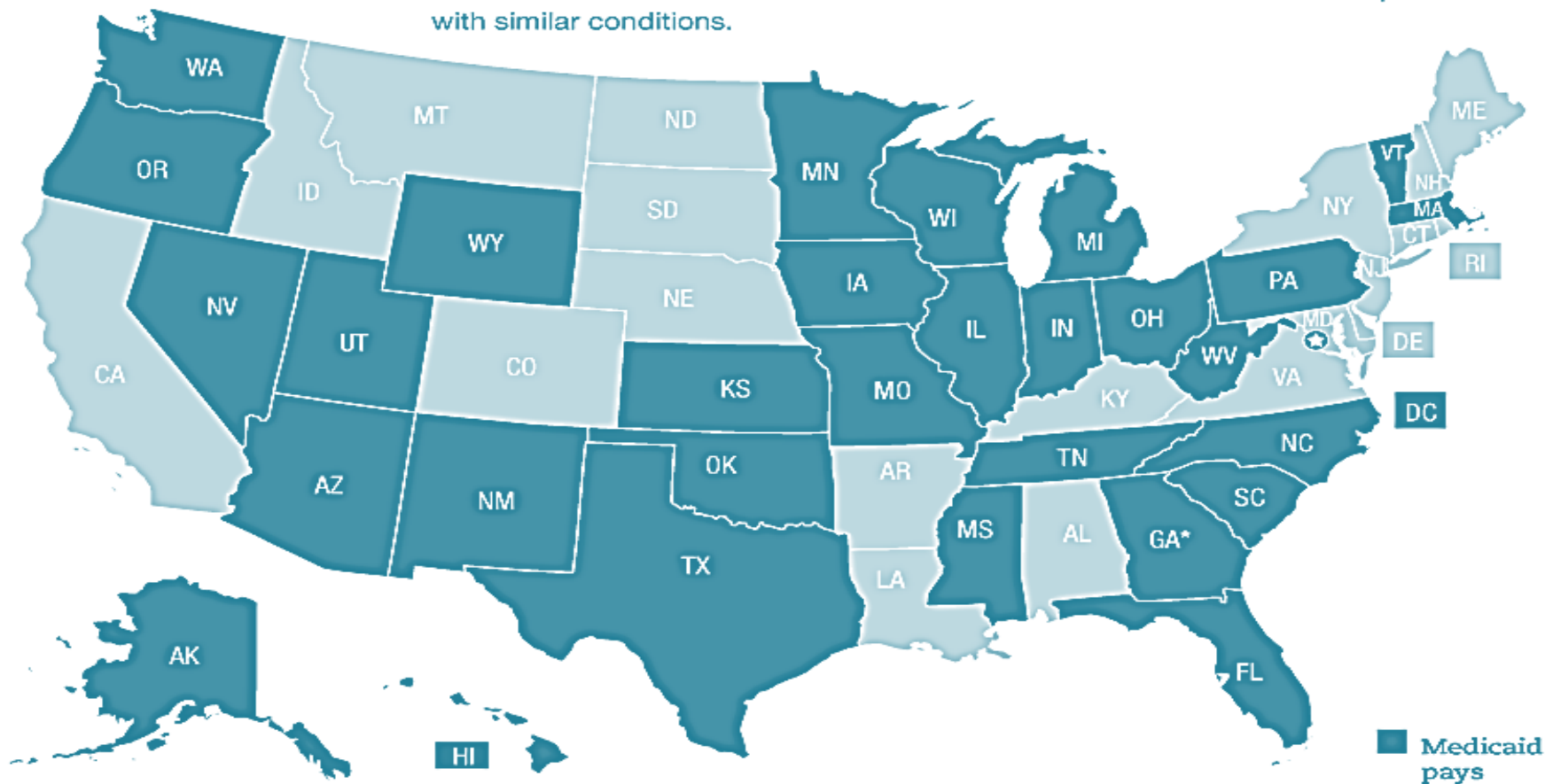
- developing clarifying legislative language that MHSAs and/or other funding may be used to establish an implementation and oversight body for statewide Peer Specialist Certification; and/or
- making Peer Certification a priority of the 2015-16 Legislative Session as a stand-alone issue ; and/or
- requiring the Certification of Peer Specialists in legislation pertaining to workforce expansion or expanded services for vulnerable populations: and/or
- identifying and including funding for the establishment of a Peer Specialist certifying and oversight body through the annual Budget Act.

The CMHPC has been following and supporting the efforts of Inspired at Work, California Association of Mental Health Peer Run Organizations (CAMHPRO), United Advocates for Children and Families (UACF), National Alliance on Mental Illness (NAMI) and the former Working Well Together Group to bring this issue to the forefront of mental health policy. These groups dedicated countless hours to investigating best practices, training models, potential curriculums, and workforce applications for Certified Peer Specialists and have generously shared their time and information to bring the CMHPC and others up to speed. Their work deserves attention and close consideration by anybody that might be in a position to support the implementation process. For detailed information on the background, issues, application, and potential processes, please visit: <http://workingwelltogether.org/resources/recruiting-hiring-and-workforce-retention/wwt-toolkit-employing-individuals-lived> or <http://www.inspiredatwork.net/Resources.html>,

# Mental Health Peer Specialists

## States where Medicaid pays for them

In 31 states, Medicaid pays for licensed peer specialists, counselors recovering from severe mental illness or substance addiction who are trained to help others with similar conditions.



Source: OptumHealth and Appalachian Consulting Group  
 NOTE: In Georgia, Medicaid pays peer specialists to provide "whole health" counseling.  
 Stateline infographic by Adam Rotmil and Christine Vestal  
 September 11, 2013

# 2013

## Final Report: Recommendations from the Statewide Summit on Certification of Peer Providers



**Working Well Together**  
Training and Technical Assistance Center



Report prepared for CAMHRO-PEERS  
under Working Well Together  
by Inspired at Work  
Lucinda Dei Rossi, MPA, CPRP and  
Debra Brasher, MS, CPRP

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## ACKNOWLEDGEMENTS

We'd like to specially recognize Karin Lettau for her diligence, hard work and grace in ensuring that all stakeholders felt heard and understood throughout the process.

## DISCLAIMER

The views expressed in this publication do not necessarily reflect the views of the Office of Statewide Health Planning and Development.



## Executive Summary

Working Well Together is the only statewide organization dedicated to transforming systems to be client and family-driven by supporting the sustained development of client, family member and parent/caregiver employment within every level of the public mental health workforce. As part of this effort Working Well Together has, for the last three years, engaged in researching and evaluating the feasibility of inclusion of Peer Support into a State Plan Amendment for Specialty Mental Health services. This three year effort has included thorough state-wide and national research and extensive stakeholder involvement and has yielded seventeen recommendations for the development of Peer Support as an integral service within the public mental health system.

The statewide survey conducted to evaluate the current practice of hiring consumers and family members into the mental health workforce revealed that most counties have indeed hired people with lived experience of a mental health challenge or parents/family members of individuals with a mental health issue into the mental health workforce. However the survey also revealed that there remain significant workforce issues that must be addressed. Of the thirty responding counties that hire people with lived experience, none required previous training or education beyond a high school diploma as a qualification for hire. This was found to be true even in counties that have developed excellent training programs for Peer Support. Additional findings revealed that a variety of generalist job titles are used to hire Peer Support Specialists, job duties and descriptions vary widely and may or may not include peer support as a job duty.

The stakeholder process exposed a number of workforce issues that must be addressed to further the professional development of Peer Support as a discipline and Peer Support Specialists as practitioners. Perhaps the most pressing issue is the lack of a definition and/or understanding of Peer Support. While most counties have hired individuals with lived experience as well as parents and family members to provide services, many of these practitioners are providing services that are traditionally considered “case management” and include collateral, targeted case management and rehabilitation services. Another identified trend was the use of peer employees as clerical support, transportation providers and social or recreational activities support. Interestingly, while many of these practitioners are providing billable services within the scope of practice of “Other Qualified Provider”, very few

counties (approximately nine) are billing Medi-Cal for these services. Going forward it is vital that Peer Support is identified as a separate and distinct service from other services provided under the current definitions of Specialty Mental Health services. Additional workforce issues identified by stakeholders necessary to advance the development for and respect of Peer Support include the;

1. Creation of welcoming environments that embrace these practitioners.
2. Development of multi-disciplinary teams that respect this new discipline.
3. Education and training of County Directors and Administration as well as the existing workforce on the value, role and legitimacy of peer support.
4. Training and acceptance of Medi-Caid approved use of recovery/resilience/wellness language in documentation.

While stakeholders strongly support the inclusion of peer support into a State Plan Amendment, they also support flexibility in what services individuals with lived experience can provide within the mental health system. Stakeholders strongly support career ladders that include non-certified peer providers as well as people with lived experience continuing their education and advancing into existing positions traditionally used in mental health settings, including supervision and management as well as the development of career ladders that include advancement opportunities within the practice of peer support. In short, stakeholders support maximum flexibility in what people with lived experience can provide and bill for within the existing State Plan as well as the inclusion of peer support as a new service category.

Stakeholders also emphasize the importance of recognizing that there are a number of services that enhance wellness and recovery/resiliency that peers may provide but that may not be reimbursed by Medi-Caid. It will be vital, when considering adding peer support as a new service, that reimbursement for peer support services not become the primary driving focus when offering/providing these services to clients and their families.

Working Well Together has engaged stakeholders in on-going teleconferences, webinars, work-groups, and five regional stakeholder meetings to provide feedback and recommendations that will support the requirements as laid out by the CMS letter regarding inclusion of peer support as a part of services provided under Specialty Mental Health. This resulted in several recommendations in support of the development of a statewide

Certification for Peer Support Specialists. In May of 2013 a final Statewide Stakeholder Summit was convened to provide further vetting with the goal of finalizing recommendations for the inclusion of peer support into the State Plan Amendment as well as the development of a statewide Certification for Peer Support Specialists. By and large the vast majority of stakeholders support the original recommendations, however, where appropriate, adjustments have been made in alignment with stakeholder feedback. Also where appropriate, additional edits to specific recommendations have been made to provide clarity. The seventeen recommendations are listed below.

DRAFT

## Final Stakeholder Recommendations regarding Certification of Peer Support Specialists

### Recommendation 1

Develop a statewide certification for Peer Support Specialists, to include:

- Adult Peer Support Specialists
- Young Adult Peer Support Specialists
- Older Adult Peer Support Specialists
- Family Peer Support Specialists (Adult Services)
- Parent Peer Support Specialists (Child/Family Services)

- 1.1 Require Peer Support Specialists to practice within the adopted Peer Support Specialist Code of Ethics.
  - 1.1.1 Seek final approval of Peer Support Code of Ethics by the Governing Board of Working Well Together.
- 1.2 Develop or adopt standardized content for a state-wide curriculum for training Peer Support Specialists.
- 1.3 Require a total of 80 hours of training for Peer Support Specialist Certification.
  - 1.3.1 55-hour core curriculum of general peer support education that all peer support specialists will receive as part of the required hours towards certification.
  - 1.3.2 25-hours of specialized curriculum specific to each Peer Support Specialist category.
- 1.4 Require an additional 25 hours of training to become certified in a specialty area such as forensics, co-occurring services, whole health and youth in foster care.
- 1.5 Require six months full-time equivalent experience in providing peer support services.
  - 1.5.1 This experience can be acquired through employment, volunteer work or as part of an internship experience.
- 1.6 Require 15 hours of CEU's per year in subject matter relevant to peer support services to maintain certification.
- 1.7 Require re-certification every three years.
- 1.8 Allow a grandfathering-in process in lieu of training.

- 1.8.1 Require one year of full-time equivalent employment in peer support services.
- 1.8.2 Require three letters of recommendation. One letter must be from a supervisor.  
The other letters may come from co-workers or people served.
- 1.9 Require an exam to demonstrate competency.
  - 1.9.1 Provide test-taking accommodations as needed.
  - 1.9.2 Provide the exam in multiple languages and assure cultural competency of exam.

### **Recommendation 2**

Identify or create a single certifying body that is peer-operated and/or partner with an existing peer-operated entity with capacity for granting certification.

### **Recommendation 3**

Include Peer Support as a service and Peer Support Specialist as a provider type within a new State Plan Amendment.

- 3.1 Seek adoption of the definitions of Peer Support Specialist providers and Peer Support services by the Governing Board of Working Well Together for use within the State Plan Amendment.
- 3.2 Maintain the ability for people with lived experience to provide services as “other qualified provider” within their scope of practice, including but not limited to rehabilitation services, collateral and targeted case management.
- 3.2 Acknowledge that there are important and non-billable services that Peer Support Specialists can and do provide.

### **Recommendation 4**

Include in the State Plan the ability to grant site certification for peer-operated agencies to provide billable peer support services.

- 4.1 Allow for peer-operated agencies to provide other services billable under “other qualified provider” within their scope of practice, including but not limited to rehabilitation services, collateral and targeted case management.

### **Recommendation 5**

Address the concern that current practice of documentation for billing may not be aligned with the values and principles of peer support and a wellness, recovery and resiliency orientation.

- 5.1 Engage with partners such as Department of Health Care Services and the California Mental Health Director’s Association in order to develop an action plan to advocate for the use of CMS-approved recovery/resiliency-oriented language in documentation.

### **Recommendation 6**

Investigate the options for broadening the definition of “service recipient” to include parents and family members of minors receiving services so that peer support services can be accessed more easily.

### **Recommendation 7**

Convene a working group consisting of Working Well Together, the Mental Health Directors, the Office of Statewide Healthcare Planning and Development (OSHPD) and the Department of Health Care Services to develop buy-in and policies that will create consistency of practice regarding peer support services across the state.

### **Recommendation 8**

Develop standards and oversight for the provider/entity that provides training of Peer Support Specialists.

- 8.1 Allow for multiple qualified training entities.
- 8.2 Training organizations must demonstrate infrastructure capacity that will allow for peer trainers.
- 8.3 Training must be provided by either individuals with lived experience or by a team that includes individuals with lived experience.

### **Recommendation 9**

Establish qualifications for who may supervise Peer Support Specialists.

- 9.1 Engage with the Mental Health Directors to develop a policy that outlines key qualifications necessary for the supervision of Peer Support Specialists.
- 9.2 Preferred supervisors are those individuals with lived experience and expertise in peer support.
- 9.3 Due to capacity issues, supervisors may include qualified people who receive specific training on the role, values and philosophy of peer support.
- 9.4 Recognize and define the specific qualities and skills within supervision that are required for the supervision of Peer Support Specialists. These skills should align with the values and philosophy of peer support.

#### **Recommendation 10**

Develop a plan to provide extensive and expansive training on the values, philosophy and efficacy of peer support to mental health administration and staff.

#### **Recommendation 11**

Develop a plan to ensure that welcoming environments are created that embrace the use of multi-disciplinary teams that can incorporate Peer Support Specialists fully onto mental health teams.

#### **Recommendation 12**

Develop a policy statement that recognizes and defines the unique service components of peer support as separate and distinct from other disciplines and services in order to maintain the integrity of peer support services.

#### **Recommendation 13**

Develop a policy statement and plan that supports the professional development of Peer Support Specialists that allows the practitioner to maintain and hone his/her professional values, ethics and principles.

#### **Recommendation 14**

Develop a plan for funding the development of certification.

- 14.1 Work with the Office of Statewide Healthcare Planning and Development to utilize

state-wide monies from the MHSA Workforce, Education and Training fund.

14.2 Investigate other potential funding sources.

14.3 Develop recommendations for funding of components of certification such as financial assistance with training, exam and certification fees.

**Recommendation 15**

Seek representation on committees and workgroups that are addressing civil service barriers to the employment of Peer Support Specialists.

**Recommendation 16**

Work with Mental Health Directors to seek agreement on a desired workforce minimum of Peer Support Specialists within each county to more fully actualize the intent of the MHSA.

**Recommendation 17**

Develop state-wide models that can inform county leadership on the development of career ladders for Peer Support Specialists that begin with non-certified Peer Support Specialists and creates pathways into management and leadership positions.



# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 1034

**VERSION:** AMENDED APRIL 26, 2016

**AUTHOR:** MITCHELL

**SPONSOR:**

- AUTISM SPEAKS
- CENTER FOR AUTISM AND RELATED DISORDERS
- SPECIAL NEEDS NETWORK

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** HEALTH CARE COVERAGE: AUTISM

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### Summary:

This bill would delete the sunset date on the law that requires health care service plans or insurance policies to provide coverage for behavioral health treatment for pervasive developmental disorder or autism. It would also make some relatively minor adjustments to this law in areas that have been identified as needing further clarification.

### Existing Law:

- 1) Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism (PDD/A). (Health and Safety Code (HSC) §1374.73(a), Insurance Code (IC) §10144.51(a))
- 2) Requires these health care service plans and health insurers subject to this provision to maintain an adequate network of qualified autism service providers. (HSC §1374.73(b), IC §10144.51(b))
- 3) Defines “behavioral health treatment” as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets the following criteria (HSC §1374.73(c), IC §10144.51(c):
  - a) Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;
  - b) Is provided under a treatment plan prescribed by a qualified autism service provider and administered by such a provider or by a qualified autism service professional under supervision and employment of a qualified autism service provider;
  - c) The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and

- d) Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.
- 4) Defines a “qualified autism service provider” as either (HSC §1374.73(c), IC §10144.51(c)):
- a) A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited and which designs, supervises, or provides treatment for pervasive developmental disorder or autism; or
  - b) A person who is licensed as a specified healing arts practitioner, including a psychologist, marriage and family therapist, educational psychologist, clinical social worker, or professional clinical counselor. The licensee must design, supervise, or provide treatment for pervasive developmental disorder or autism and be within his or her experience and competence.
- 5) Defines a “qualified autism service professional” as someone who meets all of the following (HSC §1374.73(c), IC §10144.51(c)):
- a) Provides behavioral health treatment;
  - b) Is employed and supervised by a qualified autism service provider;
  - c) Provides treatment according to a treatment plan developed and approved by the qualified autism service provider.
  - d) Is a behavioral service provider approved by a regional center to provide services as an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations (CCR); and
  - e) Has training and experience providing services for pervasive developmental disorder or autism pursuant to the Lanterman Developmental Disabilities Services Act.
- 6) Defines a “qualified autism service paraprofessional” as an unlicensed and uncertified person who meets all of the following (HSC §1374.73(c), IC §10144.51(c)):
- a) Is employed and supervised by a qualified autism service provider;
  - b) Provides treatment according to a treatment plan developed and approved by the qualified autism service provider;
  - c) Meets criteria set forth in regulations regarding use of paraprofessionals in group practice providing behavioral intervention services; and

- d) Is certified by a qualified autism service provider as having adequate education, training, and experience.
- 7) Defines vendor service codes and sets requirements for regional centers to classify the following professions (CCR 17 §54342):
  - a) Associate Behavior Analysts;
  - b) Behavior Analysts;
  - c) Behavior Management Assistants;
  - d) Behavior Management Consultants; and
  - e) Behavior Management Programs.
- 8) Sunsets all of these provisions on January 1, 2017 (HSC §1374.73, IC §§10144.51, 10144.52)

**This Bill:**

- 1) Removes the January 1, 2017 sunset date on all of the above provisions, so that health service plans and insurance policies will be required to provide coverage for behavioral health treatment for PDD/A indefinitely. (HSC §1374.73, IC §§10144.51, 10144.52)
- 2) Makes a change to the definition of “behavioral health treatment” to clarify that it includes not only behavior analysis, but also other evidence-based behavior intervention programs. Also specifies that behavioral health treatment involves developing, keeping, and restoring the functioning of an individual with PDD/A. (HSC §1374.73(c), IC §10144.51(c))
- 3) Limits unnecessary treatment plan reviews by stating that a review shall take place no more than once every six months, unless a shorter period is recommended by the autism service provider. (HSC §1374.73(c), IC §10144.51(c))
- 4) Requires that the setting, location or time of treatment shall not be used as a reason to deny medically necessary behavioral health treatment. (HSC §1374.73(c), IC §10144.51(c))
- 5) Makes minor adjustments to the definitions of “qualified autism service professional” and “qualified autism service paraprofessional.” (HSC §1374.73(c), IC §10144.51(c))
- 6) Removes the requirement currently in law that qualified autism service professionals must be approved as a vendor by a California regional center. However, it still requires them to meet the same education and experience requirements as those that work in regional centers. (HSC §1374.73(c), IC §10144.51(c))

## Comments:

- 1) Author's Intent.** The author's office states that originally, when SB 946 was signed in 2011 to require health plans and insurance policies to cover treatment for PDD/A, the bill included a sunset date because there was uncertainty regarding upcoming changes to mandated health benefits, the Affordable Care Act, and the State's fiscal responsibility for benefits. At the time, the Legislature was awaiting federal guidance on how to implement essential health benefits under the Affordable Care Act. This guidance has now been provided, and several uncertainties regarding health care coverage and the state's role have been clarified.

Therefore, the author's office believes that it is now appropriate to remove the sunset date completely, ensuring that children with autism will continue receiving insurance coverage for medically necessary behavioral health treatment.

- 2) Related Legislation.** The California Association for Behavior Analysis is currently sponsoring a bill proposal (AB 1715, Holden), which would create a licensure category for behavior analysts and assistant behavior analysts under the Board of Psychology.

AB 796 (Nazarian) requires that the Board of Psychology form a committee in order to develop a list of behavioral health evidence-based treatment modalities for individuals with pervasive development disorder or autism.

- 3) Previous Legislation.** SB 946 (Chapter 650, Statutes of 2011) requires every health care service plan contract and insurance policy that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for PDD/A.

SB 126 (Chapter 680, Statutes of 2013) extended the provisions of SB 946 until January 1, 2017.

- 4) Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider taking a "support" position on this bill.

### **5) Support and Opposition.**

#### Support:

- Autism Speaks (Co-Sponsor)
- Center for Autism and Related Disorders (Co-Sponsor)
- Special Needs Network (Co-Sponsor)
- Autism Deserves Equal Coverage Foundation (cosponsor)
- California School Employees Association, AFL-CIO
- National Association of Social Workers – California Chapter

#### Oppose:

- California Association of Health Plans
- California Chamber of Commerce

## **6) History**

### **2016**

04/26/16 Read second time and amended. Re-referred to Com. on APPR.

04/25/16 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (April 20).

04/07/16 Set for hearing April 20.

02/25/16 Referred to Com. on HEALTH.

02/16/16 From printer. May be acted upon on or after March 17.

02/12/16 Introduced. Read first time. To Com. on RLS. for assignment. To print.

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AMENDED IN SENATE APRIL 26, 2016

**SENATE BILL**

**No. 1034**

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**Introduced by Senator Mitchell**

February 12, 2016

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An act to amend Section 1374.73 of the Health and Safety Code, and to amend Sections 10144.51 and 10144.52 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, as amended, Mitchell. Health care coverage: autism.

Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A violation of those provisions is a crime. Existing law provides for the licensure and regulation of health insurers by the Department of Insurance.

Existing law requires every health care service plan contract and health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism until January 1, 2017, and defines "behavioral health treatment" to mean specific services provided by, among others, a qualified autism service professional supervised and employed by a qualified autism service provider. Existing law defines a "qualified autism service professional" to mean a person who, among other requirements, is a behavior service provider approved as a vendor by a California regional center to provide services as an associate behavior analyst, behavior analyst, behavior management assistant, behavior management consultant, or behavior management program pursuant to specified regulations adopted under the Lanterman Developmental Disabilities Services Act. Existing law requires a treatment plan to be reviewed no less than once every 6 months.

This bill would, among other things, modify requirements to be a qualified autism service professional to include providing behavioral health treatment, such as clinical management and case supervision. The bill would require that a treatment plan be reviewed no more than once every 6 months, unless a shorter period is recommended by the qualified autism service provider. The bill would extend the operation of these provisions indefinitely. The bill would make conforming changes.

By extending the operation of these provisions, the violation of which by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1374.73 of the Health and Safety Code  
 2 is amended to read:  
 3 1374.73. (a) (1) Every health care service plan contract that  
 4 provides hospital, medical, or surgical coverage shall also provide  
 5 coverage for behavioral health treatment for pervasive  
 6 developmental disorder or autism no later than July 1, 2012. The  
 7 coverage shall be provided in the same manner and shall be subject  
 8 to the same requirements as provided in Section 1374.72.  
 9 (2) Notwithstanding paragraph (1), as of the date that proposed  
 10 final rulemaking for essential health benefits is issued, this section  
 11 does not require any benefits to be provided that exceed the  
 12 essential health benefits that all health plans will be required by  
 13 federal regulations to provide under Section 1302(b) of the federal  
 14 Patient Protection and Affordable Care Act (Public Law 111-148),  
 15 as amended by the federal Health Care and Education  
 16 Reconciliation Act of 2010 (Public Law 111-152).  
 17 (3) This section shall not affect services for which an individual  
 18 is eligible pursuant to Division 4.5 (commencing with Section



1 4500) of the Welfare and Institutions Code or Title 14  
2 (commencing with Section 95000) of the Government Code.

3 (4) This section shall not affect or reduce any obligation to  
4 provide services under an individualized education program, as  
5 defined in Section 56032 of the Education Code, or an individual  
6 service plan, as described in Section 5600.4 of the Welfare and  
7 Institutions Code, or under the federal Individuals with Disabilities  
8 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing  
9 regulations.

10 (b) Every health care service plan subject to this section shall  
11 maintain an adequate network that includes qualified autism service  
12 providers who supervise qualified autism service professionals or  
13 paraprofessionals who provide and administer behavioral health  
14 treatment. Nothing shall prevent a health care service plan from  
15 selectively contracting with providers within these requirements.

16 (c) For the purposes of this section, the following definition  
17 shall apply:

18 (1) “Behavioral health treatment” means professional services  
19 and treatment programs, including applied behavior analysis and  
20 other evidence-based behavior intervention programs, that develop,  
21 ~~maintain~~, *keep*, or restore, to the maximum extent practicable, the  
22 functioning of an individual with pervasive developmental disorder  
23 or autism and that meet all of the following criteria:

24 (A) The treatment is prescribed by a physician and surgeon  
25 licensed pursuant to Chapter 5 (commencing with Section 2000)  
26 of, or is developed by a psychologist licensed pursuant to Chapter  
27 6.6 (commencing with Section 2900) of, Division 2 of the Business  
28 and Professions Code.

29 (B) The treatment is provided under a treatment plan prescribed  
30 by a qualified autism service provider and is administered by one  
31 of the following:

32 (i) A qualified autism service pr vider.

33 (ii) A qualified autism service professional supervised by the  
34 qualified autism service pr vider.

35 (iii) A qualified autism service paraprofessional supervised by  
36 a qualified autism service pr vider.

37 (C) The treatment plan has measurable goals over a specifi  
38 timeline that is developed and approved by the qualified autism  
39 service provider for the specific patient being treated. The treatment  
40 plan shall be reviewed no more than once every six months by the

1 qualified autism service provider, unless a shorter period is  
 2 recommended by the qualified autism service provider, and  
 3 modified whenever appropriate, and shall be consistent with  
 4 Section 4686.2 of the Welfare and Institutions Code pursuant to  
 5 which the qualified autism service provider does all of the  
 6 following:

7 (i) Describes the patient’s behavioral health impairments or  
 8 developmental challenges that are to be treated.

9 (ii) Designs an intervention plan that includes the service type,  
 10 number of hours, and parent or caregiver participation  
 11 recommended by the qualified autism service ~~provider, needed~~  
 12 *provider* to achieve the plan’s goal and objectives, and the  
 13 frequency at which the patient’s progress is evaluated and reported.  
 14 Lack of parent or caregiver participation shall not be used to deny  
 15 or reduce medically necessary behavioral health treatment.

16 (iii) Provides intervention plans that utilize evidence-based  
 17 practices, with demonstrated clinical efficacy in treating pervasive  
 18 developmental disorder or autism.

19 (iv) Discontinues intensive behavioral intervention services  
 20 when the treatment goals and objectives are achieved or no longer  
 21 appropriate, and continued therapy is not necessary to maintain  
 22 function or prevent deterioration.

23 (D) (i) The treatment plan is not used for purposes of providing  
 24 or for the reimbursement of respite, day care, or ~~educational~~  
 25 *academic* services and is not used to reimburse a parent for  
 26 participating in the treatment program.

27 ~~(ii) Notwithstanding the clause (i), all medically necessary~~  
 28 ~~behavioral health treatment shall be covered in all settings~~  
 29 ~~regardless of time or location of delivery.~~

30 *(ii) The setting, location, or time of treatment shall not be used*  
 31 *as a reason to deny medically necessary behavioral health*  
 32 *treatment.*

33 (iii) The treatment plan shall be made available to the health  
 34 care service plan upon request.

35 (2) “Pervasive developmental disorder or autism” shall have  
 36 the same meaning and interpretation as used in Section 1374.72.

37 (3) “Qualified autism service provider” means either of the  
 38 following:

39 (A) A person, entity, or group that is certified by a national  
 40 entity, such as the Behavior Analyst Certification Board, that is

1 accredited by the National Commission for Certifying Agencies,  
2 and who designs, supervises, or provides treatment for pervasive  
3 developmental disorder or autism, provided the services are within  
4 the experience and competence of the person, entity, or group that  
5 is nationally certified

6 (B) A person licensed as a physician and surgeon, physical  
7 therapist, occupational therapist, psychologist, marriage and family  
8 therapist, educational psychologist, clinical social worker,  
9 professional clinical counselor, speech-language pathologist, or  
10 audiologist pursuant to Division 2 (commencing with Section 500)  
11 of the Business and Professions Code, who designs, supervises,  
12 or provides treatment for pervasive developmental disorder or  
13 autism, provided the services are within the experience and  
14 competence of the licensee.

15 (4) “Qualified autism service professional” means an individual  
16 who meets all of the following criteria:

17 (A) Provides behavioral health treatment, including clinical  
18 management and case supervision.

19 (B) Is supervised by a qualified autism service pr vider.

20 (C) Provides treatment pursuant to a treatment plan developed  
21 and approved by the qualified autism service pr vider.

22 (D) Is a behavioral service provider who meets the education  
23 and experience qualifications defined in ~~Section 5432~~ 54342 of  
24 Title 17 of the California Code of Regulations for an Associate  
25 Behavior Analyst, Behavior Analyst, Behavior Management  
26 Assistant, Behavior Management Consultant, or Behavior  
27 Management Program.

28 (E) Has training and experience in providing services for  
29 pervasive developmental disorder or autism pursuant to Division  
30 4.5 (commencing with Section 4500) of the Welfare and  
31 Institutions Code or Title 14 (commencing with Section 95000)  
32 of the Government Code.

33 (5) “Qualified autism service paraprofessional” means an  
34 unlicensed and uncertified individual who meets all of the  
35 following criteria:

36 (A) Is supervised by a qualified autism service pr vider.

37 (B) Provides treatment and implements services pursuant to a  
38 treatment plan developed and approved by the qualified autism  
39 service provider or qualified autism service professional

1 (C) Meets the education and ~~experience~~ *training* qualification  
 2 defined in the regulations adopted pursuant to Section 4686.3 of  
 3 the Welfare and Institutions Code.

4 (D) Has adequate education, training, and experience, as  
 5 certified by a qualified autism service provider.

6 (d) This section shall not apply to the following:

7 (1) A specialized health care service plan that does not deliver  
 8 mental health or behavioral health services to enrollees.

9 (2) A health care service plan contract in the ~~MDI-Cal~~ *Medi-Cal*  
 10 program (Chapter 7 (commencing with Section 14000) of Part 3  
 11 of Division 9 of the Welfare and Institutions Code).

12 (e) This section does not limit the obligation to provide services  
 13 pursuant to Section 1374.72.

14 (f) As provided in Section 1374.72 and in paragraph (1) of  
 15 subdivision (a), in the provision of benefits required by this section,  
 16 a health care service plan may utilize case management, network  
 17 providers, utilization review techniques, prior authorization,  
 18 copayments, or other cost sharing.

19 SEC. 2. Section 10144.51 of the Insurance Code is amended  
 20 to read:

21 10144.51. (a) (1) Every health insurance policy shall also  
 22 provide coverage for behavioral health treatment for pervasive  
 23 developmental disorder or autism no later than July 1, 2012. The  
 24 coverage shall be provided in the same manner and shall be subject  
 25 to the same requirements as provided in Section 10144.5.

26 (2) Notwithstanding paragraph (1), as of the date that proposed  
 27 final rulemaking for essential health benefits is issued, this section  
 28 does not require any benefits to be provided that exceed the  
 29 essential health benefits that all health insurers will be required by  
 30 federal regulations to provide under Section 1302(b) of the federal  
 31 Patient Protection and Affordable Care Act (Public Law 111-148),  
 32 as amended by the federal Health Care and Education  
 33 Reconciliation Act of 2010 (Public Law 111-152).

34 (3) This section shall not affect services for which an individual  
 35 is eligible pursuant to Division 4.5 (commencing with Section  
 36 4500) of the Welfare and Institutions Code or Title 14  
 37 (commencing with Section 95000) of the Government Code.

38 (4) This section shall not affect or reduce any obligation to  
 39 provide services under an individualized education program, as  
 40 defined in Section 56032 of the Education Code, or an individual

1 service plan, as described in Section 5600.4 of the Welfare and  
2 Institutions Code, or under the federal Individuals with Disabilities  
3 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing  
4 regulations.

5 (b) Pursuant to Article 6 (commencing with Section 2240) of  
6 Title 10 of the California Code of Regulations, every health insurer  
7 subject to this section shall maintain an adequate network that  
8 includes qualified autism service providers who supervise qualifie  
9 autism service professionals or paraprofessionals who provide and  
10 administer behavioral health treatment. Nothing shall prevent a  
11 health insurer from selectively contracting with providers within  
12 these requirements.

13 (c) For the purposes of this section, the following definition  
14 shall apply:

15 (1) "Behavioral health treatment" means professional services  
16 and treatment programs, including applied behavior analysis and  
17 other evidence-based behavior intervention programs, that develop,  
18 ~~maintain~~, *keep*, or restore, to the maximum extent practicable, the  
19 functioning of an individual with pervasive developmental disorder  
20 or autism, and that meet all of the following criteria:

21 (A) The treatment is prescribed by a physician and surgeon  
22 licensed pursuant to Chapter 5 (commencing with Section 2000)  
23 of, or is developed by a psychologist licensed pursuant to Chapter  
24 6.6 (commencing with Section 2900) of, Division 2 of the Business  
25 and Professions Code.

26 (B) The treatment is provided under a treatment plan prescribed  
27 by a qualified autism service provider and is administered by one  
28 of the following:

29 (i) A qualified autism service pr vider.

30 (ii) A qualified autism service professional supervised by the  
31 qualified autism service pr vider.

32 (iii) A qualified autism service paraprofessional supervised by  
33 a qualified autism service pr vider.

34 (C) The treatment plan has measurable goals over a specifi  
35 timeline that is developed and approved by the qualified autism  
36 service provider for the specific patient being treated. The treatment  
37 plan shall be reviewed no more than once every six months by the  
38 qualified autism service provider, unless a shorter period is  
39 recommended by the qualified autism service provider, and  
40 modified whenever appropriate, and shall be consistent with

1 Section 4686.2 of the Welfare and Institutions Code pursuant to  
 2 which the qualified autism service provider does all of the  
 3 following:

4 (i) Describes the patient’s behavioral health impairments or  
 5 developmental challenges that are to be treated.

6 (ii) Designs an intervention plan that includes the service type,  
 7 number of hours, and parent or caregiver participation  
 8 recommended by a qualified autism service provider ~~needed~~ to  
 9 achieve the plan’s goal and objectives, and the frequency at which  
 10 the patient’s progress is evaluated and reported. Lack of parent or  
 11 caregiver participation shall not be used to deny or reduce  
 12 medically necessary behavioral health treatment.

13 (iii) Provides intervention plans that utilize evidence-based  
 14 practices, with demonstrated clinical efficacy in treating pervasive  
 15 developmental disorder or autism.

16 (iv) Discontinues intensive behavioral intervention services  
 17 when the treatment goals and objectives are achieved or no longer  
 18 appropriate, and continued therapy is not necessary to maintain  
 19 function or prevent deterioration.

20 (D) (i) The treatment plan is not used for purposes of providing  
 21 or for the reimbursement of respite, day care, or ~~educational~~  
 22 *academic* services and is not used to reimburse a parent for  
 23 participating in the treatment program.

24 ~~(ii) Notwithstanding the above, all medically necessary~~  
 25 ~~behavioral health treatment shall be covered in all settings~~  
 26 ~~regardless of time or location of delivery.~~

27 *(ii) The setting, location, or time of treatment shall not be used*  
 28 *as a reason to deny medically necessary behavioral health*  
 29 *treatment.*

30 (iii) The treatment plan shall be made available to the insurer  
 31 upon request.

32 (2) “Pervasive developmental disorder or autism” shall have  
 33 the same meaning and interpretation as used in Section 10144.5.

34 (3) “Qualified autism service provider” means either of the  
 35 following:

36 (A) A person, entity, or group that is certified by a national  
 37 entity, such as the Behavior Analyst Certification Board, that is  
 38 accredited by the National Commission for Certifying Agencies,  
 39 and who designs, supervises, or provides treatment for pervasive  
 40 developmental disorder or autism, provided the services are within

1 the experience and competence of the person, entity, or group that  
2 is nationally certified

3 (B) A person licensed as a physician and surgeon, physical  
4 therapist, occupational therapist, psychologist, marriage and family  
5 therapist, educational psychologist, clinical social worker,  
6 professional clinical counselor, speech-language pathologist, or  
7 audiologist pursuant to Division 2 (commencing with Section 500)  
8 of the Business and Professions Code, who designs, supervises,  
9 or provides treatment for pervasive developmental disorder or  
10 autism, provided the services are within the experience and  
11 competence of the licensee.

12 (4) “Qualified autism service professional” means an individual  
13 who meets all of the following criteria:

14 (A) Provides behavioral health treatment, including clinical  
15 management and case supervision.

16 (B) Is employed and supervised by a qualified autism service  
17 provider.

18 (C) Provides treatment pursuant to a treatment plan developed  
19 and approved by the qualified autism service pr vider.

20 (D) Is a behavioral service provider who meets the education  
21 and experience qualifications defined in Section ~~5432~~ 54342 of  
22 Title 17 of the California Code of Regulations for an Associate  
23 Behavior Analyst, Behavior Analyst, Behavior Management  
24 Assistant, Behavior Management Consultant, or Behavior  
25 Management Program.

26 (E) Has training and experience in providing services for  
27 pervasive developmental disorder or autism pursuant to Division  
28 4.5 (commencing with Section 4500) of the Welfare and  
29 Institutions Code or Title 14 (commencing with Section 95000)  
30 of the Government Code.

31 (5) “Qualified autism service paraprofessional” means an  
32 unlicensed and uncertified individual who meets all of the  
33 following criteria:

34 (A) Is supervised by a qualified autism service pr vider.

35 (B) Provides treatment and implements services pursuant to a  
36 treatment plan developed and approved by the qualified autism  
37 service provider or qualified autism service professional

38 (C) Meets the education and ~~experience~~ *training* qualification  
39 defined in the regulations adopted pursuant to Section 4686.3 of  
40 the Welfare and Institutions Code.

1 (D) Has adequate education, training, and experience, as  
2 certified by a qualified autism service provider.

3 (d) This section shall not apply to the following:

4 (1) A specialized health insurance policy that does not cover  
5 mental health or behavioral health services or an accident only,  
6 specified disease, hospital indemnity, or Medicare supplement  
7 policy.

8 (2) A health insurance policy in the ~~MDI-Cal~~ *Medi-Cal* program  
9 (Chapter 7 (commencing with Section 14000) of Part 3 of Division  
10 9 of the Welfare and Institutions Code).

11 (e) As provided in Section 10144.5 and in paragraph (1) of  
12 subdivision (a), in the provision of benefits required by this section,  
13 a health insurer may utilize case management, network providers,  
14 utilization review techniques, prior authorization, copayments, or  
15 other cost sharing.

16 SEC. 3. Section 10144.52 of the Insurance Code is amended  
17 to read:

18 10144.52. For purposes of this part, the terms “provider,”  
19 “professional provider,” “network provider,” “mental health  
20 provider,” and “mental health professional” shall include the term  
21 “qualified autism service provider,” as defined in subdivision (c)  
22 of Section 10144.51.

23 SEC. 4. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 1101

**VERSION:** AMENDED APRIL 11, 2016

**AUTHOR:** WIECKOWSKI

**SPONSOR:**

- CA ASSOCIATION OF ALCOHOL & DRUG EDUCATORS
- CA CONSORTIUM OF ADDICTION PROGRAMS AND PROFESSIONALS
- CA ASSOCIATION OF DUI TREATMENT PROGRAMS

**RECOMMENDED POSITION:** SUPPORT IF AMENDED

**SUBJECT:** ALCOHOL AND DRUG COUNSELORS: REGULATION

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### **Summary:**

This bill creates the Alcohol and Drug Counseling Professional Bureau under the Department of Consumer Affairs (DCA) for the purpose of licensing alcohol and drug counselors.

### **Existing Law:**

- 1) Requires the Department of Health Care Services (DHCS) to review and certify alcohol and other drug programs meeting state standards, and to develop standards for ensuring minimal statewide levels of service quality provided by alcohol and other drug programs. (Health and Safety Code (HSC) §11755(k) and (l)).
- 2) Identifies 10 organizations as approved by DHCS to register and certify alcohol and drug counselors. (9 California Code of Regulations (CCR) §13035(a))
- 3) Requires these DHCS-approved certifying organizations to gain and maintain accreditation with the National Commission for Certifying Agencies (NCCA). (9 CCR §13035(c))
- 4) Requires all alcohol and drug (AOD) counselors providing counseling services in an AOD program to register to obtain certification as an AOD counselor with one of the approved certifying organizations within 6 months of their hire date. Certification must be completed within 5 years. (9 CCR §13035(f))

- 5) Sets minimum education and experience requirements that the certifying organizations must require, including the following (9 CCR §13040):
  - At least 155 hours formal AOD education, covering specified topics;
  - At least 160 hours supervised AOD training based on specified curriculum;
  - At least 2,080 hours of work experience providing AOD counseling;
  - Passage of a written or oral exam.
- 6) Prior to certifying a registrant as an AOD counselor, the certifying organization must contact all other DHCS-approved certifying organizations to determine if the registrant's certification was ever revoked. If revoked, the certifying organization must document reasons for granting or denying certification. (9 CCR §13045)

**This Bill:**

- 1) Creates the Alcohol and Drug Counseling Professional Bureau (Bureau) under DCA for the purpose of licensing alcohol and drug counselors. (BPC §4451)
- 2) Prohibits a person from using the "licensed alcohol and drug counselor" title unless they have obtained a license issued by the Bureau. (BPC §4455(a))
- 3) Outlines the minimum qualifications for obtaining an alcohol and drug counselor license, as follows (BPC §4455(b))
  - a. Has a master's or doctoral degree from an accredited or approved school in a specified profession, including addiction counseling, psychology, social work, counseling, marriage and family therapy, or counseling psychology;
  - b. The degree contained at least 21 semester units of addiction specific education;
  - c. Has passed an exam deemed acceptable by one of the Department of Health Care Services' (DHCS's) approved certifying organizations;
  - d. Is currently credentialed as an advanced alcohol and drug counselor in good standing with one of the certification organizations recognized by DHCS, with no history of revocation;
  - e. Can document completion of certain specified coursework; and
  - f. Submits to a state and federal criminal background check.
- 4) Allows for a one year grandparenting period. During the one-year period, applicants with 12,000 experience hours are exempted from the degree requirements, the exam requirements, and the specified coursework requirements. However, such applicants must pass the exam within one year of the end of their licenses' first renewal period. (BPC §4456)

- 5) Provides that a license for an alcohol and drug counselor is valid for two years, and that 36 hours of continuing education must be completed in order to be eligible for renewal. (BPC §4457)
- 6) Allows DCA to revoke a license if one of the following occur (BPC §4457)
  - a. The licensee loses his or her credential from the certifying organization; or
  - b. The licensee is convicted of a felony substantially related to the qualifications, functions or duties of a licensed alcohol and drug counselor.
- 7) Allows DHCS to deny, suspend, or delay a license if it determines the person has a criminal conviction or criminal charge pending, that is substantially related to actions as a licensed alcohol and drug counselor. (BPC §4459)
- 8) Allows DCA to waive action to deny, suspend or delay a license under the following circumstances (BPC §4459)
  - a. For a felony conviction, more than five years have passed since convicted; or
  - b. For a misdemeanor, the applicant must not be incarcerated, on work release, probation, or parole and must be in substantial compliance with all court orders.

In order to qualify for a waiver, the applicant must not have been convicted of a felony sexual offense and must not present a danger to the public.

### **Comments:**

- 1) **Background.** Although regulations promulgated by the DHCS require AOD counselors working within its licensed or certified facilities to become certified, this requirement does not apply outside its licensed or certified facilities. As a result many practitioners of drug and alcohol treatment are not regulated.

In May 2013, the California Senate Office of Oversight and Outcomes (SOOO) published a report titled, "Suspect Treatment: State's lack of scrutiny allows unscreened sex offenders and unethical counselors to treat addicts." The report presents evidence that California's system for addiction treatment allows registered sex offenders and other serious felons, as well as counselors facing current drug and alcohol charges and those already revoked for misconduct, to provide treatment. The report finds that counselors can easily flout education and training requirements; that the system does not allow for criminal background checks for counselors; and that the system contains gaps that can be exploited by counselors who move between private organizations that register and certify counselors. The SOOO report recommends that drastic changes to California's

counselor certification system should be considered. Among a list of many recommendations, the report recommends a requirement for fingerprint-based criminal background checks for anyone working as a counselor.

- 2) **Intent.** This bill will create a bureau responsible for licensing alcohol and drug counselors under the Department of Consumer Affairs. The author notes that most states already have a licensing program for such counselors, but California does not. In addition, the author notes that California does not currently even require a background check for alcohol and drug counselors. This bill will help ensure public protection by specifying minimum education qualifications for a license, requiring passage of an examination, and requiring a criminal background check.
- 3) **Scope of Practice Missing.** This bill does not explicitly define the scope of practice for an alcohol and drug counselor. The bill requires alcohol and drug counselors to receive some training in counseling techniques and approaches and crisis intervention. A defined scope of practice would help clarify that an alcohol and drug counselor is not permitted to practice within the scopes of practice of the Board's licensees.
- 4) **Title Act Versus Practice Act.** This bill is currently written as a title act, meaning that using the title of "licensed alcohol and drug counselor" is prohibited unless such a license is held.

A practice act is a law that prohibits the practice of a profession unless a license is held. At this time, the bill is not a practice act, and this Board's licensees may continue to practice alcohol and drug counseling that is within the scope of their practice, education, and experience, as long as they do not use the title "licensed alcohol and drug counselor."

If at any point this bill became a practice act, the Board would need to request that it be amended to contain language stating the following:

*"This bill shall not be construed to constrict, limit, or withdraw the licensing acts to practice marriage and family therapy, educational psychology, clinical social work, or professional clinical counseling."*

- 5) **Single Modality License.** This bill would create a license to treat only one type of diagnosis. An alcohol and drug counselor would therefore have to be able to differentiate between an issue that is solely attributed to alcohol and drug abuse problems and symptoms and issues that may be attributable to a diagnosis outside his or her scope of practice.

SB 570 (2014), which was a previously proposed bill to license alcohol and drug counselors, contained the following language. It may be helpful in this bill as well:

*“Alcohol and drug counseling includes understanding and application of the limits of the counselor’s own qualifications and scope of practice, including, but not limited to, screening and, as indicated, referral to or consultation with an appropriately licensed health practitioner consistent with the client’s needs. Every licensee who operates an independent counseling practice shall refer any client assessed as needing the services of another licensed professional to that professional in a timely manner.”*

## 6) Past Legislation:

- **SB 570 (De Saulnier) of 2014** This bill would have established the Alcohol and Drug Counselor Licensing Board within the Department of Consumer Affairs for the purposes of licensing and regulating Advanced Alcohol and Drug Counselor Interns (AADCIs) and Licensed Advanced Alcohol and Drug Counselors (LAADCs). This bill died in the Assembly.
- **AB 2007 (Williams) of 2012** would have established a licensing and certification system for AADCs to be administered by the Department of Public Health. This bill was held in Assembly Health Committee.
- **SB 1203 (DeSaulnier) of 2010** would have instituted a licensing and certification structure for AOD counselors by DADP. SB 1203 was held in the Assembly Rules Committee.
- **SB 707 (DeSaulnier) of 2009**, which was substantially similar to SB 1203 of 2010, died on the Assembly Appropriations Committee Suspense File.
- **AB 239 (DeSaulnier) of 2008** would have established two categories of licensed alcoholism and drug abuse counselors for persons licensed to practice alcoholism and drug abuse counseling under clinical supervision, and persons licensed to conduct an independent practice of alcoholism and drug abuse counseling, and to provide supervision to other counselors, both to be overseen by BBS. AB 239 was vetoed by Governor Arnold Schwarzenegger who stated, in his veto message, that he was directing DADP to work to craft a uniform standard for all alcohol and drug counselors whether in private practice or in facilities.
- **AB 1367 (DeSaulnier) of 2007** would have provided for the licensing, registration and regulation of Alcoholism and Drug Abuse Counselors, as defined, by BBS. AB 1367 died on Assembly Appropriations Committee Suspense File.
- **AB 2571 (Longville) of 2004** would have created the Board of Alcohol and Other Drugs of Abuse Professionals in DCA and established requirements for licensure of AOD abuse counselors. AB 2571 failed passage in the Assembly Health Committee.

- **AB 1100 (Longville) of 2003** would have enacted the Alcohol and Drug Abuse Counselors Licensing Law, to be administered by BBS. AB 1100 was held in the Assembly Business and Professions Committee.
- **SB 1716 (Vasconcellos) of 2002** would have required BBS to license and regulate alcohol and drug abuse counselors. SB 1716 was held in the Assembly Business and Professions Committee.
- **SB 537 (Vasconcellos) of 2001** would have required DCA to initiate a comprehensive review of the need for licensing substance abuse counselors. SB 537 was vetoed by Governor Gray Davis due to cost concerns. In his veto message, the Governor directed DADP to require counselors in drug and alcohol treatment facilities to be certified for quality assurance purposes.

7) **Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee considered this bill and recommended the Board take a “support if amended” position. It directed staff to provide technical assistance to the author’s office regarding the following:

- Inclusion of a scope of practice;
- Inclusion of the language proposed in Item 4 of this analysis; and
- Inclusion of the language proposed in Item 5 of this analysis.

In a conversation with the author’s office, staff learned that they plan to amend the bill to include a clearly defined scope of practice. Staff provided the other two amendments that the Committee requested for their consideration.

#### 8) **Support and Opposition.**

##### **Support:**

- California Consortium of Addiction Programs and Professionals (co-sponsor)
- California Association for Alcohol and Drug Educators (co-sponsor) California Association of DUI
- Treatment Programs (co-sponsor) Alpha Project
- Associated Rehabilitation Program for Women, Inc. California Society of Addiction Medicine
- Clean and Sober Transitional Living Community Social Model Advocates, Inc. Inland Valley Recovery
- Services
- International Certification and Reciprocity Consortium MARSTE Training
- Sacramento Recovery House, Inc. Skyway House
- Soroptimist House of Hope Strategies for Change
- Sun Street Centers
- Visions of the Cross, Inc.

**Oppose:**

- None at this time.

**7) History**

**2016**

04/19/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (April 18). Re-referred to Com. on APPR.  
04/14/16 Re-referred to Com. on B., P. & E.D.  
04/14/16 Set for hearing April 18 in B., P. & E.D. pending receipt.  
04/11/16 Re-referred to Com. on RLS.  
04/11/16 Withdrawn from committee.  
04/11/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.  
03/29/16 March 30 set for first hearing canceled at the request of author.  
03/28/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.  
03/17/16 Set for hearing March 30.  
02/25/16 Referred to Com. on HEALTH.  
02/18/16 From printer. May be acted upon on or after March 19.  
02/17/16 Introduced. Read first time. To Com. on RLS. for assignment. To print.

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AMENDED IN SENATE APRIL 11, 2016  
AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1101**

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**Introduced by Senator Wieckowski**

February 17, 2016

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An act to add ~~Part 6.5 Chapter 9.7~~ (commencing with Section ~~1179.80~~ 4450) to Division 1 of 2 of the ~~Health Business and Safety Professions Code~~, relating to alcohol and drug counselors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1101, as amended, Wieckowski. Alcohol and drug counselors: regulation.

Existing law provides for the registration, certification, and licensure of various healing arts professionals. Existing law provides for various programs to eliminate alcohol and drug abuse, and states the finding of the Legislature that state government has an affirmative role in alleviating problems related to the inappropriate use of alcoholic beverages and other drug use.

This bill, among other things, *would establish the Alcohol and Drug Counseling Professional Bureau within the Department of Consumer Affairs, specify the bureau's powers and duties, and authorize the bureau to adopt necessary rules and regulations. The bill would prohibit any* a person from using the title licensed alcohol and drug counselor unless the person had applied for and obtained a license from the ~~State Department of Health Care Services~~ *bureau* and would specify the minimum qualifications for a license, including, but not limited to, educational qualifications, being currently credentialed as an advanced alcohol and drug counselor, and having submitted to a criminal background check. The bill would provide that a license for an alcohol

and drug counselor would be valid for 2 years unless at any time during that period it is revoked or suspended, that the license would be authorized to be renewed prior to the expiration of the 2-year period, and that a licensee fulfill continuing education requirements prior to renewal. The bill would also require ~~that the license fee~~ *the bureau to establish the fees* for an ~~original~~ *initial* alcohol and drug counselor license and ~~the license a renewal fee~~ *be license in an amount* reasonably related to the ~~department's bureau's~~ *bureau's* actual costs in performing its ~~duties under this part, duties,~~ but to not exceed \$200.

This bill would require the ~~department~~ *bureau* to ~~ensure that~~ *review* the state and federal level criminal history of the applicant ~~is reviewed~~ before issuing a license, and the ~~department~~ *bureau* would be required, with exceptions, to deny, suspend, delay, or set aside a person's license if, at the time of the ~~department's bureau's~~ *bureau's* determination, the person has a criminal conviction or pending criminal charge relating to an offense, the circumstances of which substantially relate to actions as a licensed alcohol and drug counselor. ~~The bill would also require the department to oversee the disciplinary actions of certifying organizations it approves, as provided.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 9.7 (commencing with Section 4450) is  
2     added to Division 2 of the Business and Professions Code, to read:

3  
4             CHAPTER 9.7. ALCOHOL AND DRUG COUNSELING  
5                             PROFESSIONALS

6  
7                             Article 1. Administration

8  
9     4450. For purposes of this chapter the following definition  
10    apply:

- 11    (a) "Bureau" means the Alcohol and Drug Counseling
- 12    Professional Bureau established pursuant to Section 4452.
- 13    (b) "Department" means the Department of Consumer Affairs.
- 14    (c) "Director" means the Director of Consumer Affairs.

1 4451. (a) (1) *There is established within the department the*  
2 *Alcohol and Drug Counseling Professional Bureau, under the*  
3 *supervision and control of the director.*

4 (2) (A) *The duties of enforcing and administering this chapter*  
5 *is vested in the chief, of the bureau and he or she is responsible*  
6 *to the director for performing those duties.*

7 (B) *The chief shall serve at the pleasure of director.*

8 (3) *Every power granted or duty imposed upon the director*  
9 *pursuant to this chapter may be exercised or performed in the*  
10 *name of the director by a deputy director or by the chief, subject*  
11 *to the conditions and limitations that the director may prescribe.*

12 (b) *Notwithstanding any other law, the powers and duties of*  
13 *the bureau pursuant to this chapter are subject to review by the*  
14 *appropriate policy committee of the Legislature.*

15 4452. *Protection of the public is the highest priority for the*  
16 *bureau in exercising its licensing, regulatory, and disciplinary*  
17 *functions. If the protection of the public is inconsistent with other*  
18 *interests sought to be promoted, the protection of the public shall*  
19 *be paramount.*

20 4453. *The bureau may adopt necessary rules and regulations*  
21 *for the administration and enforcement of this chapter and the*  
22 *laws subject to its jurisdiction and prescribe the form of statements*  
23 *and reports provided for in this chapter. The rules and regulations*  
24 *shall be adopted, amended, or repealed in accordance with the*  
25 *provisions of the Administrative Procedure Act (Chapter 3.5*  
26 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
27 *2 of the Government Code).*

28 4454. *The director may employ and appoint all employees*  
29 *necessary to properly administer the duties of the bureau in*  
30 *accordance with civil service regulations.*

31

32

*Article 2. Licensing*

33

34 4455. (a) *No person shall use the title of licensed alcohol and*  
35 *drug counselor unless the person has applied for and obtained a*  
36 *license from the bureau.*

37 (b) *An applicant for an alcohol and drug counselor license shall*  
38 *meet minimum qualifications that include, but are not limited to,*  
39 *all of the following:*

1 (1) *Has earned a master of arts, master of science, or doctoral*  
2 *degree in addiction counseling, psychology, social work,*  
3 *counseling, marriage and family therapy, counseling psychology,*  
4 *clinical psychology, or other clinically focused major that requires*  
5 *no less than 21 semester units, or equivalent, of addiction specifi*  
6 *education approved by a certifying organization recognized by*  
7 *the department, from an institution of higher learning accredited*  
8 *by a regional accrediting agency, or a board for private*  
9 *postsecondary education.*

10 (2) *Has demonstrated competence by passing a master's level*  
11 *exam accepted by a certifying organization approved by the State*  
12 *Department of Health Care Services.*

13 (3) *Is currently credentialed as an advanced alcohol and drug*  
14 *counselor and in good standing with a certification organization*  
15 *recognized by the State Department of Health Care Services*  
16 *pursuant to Section 13035 of Title 9 of the California Code of*  
17 *Regulations, as that section read on January 1, 2017, and has no*  
18 *history of revocation by a certifying organization, licensure board,*  
19 *or certifying entity.*

20 (4) *Has documented to the certifying organization that the*  
21 *applicant has completed all of the following courses:*

22 (A) *Three semester units, or the equivalent, of*  
23 *psychopharmacology and physiology of addiction, including any*  
24 *of the following subjects:*

25 (i) *Examination of the effects of alcohol and similar legal*  
26 *psychoactive drugs to the body and behavior.*

27 (ii) *Damage to the body and behaviors.*

28 (iii) *Damage to the brain, liver, and other organs.*

29 (iv) *Tolerance, cross tolerance, and synergistic effects.*

30 (v) *Physiological differences between males and females.*

31 (vi) *Disease model, including neurobiological signs and*  
32 *symptoms.*

33 (B) *Three semester units, or the equivalent, of clinical evaluation*  
34 *and psychopathology, including any of the following subjects:*

35 (i) *Initial interviewing process.*

36 (ii) *Biopsychosocial assessment.*

37 (iii) *Differential diagnosis.*

38 (iv) *Diagnostic summaries.*

39 (v) *Cooccurring disorders, referral processes, and the*  
40 *evaluation of clients using placement criteria, including the*

- 1 *American Society of Addiction Medicine patient placement criteria*  
2 *or other validated clinical tools, to determine the most appropriate*  
3 *level of care for the client and eligibility for admission to a*  
4 *particular alcohol and other drug abuse treatment program.*  
5 *(C) Three semester units, or the equivalent, of counseling*  
6 *psychotherapy for addiction, including all of the following subjects:*  
7 *(i) Introduction to counseling.*  
8 *(ii) Introduction to techniques and approaches.*  
9 *(iii) Crisis intervention.*  
10 *(iv) Individual counseling focused on addiction.*  
11 *(v) Group counseling.*  
12 *(vi) Family counseling as it pertains to addiction treatment.*  
13 *(D) Three semester units, or the equivalent, in case management,*  
14 *including all of the following subjects:*  
15 *(i) Community resources.*  
16 *(ii) Consultation.*  
17 *(iii) Documentation.*  
18 *(iv) Resources for persons who are HIV positive.*  
19 *(E) Three semester units, or the equivalent, of client education,*  
20 *including all of the following subjects:*  
21 *(i) Addiction recovery.*  
22 *(ii) Psychological client education.*  
23 *(iii) Biochemical and medical client education.*  
24 *(iv) Sociocultural client education.*  
25 *(v) Addiction recovery and psychological family education.*  
26 *(vi) Biomedical and sociocultural family education.*  
27 *(vii) Community and professional education.*  
28 *(F) Three semester units, or the equivalent, of professional*  
29 *responsibility law and ethics, including all of the following*  
30 *subjects:*  
31 *(i) Ethical standards, legal aspects, cultural competency,*  
32 *professional growth, personal growth, dimensions of recovery,*  
33 *clinical supervision, and consultation.*  
34 *(ii) Community involvement.*  
35 *(iii) Operating a private practice.*  
36 *(G) Three semester units, or the equivalent, of supervised*  
37 *fieldwork*  
38 *(5) Has submitted to both a state and federal level criminal*  
39 *offender record information search pursuant to Section 4459.*

1 4456. (a) For a period not to exceed one year, as determined  
2 by the bureau, from the date the bureau commences accepting  
3 applications for an initial license, an applicant who has a minimum  
4 of 12,000 hours experience is not required to meet the requirements  
5 of paragraphs (1), (2), and (4) of subdivision (b) of Section 4455.

6 (b) Applicants who do not meet the requirements of paragraphs  
7 (1), (2), and (4) of subdivision (b) of Section 4455 shall sit for the  
8 masters level exam required by paragraph (2) of subdivision (b)  
9 of Section 4455 before the first renewal period and shall provide  
10 proof of passing the exam to the certifying organization before  
11 one year after the end of the first renewal period.

12 4457. (a) A license for an alcohol and drug counselor shall  
13 be valid for two years unless at any time during that period it is  
14 revoked or suspended. The license may be renewed prior to the  
15 expiration of the two-year period.

16 (b) To qualify to renew the license, a licensee shall have  
17 completed 36 hours of continuing education units approved by the  
18 certification organization during the two-year license renewal  
19 period, which shall include six hours of ethics and law, six hours  
20 of cooccurring disorder, and three hours of cultural competency.

21 (c) The department may revoke a license issued pursuant to this  
22 chapter if either of the following occurs:

23 (1) The licensee loses his or her credential granted by the  
24 certifying organization.

25 (2) The licensee has been convicted of a felony charge that is  
26 substantially related to the qualifications, functions, or duties of  
27 a licensed alcohol and drug counselor. A plea of guilty or nolo  
28 contendere to a felony charge shall be deemed a conviction for  
29 the purposes of this paragraph.

30 4458. The bureau shall establish the fees for an initial alcohol  
31 and drug counselor license or a renewal license in an amount  
32 reasonably related to the department's actual costs in performing  
33 its duties under this chapter not to exceed two hundred dollars  
34 (\$200).

35 4459. (a) Before issuing a license, the bureau shall review  
36 both the state and federal level criminal history of the applicant.

37 (b) (1) (A) The department shall deny, suspend, delay, or set  
38 aside a person's license if, at the time of the department's  
39 determination, the person has a criminal conviction or criminal  
40 charge pending, relating to an offense, the circumstances of which

1 *substantially relate to actions as a licensed alcohol and drug*  
2 *counselor.*

3 *(B) An applicant who has a criminal conviction or pending*  
4 *criminal charge shall request the appropriate authorities to provide*  
5 *information about the conviction or charge directly to the*  
6 *department in sufficient specificity to enable the department to*  
7 *make a determination as to whether the conviction or charge is*  
8 *substantially related to actions as a licensed alcohol and drug*  
9 *counselor.*

10 *(2) However, after a hearing or review of documentation*  
11 *demonstrating that the applicant meets the specified criteria for*  
12 *a waiver, the department may waive the requirements of this*  
13 *subdivision if the department finds any of the following*

14 *(A) For waiver of a felony conviction, more than five years has*  
15 *elapsed since the date of the conviction. At the time of the*  
16 *application, the applicant is not incarcerated, on work release, on*  
17 *probation, on parole, on post-release community supervision, or*  
18 *-serving any part of a suspended sentence and the applicant is in*  
19 *substantial compliance with all court orders pertaining to fines*  
20 *restitution, or community service.*

21 *(B) For waiver of a misdemeanor conviction or violation, at the*  
22 *time of the application, the applicant is not incarcerated, on work*  
23 *release, on probation, on parole, on post-release community*  
24 *supervision, or serving any part of a suspended sentence and the*  
25 *applicant is in substantial compliance with all court orders*  
26 *pertaining to fines, restitution, or community service.*

27 *(C) The applicant is capable of practicing licensed alcohol and*  
28 *drug treatment counselor services in a competent and professional*  
29 *manner.*

30 *(D) Granting the waiver will not endanger the public health,*  
31 *safety, or welfare.*

32 *(E) The applicant has not been convicted of a felony sexual*  
33 *offense.*

34

35 *Article 3. Construction of Chapter*

36

37 *4460. (a) This chapter does not constrict, limit, or prohibit a*  
38 *facility or program that is licensed or certified by this state, a*  
39 *county-contracted alcohol and drug treatment facility or program,*  
40 *or a driving-under-the-influence program from employing or*

1 *contracting with an alcohol and drug counselor who is certifie*  
2 *by a certifying organization accredited and approved by this state*  
3 *pursuant to Chapter 8 (commencing with Section 13000) of*  
4 *Division 4 of Title 9 of the California Code of Regulations as that*  
5 *chapter read on January 1, 2017.*

6 *(b) This chapter does not require a facility or program licensed*  
7 *or certified by this state, a county-operated or contracted alcohol*  
8 *and drug treatment program or facility, or a*  
9 *driving-under-the-influence program to utilize the services of an*  
10 *alcohol and drug counselor licensed pursuant to this chapter.*

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**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Senate, March 28, 2016. (JR11)**

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 1155                      **VERSION:** AMENDED MARCH 28, 2016

**AUTHOR:** MORRELL                      **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NEUTRAL

**SUBJECT:** PROFESSIONS AND VOCATIONS: LICENSES: MILITARY SERVICE

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### **Summary**

This bill would require licensing boards within the Department of Consumer Affairs (DCA) to grant fee waivers for the application for and issuance of a license to persons who are honorably discharged veterans.

### **Existing Law:**

- 1) Allows a licensee or registrant of any board, commission, or bureau within DCA to reinstate his or her license without examination or penalty if the license expired while he or she was on active duty with the California National Guard or the United States Armed Forces, if certain conditions are met. (Business and Professions Code (BPC) §114):
- 2) Requires boards under DCA to waive continuing education requirements and renewal fees for a licensee or registrant while he or she is called to active duty as a military member if he or she held a valid license or registration upon being called to active duty, and substantiates the active duty service. (Business and Professions Code (BPC) §114.3)
- 3) Requires every board under DCA to ask on all licensure applications if the individual serves, or has previously served, in the military. (BPC §114.5)
- 4) Requires Boards under DCA to expedite the initial licensure process for applicants who are honorably discharged from the military, or who are spouses of active military members who are already licensed in another state. (BPC §§115.4, 115.5)

### **This Bill:**

- 1) Requires licensing boards within DCA to grant fee waivers for the application for and issuance of a license to persons who are honorably discharged military members. (BPC §114.6)
- 2) Prohibits fee waivers for license renewals. (BPC §114.6(c))

3) Only allows one fee waiver per person. (BPC §114.6(a))

**Comments:**

1) **Author's Intent.** The author seeks to assist honorably discharged military veterans with entrance into the workforce. They note that initial application and occupational license fees can act as barriers into the workforce for veterans.

2) **Fiscal Impact.** The fees that would qualify for a military service waiver under this bill are as follows:

**LMFTs:** \$130 initial license fee

**LEPs:** \$80 initial license fee

**LCSWs:** \$100 initial license fee

**LPCCs:** \$200 initial license fee

The Board only recently began tracking data about the number of licensees in military service when the Breeze database system came online in late 2014. Therefore, data about applicants and licensees in military service is limited.

Since October 2014, the Board has received applications from 259 individuals who successfully qualified for an expedited license due to being honorably discharged from the military. However, this number represents more than just initial licensees; it also includes registrants and those who are in the exam cycle.

The Board cannot make an accurate estimate at this time about how many individuals per year would qualify for the fee waiver. As hypothetical example, however, we will assume 200 individuals per year qualified for the waiver. The average of the fee waived across license types is \$128. Under this scenario, the fiscal impact to the Board would be as follows:

*200 applicants qualifying for fee waivers x \$128 average waived fee = **\$25,600**  
**fiscal impact to the Board for the year***

3) **Proration of Initial License Fees.** The Board prorates the initial license fee for all applicants based on their birth month and the month the initial license issuance application is received by the Board. This is done to ensure fairness. Licenses always expire in the licensee's birth month, and if the fee were not prorated, some would pay the full amount but receive less than the full two years of licensure due to their birth date.

As an example, the full initial license fee for LMFT applicants is \$130, but some pay a prorated fee as low as \$70 based on birth date and submission time.

Because the initial license fee is prorated, allowing a fee waiver for it may cause some inequity. Some applicants will get more of a savings from the waived fee than others, depending on their birth date and when they submitted the application.

- 4) **Fees Intended for Waiver Unclear.** The amendments in this bill state that boards must grant a fee waiver for “the application for and issuance of a license...”

Boards under DCA collect fees at a variety of times during the licensure process. Some boards only require fees to be paid for the issuance of a license. This Board requires fees to be paid at a variety of times: at registration, at renewal of registration, to apply for exam eligibility, to take licensing exams, and for the issuance of an initial license.

The Board’s initial license fee is the only fee that appears to meet the requirements for waiver under this bill. It is not known if the intent of the bill was for other fees in the process (for example, the Board’s exam eligibility application fees) to qualify for waiver as well.

- 5) **Tracking Previous Fee Waivers.** This bill states that applicants can only be granted one fee waiver.

It may be difficult for the Board to ascertain whether an applicant has already been granted a fee waiver, especially if he or she is dually licensed.

- 6) **Related Legislation.** SB 1348 (Cannella) would require that if a board’s governing law allows it to accept military experience and training toward licensure, then that board must modify its licensure applications to advise veterans of this allowance.

- 7) **Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended that the Board consider a “neutral” position on this bill.

8) **Support and Opposition.**

**Support:**

- American G.I. Forum of California
- AMVETS, Department of California
- California Association of County Veterans Service Officers (CACVSO) California Association of Licensed Investigators, Inc.
- Military Officers Association of America - California Council of Chapters
- Veterans of Foreign Wars - Department of California
- California Association of Marriage and Family Therapists (CAMFT)

**Opposition:**

- None at this time.

9) **History**

**2016**

04/25/16 April 25 hearing: Placed on APPR. suspense file.

04/15/16 Set for hearing April 25.

04/13/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 0. Page 3523.) (April 12). Re-referred to Com. on APPR.

04/06/16 Set for hearing April 12.

03/28/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.

03/11/16 Set for hearing April 4.

03/03/16 Referred to Coms. on B., P. & E.D. and V.A.

02/19/16 From printer. May be acted upon on or after March 20.

02/18/16 Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1155**

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**Introduced by Senator Morrell**

February 18, 2016

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An act to add Section 114.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as amended, Morrell. Professions and vocations: licenses: military service.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met. Existing law also requires the boards to waive the renewal fees, continuing education requirements, and other renewal requirements, if applicable, of any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard, if certain requirements are met. Existing law requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military. Existing law, on and after July 1, 2016, requires a board within the Department of Consumer Affairs to expedite, and authorizes a board to assist, the initial licensure process for an applicant who has served as an active duty member of the ~~Armed Forces of the United States~~ *Armed Forces* and was honorably discharged.

This bill would require ~~the Department of Consumer Affairs, in consultation with the Department of Veterans Affairs and the Military Department, to establish and maintain a program that grants every board within the Department of Consumer Affairs to grant~~ a fee waiver for the application for and the issuance of an initial license to an individual who is an honorably discharged veteran, as specified

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 114.6 is added to the Business and
- 2 Professions Code, to read:
- 3 114.6. ~~The Department of Consumer Affairs, in consultation~~
- 4 ~~with the Department of Veterans Affairs and the Military~~
- 5 ~~Department, shall establish and maintain a program that grants~~
- 6 *Notwithstanding any other provision of law, every board within*
- 7 *the department shall grant* a fee waiver for the application for and
- 8 issuance of a license to an individual who is an honorably
- 9 discharged veteran who served as an active duty member of the
- 10 California National Guard or the United States Armed Forces.
- 11 Under this program, all of the following apply:
- 12 (a) ~~The Department of Consumer Affairs shall grant only one~~
- 13 ~~fee waiver to a veteran. A veteran shall be granted only one fee~~
- 14 ~~waiver.~~
- 15 (b) The fee waiver shall apply only to an application of and a
- 16 license issued to an individual veteran and not to an application
- 17 of or a license issued to a business or other entity.
- 18 (c) A waiver shall not be issued for a renewal of a license or for
- 19 the application for and issuance of a license other than one initial
- 20 license.

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**CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES**

**BILL ANALYSIS**

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**BILL NUMBER: SB 1334**

**VERSION: AMENDED APRIL 19, 2016**

**AUTHOR: STONE**

**SPONSOR: CALIFORNIA CLINICAL FORENSIC  
MEDICAL TRAINING CENTER**

**RECOMMENDED POSITION: OPPOSE UNLESS AMENDED**

**SUBJECT: HEALTH PRACTITIONERS: REPORTS**

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**Summary:** This bill would require a health care practitioner providing medical services to a patient to make a mandated report if the patient informs him or her that they are seeking treatment due to being the victim of assaultive or abusive conduct. It would also add human trafficking to the list of offenses that are considered reportable assaultive and abusive conduct.

**Existing Law:**

- 1) Requires any health practitioner who is employed in a health facility, clinic, physician's office, or local or state public health department to make a report when he or she provides medical services for a physical condition to a patient as follows (Penal Code (PC) §11160(a)):
  - a) The patient is suffering from a wound or physical injury inflicted by his or her own act or inflicted by another, by means of a firearm; or
  - b) The patient is suffering from a wound or physical injury inflicted as a result of assaultive or abusive conduct.
- 2) Defines "assaultive or abusive conduct" as including battery, sexual battery, assault with a deadly weapon, rape, incest, child abuse, spousal abuse, and elder abuse, among others. (PC §11160(d))
- 3) Defines a "health practitioner" to include the Board's license types. (PC §§11162.5(a), 11165.7(a))

**This Bill:**

- 1) Requires a health practitioner employed in a health facility, clinic, physician's office, or local or state public health department to make a report when he or she provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct. (PC §11160(a)(2))

## Comment:

- 1) **Author's Intent.** The author states that there is a gap in the mandated reporting law that impacts reporting of sexual assault by health care providers. Currently such a mandated report is only triggered if there is a wound or injury. However, the author notes that there is not always a wound or physical injury resulting from a sexual assault.
- 2) **Definition of "Medical Services."** This bill requires a health care practitioner (which by definition includes Board licensees) to make specified mandated report based on observations made while providing medical services to the patient. It is unclear if medical services include mental health services, as no definition is provided.
- 3) **Effect on Psychotherapist-Patient Privilege.** The Committee may want to discuss effects on the psychotherapist-patient privilege if a Board licensee is required to make a mandated report upon learning that a patient is seeking treatment due to being a victim of assaultive or abusive conduct.
- 4) **Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee recommended the Board consider an "oppose unless amended" position, and ask that the Board's licensees be excluded from the provisions of this bill. Board staff has contacted the author's office to make this request.

## 5) **Support and Opposition.**

### Support

- California Clinical Forensic Medical Training Center (Sponsor)
- California District Attorneys Association
- California State Sheriffs' Association
- County Health Executives' Association of California

### Opposition

- None at this time.

## 6) **History**

### **2016**

04/25/16 April 25 hearing: Placed on APPR. suspense file.

04/19/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.

04/15/16 Set for hearing April 25.

04/13/16 April 18 set for first hearing canceled at the request of author.

04/08/16 Set for hearing April 18.

04/05/16 From committee: Do pass and re-refer to Com. on APPR. with recommendation: To consent calendar. (Ayes 7. Noes 0.) (April 5). Re-referred to Com. on APPR.



03/28/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on PUB. S.  
03/15/16 Set for hearing April 5.  
03/03/16 Referred to Com. on PUB. S.  
02/22/16 Read first time.  
02/22/16 From printer. May be acted upon on or after March 23.  
02/19/16 Introduced. To Com. on RLS. for assignment. To print.

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AMENDED IN SENATE APRIL 19, 2016  
AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1334**

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**Introduced by Senator Stone**

February 19, 2016

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An act to amend Section 11160 of the Penal Code, relating to crime reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as amended, Stone. Crime reporting: health practitioners: ~~human trafficking reports.~~

Existing law requires a health practitioner, as specified, who, in his or her professional capacity or within the scope of his or her employment, provides medical services to a patient who he or she knows, or reasonably suspects, has suffered from a wound or other physical injury where the injury is by means of a firearm or is the result of assaultive or abusive conduct, to make a report to a law enforcement agency, as specified. Existing law defines "assaultive or abusive conduct" for these purposes as a violation of specified crimes. Under existing law, a violation of this provision is a crime.

This bill would require a health care practitioner who provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct, to additionally make a report to a law enforcement agency. ~~The bill would also add the crime of human trafficking to the list of crimes that constitute assaultive or abusive conduct for purposes of the above reporting requirements and the reporting requirements added by this bill.~~ By increasing the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11160 of the Penal Code is amended to  
 2 read:

3 11160. (a) (1) A health practitioner employed in a health  
 4 facility, clinic, physician’s office, local or state public health  
 5 department, or a clinic or other type of facility operated by a local  
 6 or state public health department who, in his or her professional  
 7 capacity or within the scope of his or her employment, provides  
 8 medical services for a physical condition to a patient who he or  
 9 she knows, or reasonably suspects, is a person described as follows,  
 10 shall immediately make a report in accordance with subdivision  
 11 (b):

12 (A) A person suffering from a wound or other physical injury  
 13 inflicted by his or her own act or inflicted by another where the  
 14 injury is by means of a firearm

15 (B) A person suffering from a wound or other physical injury  
 16 inflicted upon the person where the injury is the result of assaultive  
 17 or abusive conduct.

18 (2) A health practitioner employed in a health facility, clinic,  
 19 physician’s office, local or state public health department, or a  
 20 clinic or other type of facility operated by a local or state public  
 21 health department who, in his or her professional capacity or within  
 22 the scope of his or her employment, provides medical services to  
 23 a patient who discloses that he or she is seeking treatment due to  
 24 being the victim of assaultive or abusive conduct, shall immediately  
 25 make a report in accordance with subdivision (b).

26 (b) A health practitioner employed in a health facility, clinic,  
 27 physician’s office, local or state public health department, or a  
 28 clinic or other type of facility operated by a local or state public  
 29 health department shall make a report regarding persons described  
 30 in subdivision (a) to a local law enforcement agency as follows:

1 (1) A report by telephone shall be made immediately or as soon  
2 as practically possible.

3 (2) A written report shall be prepared on the standard form  
4 developed in compliance with paragraph (4) of this subdivision  
5 adopted by the Office of Emergency Services, or on a form  
6 developed and adopted by another state agency that otherwise  
7 fulfills the requirements of the standard form. The completed form  
8 shall be sent to a local law enforcement agency within two working  
9 days of receiving the information regarding the person.

10 (3) A local law enforcement agency shall be notified and a  
11 written report shall be prepared and sent pursuant to paragraphs  
12 (1) and (2) even if the person who suffered the wound, other injury,  
13 or assaultive or abusive conduct has expired, regardless of whether  
14 or not the wound, other injury, or assaultive or abusive conduct  
15 was a factor contributing to the death, and even if the evidence of  
16 the conduct of the perpetrator of the wound, other injury, or  
17 assaultive or abusive conduct was discovered during an autopsy.

18 (4) The report shall include, but shall not be limited to, the  
19 following:

20 (A) The name of the injured, assaulted, or abused person, if  
21 known.

22 (B) The injured, assaulted, or abused person's whereabouts.

23 (C) The character and extent of the person's injuries, if any.

24 (D) The identity of a person the injured, assaulted, or abused  
25 person alleges inflicted the wound, other injury, or assaultive or  
26 abusive conduct upon the injured person.

27 (c) For the purposes of this section, "injury" shall not include  
28 any psychological or physical condition brought about solely  
29 through the voluntary administration of a narcotic or restricted  
30 dangerous drug.

31 (d) For the purposes of this section, "assaultive or abusive  
32 conduct" includes any of the following offenses:

33 (1) Murder, in violation of Section 187.

34 (2) Manslaughter, in violation of Section 192 or 192.5.

35 (3) Mayhem, in violation of Section 203.

36 (4) Aggravated mayhem, in violation of Section 205.

37 (5) Torture, in violation of Section 206.

38 (6) Assault with intent to commit mayhem, rape, sodomy, or  
39 oral copulation, in violation of Section 220.

- 1 (7) Administering controlled substances or anesthetic to aid in
- 2 commission of a felony, in violation of Section 222.
- 3 ~~(8) Human trafficking, in violation of Section 236.1~~
- 4 ~~(9)~~
- 5 (8) Battery, in violation of Section 242.
- 6 ~~(10)~~
- 7 (9) Sexual battery, in violation of Section 243.4.
- 8 ~~(11)~~
- 9 (10) Incest, in violation of Section 285.
- 10 ~~(12)~~
- 11 (11) Throwing any vitriol, corrosive acid, or caustic chemical
- 12 with intent to injure or disfigure, in violation of Section 244
- 13 ~~(13)~~
- 14 (12) Assault with a stun gun or taser, in violation of Section
- 15 244.5.
- 16 ~~(14)~~
- 17 (13) Assault with a deadly weapon, firearm, assault weapon, or
- 18 machinegun, or by means likely to produce great bodily injury, in
- 19 violation of Section 245.
- 20 ~~(15)~~
- 21 (14) Rape, in violation of Section 261.
- 22 ~~(16)~~
- 23 (15) Spousal rape, in violation of Section 262.
- 24 ~~(17)~~
- 25 (16) Procuring a female to have sex with another man, in
- 26 violation of Section 266, 266a, 266b, or 266c.
- 27 ~~(18)~~
- 28 (17) Child abuse or endangerment, in violation of Section 273a
- 29 or 273d.
- 30 ~~(19)~~
- 31 (18) Abuse of spouse or cohabitant, in violation of Section
- 32 273.5.
- 33 ~~(20)~~
- 34 (19) Sodomy, in violation of Section 286.
- 35 ~~(21)~~
- 36 (20) Lewd and lascivious acts with a child, in violation of
- 37 Section 288.
- 38 ~~(22)~~
- 39 (21) Oral copulation, in violation of Section 288a.
- 40 ~~(23)~~

1 (22) Sexual penetration, in violation of Section 289.

2 ~~(24)~~

3 (23) Elder abuse, in violation of Section 368.

4 ~~(25)~~

5 (24) An attempt to commit any crime specified in paragraphs  
6 (1) to ~~(24)~~ (23), inclusive.

7 (e) If two or more persons who are required to report are present  
8 and jointly have knowledge of a known or suspected instance of  
9 violence that is required to be reported pursuant to this section,  
10 and if there is an agreement among these persons to report as a  
11 team, the team may select by mutual agreement a member of the  
12 team to make a report by telephone and a single written report, as  
13 required by subdivision (b). The written report shall be signed by  
14 the selected member of the reporting team. A member who has  
15 knowledge that the member designated to report has failed to do  
16 so shall thereafter make the report.

17 (f) The reporting duties under this section are individual, except  
18 as provided in subdivision (e).

19 (g) A supervisor or administrator shall not impede or inhibit the  
20 reporting duties required under this section and a person making  
21 a report pursuant to this section shall not be subject to sanction for  
22 making the report. However, internal procedures to facilitate  
23 reporting and apprise supervisors and administrators of reports  
24 may be established, except that these procedures shall not be  
25 inconsistent with this article. The internal procedures shall not  
26 require an employee required to make a report under this article  
27 to disclose his or her identity to the employer.

28 (h) For the purposes of this section, it is the Legislature’s intent  
29 to avoid duplication of information.

30 SEC. 2. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the penalty  
35 for a crime or infraction, within the meaning of Section 17556 of  
36 the Government Code, or changes the definition of a crime within  
37 the meaning of Section 6 of Article XIII B of the California  
38 Constitution.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER: AB 1715**

**VERSION: AMENDED APRIL 12, 2016**

**AUTHOR: HOLDEN**

**SPONSOR: CALIFORNIA ASSOCIATION FOR  
BEHAVIOR ANALYSIS**

**RECOMMENDED POSITION: NONE**

**SUBJECT: HEALING ARTS: BEHAVIOR ANALYSIS: LICENSING**

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### **Summary**

This bill establishes licensure for behavior analysts and assistant behavior analysts under the Board of Psychology. In addition, it would require behavior analyst interns and behavior analyst technicians to register with the Board of Psychology.

### **Existing Law:**

- 1) Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism (PDD/A). (Health and Safety Code (HSC) §1374.73(a), Insurance Code (IC) §10144.51(a))
- 2) Requires these health care service plans and health insurers subject to this provision to maintain an adequate network of qualified autism service providers. (HSC §1374.73(b), IC §10144.51(b))
- 3) Defines “behavioral health treatment” as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets the following criteria (HSC §1374.73(c), IC §10144.51(c):
  - Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;
  - Is provided under a treatment plan prescribed by a qualified autism service provider and administered by such a provider or by a qualified autism service professional under supervision and employment of a qualified autism service provider;
  - The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and

- Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.
- 4) Defines a “qualified autism service provider” as either (HSC §1374.73(c), IC §10144.51(c)):
- A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited and which designs, supervises, or provides treatment for pervasive developmental disorder or autism; or
  - A person who is licensed as a specified healing arts practitioner, including a psychologist, marriage and family therapist, educational psychologist, clinical social worker, or professional clinical counselor. The licensee must design, supervise, or provide treatment for pervasive developmental disorder or autism and be within his or her experience and competence.
- 5) Defines a “qualified autism service professional” as someone who meets all of the following (HSC §1374.73(c), IC §10144.51(c)):
- Provides behavioral health treatment;
  - Is employed and supervised by a qualified autism service provider;
  - Provides treatment according to a treatment plan developed and approved by the qualified autism service provider.
  - Is a behavioral service provider approved by a regional center to provide services as an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations (CCR); and
  - Has training and experience providing services for pervasive developmental disorder or autism pursuant to the Lanterman Developmental Disabilities Services Act.
- 6) Defines a “qualified autism service paraprofessional” as an unlicensed and uncertified person who meets all of the following (HSC §1374.73(c), IC §10144.51(c)):
- Is employed and supervised by a qualified autism service provider;
  - Provides treatment according to a treatment plan developed and approved by the qualified autism service provider;

- Meets criteria set forth in regulations regarding use of paraprofessionals in group practice providing behavioral intervention services; and
  - Is certified by a qualified autism service provider as having adequate education, training, and experience.
- 7) Establishes billing service codes and definitions for the following types of professionals used in regional centers for functions related to behavioral analysis for persons with developmental disabilities: (17 California Code of Regulations (CCR) §54342(a))
- Associate Behavior Analyst;
  - Behavior Analyst;
  - Behavior Management Assistant; and
  - Behavior Management Consultant.

**This Bill:**

- 1) Establishes the Behavior Analyst Act to license behavior analysts and assistant behavior analysts, and to register behavior analyst interns and technicians, under the Board of Psychology beginning January 1, 2018. (Business and Professions Code (BPC) §2999.10, et. seq.)
- 2) Defines the “practice of behavior analysis” as the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. It includes the following (BPC §2999.12):
  - Empirical identification of functional relations between behavior and environmental factors;
  - Interventions based on scientific research and direct observation and measurement of behavior and the environment; and
  - Utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.
- 3) Specifies that the practice of behavior analysis does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, counseling, prescribing drugs, performing surgery, or administering electroconvulsive therapy. (BPC §2999.12)
- 4) States that nothing in the Behavior Analyst Act shall be construed to allow a licensee to engage in the scope of practices of other healing arts licensees. Such a violation

subjects the licensee to disciplinary action by the Board of Psychology and the board overseeing the other healing art (BPC §2999.12).

- 5) Creates the Behavior Analyst Committee, under the jurisdiction of the Board of Psychology, with the mandate to protect the public from unauthorized and unqualified practice of applied behavior analysis. (BPC §2999.26)

**6) Licensure as a Behavior Analyst (BPC §§2999.31 and 2999.32)**

- i. Requires an applicant for licensure as a Behavior Analyst to maintain active status as a certified behavior analyst with the Behavior Analyst Certification Board (BACB), or a national credentialing organization with behavior analyst certification programs approved by the board and accredited by the National Commission for Certifying Agencies. The applicant must also have passed the BACB's exam and must pass a California Law and Ethics Exam.

After July 1, 2019, the applicant must also meet the following requirements:

- a. Possess a master's degree or higher in behavior analysis, psychology, education or a degree program that contained a behavior analysis course sequence approved by the certifying entity.
- b. Completion of one of the following options:

**Option One:**

Completion of 270 hours of graduate level coursework in specified content areas and either 1,500 hours of supervised independent field work in behavior analysis, 1,000 hours of supervised practicum in behavior analysis, 750 hours of supervised intensive practicum in behavior analysis, or a combination thereof.

**Option Two:**

Have a faculty appointment of at least three years at a fully accredited school within a five year period, and taught at least five sections of behavior analysis coursework that meets specified criteria, and published one article meeting specified criteria. The applicant must have also obtained either 1,500 hours of supervised independent field work in behavior analysis, 1,000 hours of supervised practicum in behavior analysis, 750 hours of supervised intensive practicum in behavior analysis, or a combination thereof.

**Option Three:**

Possess a doctoral degree conferred at least ten years prior to application, in behavior analysis, psychology, or education, and have ten years of postdoctoral experience practicing behavior analysis. The applicant must also have at least 500 hours of supplemental supervised experience that meets current experience requirements of the certifying entity.

**7) Licensure as an Assistant Behavior Analyst (BPC §§2999.33 and 2999.34)**

- i. Requires an applicant for licensure as an Assistant Behavior Analyst to maintain active status as a certified assistant behavior analyst with the Behavior Analyst Certification Board (BACB), or a national organization with a behavior analyst certification program approved by the board and accredited by the National Commission for Certifying Agencies. The applicant must also have passed the BACB's exam and a California Law and Ethics Exam.
- ii. Requires the applicant to provide proof of ongoing supervision by a licensed behavior analyst or a licensed psychologist.

After July 1, 2019, the applicant must also meet the following requirements:

- i. Have a bachelor's degree or higher from an accredited institution.
- ii. Complete 180 hours of undergraduate or graduate instruction in specified content areas, and either 1,000 hours of supervised independent field work in behavior analysis, 670 hours of supervised practicum in behavior analysis, 500 hours of supervised intensive practicum in behavior analysis, or a combination thereof.

**8)** Allows a person preparing for licensure as a behavior analyst to register as a behavior analyst intern. The intern must meet the following requirements (BPC §2999.35.5):

- i. Be supervised by a licensed behavior analyst or licensed psychologist;
- ii. Be enrolled in or have completed an education program designed to qualify him or her to become a licensed behavior analyst;
- iii. Provide fingerprints and submit to a background check;
- iv. Renew his or her registration every two years.

**9)** Requires behavior analysis technicians practicing under a licensed behavior analyst or psychologist to be meet the following criteria (BPC §2999.36):

- i. Be at least age 18;
- ii. Have at least a high school diploma;
- iii. Submit an application to the Board of Psychology;
- iv. Submit fingerprints;
- v. Pay an application fee; and
- vi. Renew the application every two years.

**10)** Prohibits a person from engaging in the practice of behavior analysis, representing his or her self as a licensed behavior analyst or licensed assistant behavior analyst, or using the title or letters, without being licensed (BPC §2999.37).

**11)** Exempts the following practitioners from the provisions of this licensing act if the person is acting within the scope of his or her licensed scope of practice and within the scope of his or her training and competence (BPC §2999.38):

- Licensed psychologists;
- Licensed occupational therapists;
- Licensed physical therapists;
- **Licensed marriage and family therapists;**
- **Licensed educational psychologists;**
- **Licensed clinical social workers;**
- **Licensed professional clinical counselors.**

Any of the above individuals must not represent that they are a licensed behavior analyst or licensed assistant behavior analyst, unless they actually hold that license.

**12)** Exempts certain other, non-licensed persons from the provisions of this licensing act, including the following (BPC §2999.38):

- A parent or guardian of a recipient of behavior analysis, under the direction of a licensed behavior analyst or other exempt licensee;
- An individual who teaches or researches behavior analysis, as long they do not provide direct services;
- A behavior analyst licensed in another state, who provides services temporarily in California for a period of not more than 90 days per year.
- An individual employed or contracted by a local educational agency assisting students with behavioral or developmental issues.

**13)** Sets forth criteria for renewing a license. (BPC §§2999.44-2999.47)

**14)** Sets forth unprofessional conduct provisions. (BPC §2999.62)

### **Comments:**

**1) Intent of This Bill.** Applied Behavior Analysis (ABA) is commonly used to treat autism spectrum disorders. During the past decade, there has been increasing evidence that ABA therapy is effective in the treatment of autism, and there has been an increase in the practice of this profession in California. State law now mandates that insurance plans provide coverage for ABA treatment. However, the California Business and Professions Code does not apply any standard requirements to the practice of ABA.

Because there is no licensure for ABAs, it is difficult for consumers to make an informed decision when choosing an applied behavior analyst. In some cases, ABA programs may be designed, supervised, and/or implemented by someone who lacks training and experience.

The goal of this bill is establish licensure for behavior analysts and assistant behavior analysts, so that individuals with autism are protected from unqualified practitioners.

- 2) Ability of Board Licensees to Become Dually Licensed.** As written, this bill allows BBS licensees to continue to practice behavior analysis as part of their scope of services, as long as they are competent to practice them, and as long as they do not hold themselves out to be a licensed behavior analyst or licensed assistant behavior analyst.

However, if a BBS licensee wishes to obtain licensure as a behavior analyst, it may be difficult to do so. BPC §2999.32(d) requires an applicant to have a master's degree or higher in behavior analysis, psychology, education, or in a degree program with a behavior analysis course sequence approved by the certifying entity (currently this is the BACB). These degree titles are required both by law, and are also required for a certification as a behavior analyst with the BACB. (a BACB certification is required by law for licensure.)

**Attachment A** provides the BACB's definitions of acceptable degrees for certification. It is unclear if the BACB would accept marriage and family therapy, clinical social work, or clinical counseling degrees under these definitions.

- 3) Ability of Board Registrants and Trainees to Gain Supervised Experience Practicing Behavior Analysis.** The exemptions from licensure listed in BPC §2999.38 no longer contain an allowance for BBS trainees and registrants to practice behavior analysis even if they are doing so to gain experience hours toward a BBS license.
- 4) Ability of Board Licensees to Supervise Assistant Behavior Analysts and Behavior Analyst Technicians.** Although this bill allows BBS licensees to continue to practice behavior analysis if it is in the scope of their competence, it does not allow them to supervise licensed assistant behavior analysts, behavior analyst interns, or behavior analysis technicians.

Licensed assistant behavior analysts and behavior analyst interns must be supervised by a licensed behavior analyst or a licensed psychologist. Behavior analyst technicians must be supervised by a licensed behavior analyst, licensed assistant behavior analyst, or a licensed psychologist.

This means that although Health and Safety Code §1374.73 and Insurance Code Section 10144.51 currently include BBS licensees in the definition of "qualified autism service providers" and allow them to supervise qualified autism service professionals and paraprofessionals, this bill would eliminate their ability to supervise such individuals.

- 5) Related Legislation.** AB 796 (Nazarian) requires that the Board of Psychology form a committee in order to develop a list of behavioral health evidence-based treatment modalities for individuals with pervasive development disorder or autism.

SB 1034 (Mitchell) would extend indefinitely the provisions in current law that all health insurance plans must provide coverage for behavioral health treatment for

pervasive development disorder or autism. Previously, the provisions were scheduled to sunset in 2017.

- 6) Previous Legislation.** AB 1282 (Steinberg, 2010) was proposed in 2010. This bill, which failed passage, attempted to establish a certification process for practitioners of behavior analysis. It would have established the California Behavioral Certification Organization (CBCO), a nonprofit organization that would have provided for the certification and registration of applied behavioral analysis practitioners if they met certain conditions, one of which was being certified by the BACB or a similar entity. The Board took an oppose position on this legislation.

AB 1205 (Berryhill, 2011), proposed licensing behavior analysts and assistant behavior analysts under the Board of Behavioral Sciences. The Board did not take a position on this legislation. The bill died in the Assembly Appropriations Committee.

SB 946 (Chapter 650, Statutes of 2011) requires every health care service plan contract and insurance policy that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for pervasive developmental disorder or autism, effective July 1, 2012.

SB 126 (Chapter 680, Statutes of 2013) extended the provisions of SB 946 until January 1, 2017.

SB 479 (Bates, 2015) proposed licensing behavior analysts and assistant behavior analysts under the Board of Psychology. The provisions of SB 479 were very similar to those in the introduced version of this bill. The Board was neutral on the bill. SB 479 is now a two-year bill, and the author's office does not plan to pursue it this year.

- 7) Recommended Position.** At its April 15, 2016 meeting, the Policy and Advocacy Committee chose not to recommend a position on this bill. Instead, it directed staff to contact the author's office to provide technical support regarding three concerns:

- a) Education requirements may make it difficult for licensees of this Board to become dually licensed as a behavior analyst, if they so choose;
- b) An exemption has been removed that would have allowed BBS trainees and registrants to practice behavior analysis if they were doing so to gain supervised experience hours toward a BBS license; and
- c) Although the bill allows BBS licensees to continue to practice behavior analysis, it does not allow them to supervise licensed assistant behavior analysts, behavior analyst interns, or behavior analysis technicians. Those individuals must be supervised by a licensed behavior analyst or a licensed psychologist.

Staff engaged in discussions with the bill's sponsor regarding the above concerns, with the following results:



- The sponsor indicated that as written, it would be possible for a BBS licensee to become dually licensed. They note that the educational requirement set forth in BPC §2999.31(d)(2) calls for a master's degree or higher, and completion of a behavior analysis course sequence approved by the certifying entity. The sponsor states that the behavior analysis course sequence can be completed post-degree.
- The sponsor indicated that they will place the exemption for BBS trainees and registrants back in the bill. The exemption will be placed in 2999.38 and will apply to individuals pursuing supervised experience toward any of the licenses described in §2999.38(b) (this includes BBS licenses).
- Regarding the concern that BBS licensees may not supervise behavior analysis assistants, interns, and technicians, the sponsor is open to the idea of allowing such supervision. However, they would like to negotiate an agreement where behavior analyst licensees could also supervise the interns and trainees of other boards, if those interns and trainees were practicing behavior analysis. As this affects the interns and trainees of many boards, and not just BBS, the sponsor is currently working with DCA on this matter.

## 8) Support and Opposition.

### Support:

- California Association for Behavior Analysis (sponsor)
- Advance Kids, Inc.
- A.G.E.S. Learning Solutions, Inc. Autism Behavior Intervention Behavioral Learning Network
- Building Blocks Behavior Consultants, Inc. CARE, Inc.
- Central Valley Autism Project
- Coyne Associates Education Corporation Ed Support Services
- Gateway Learning Group
- The Kendall Centers
- Kids Overcoming, LLC
- North Los Angeles County Regional Center The Reilly Behavioral Group, LLC
- Shabani Institute STE Consultants
- Trumpet Behavioral Health
- 2 individuals

### Opposition:

- California Board of Psychology
- DIR/Floortime Coalition of California
- 1 individual

## **9) History.**

### **2016**

04/20/16 In committee: Set, first hearing. Referred to APPR. suspense file.

04/13/16 Re-referred to Com. on APPR.

04/12/16 Read second time and amended.

04/11/16 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 14. Noes 0.) (April 5).

03/30/16 Re-referred to Com. on B. & P.

03/29/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.

02/18/16 Referred to Com. on B. & P.

01/27/16 From printer. May be heard in committee February 26.

01/26/16 Read first time. To print.

## **10) Attachments.**

**Attachment A:** Behavior Analyst Certification Board: Acceptable Degree Definitions for Certification as a Behavior Analyst

AMENDED IN ASSEMBLY APRIL 12, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1715**

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**Introduced by Assembly Member Holden**

January 26, 2016

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An act to amend Sections 27 and 2920 of, to amend, repeal, and add Sections 2922, 2923, and 2927 of, to add Chapter 6.7 (commencing with Section 2999.10) to Division 2 of, and to repeal Sections 2999.20, 2999.26, 2999.31, and 2999.33 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as amended, Holden. Healing arts: behavior analysis: licensing.

Existing law provides for the licensure and regulation of various healing arts licensees by various boards within the Department of Consumer Affairs, including the Board of Psychology. Under existing law, until January 1, 2017, the board is vested with the power to enforce the Psychology Licensing Law, and the board consists of 9 members, 4 of whom are public members and 5 of whom are licensed psychologists. Existing law specifies that a quorum of the board requires 5 members. Existing law requires the board to post information on its licensees, including the license status and address of record for a licensee, as specified

This bill would enact the Behavior Analyst Act and would, until January 1, 2022, vest the board with the power to enforce the act.

This bill would, on and after July 1, 2018, increase the number of members that constitute a quorum of the board to 6 members, and would require the Governor to appoint 2 additional members to the board that meet certain requirements, including, but not limited to, that one member is licensed as a psychologist and is qualified to practice behavior analysis, as defined. The bill would also additionally require the board to post license information regarding behavior analysts, assistant behavior analysts, behavior analysis technicians, and behavior analyst interns.

This bill would require a person to apply for and obtain a license from the board prior to engaging in the practice of behavior analysis, as defined, either as a behavior analyst or an assistant behavior analyst. The bill would require these applicants to, among other things, meet certain educational and training requirements, and submit fingerprint for both a state and federal criminal background check. The bill would require an assistant behavior analyst applicant to provide proof to the board of ongoing supervision by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis, as specified. The bill would provide that those licenses expire 2 years after the date of issuance and would authorize the renewal of unexpired licenses if certain requirements are met, including the completion of specific continuing education. The bill would also require an applicant to certify, under penalty of perjury, that he or she is in compliance with that continuing education requirement. By expanding the crime of perjury, the bill would impose a state-mandated local program.

This bill would require the registration of a behavior analyst intern by the board and would require the intern to be supervised by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis. In order to be registered, the bill would require an intern applicant to meet certain educational requirements, submit fingerprints for a criminal background check, and pay an application fee, as provided. The bill would make these intern registrations subject to renewal every 2 years and would require the payment of a renewal fee.

This bill would also require a behavior analysis technician, as defined who practices under the direction and supervision of a licensed behavior analyst, a licensed assistant behavior analyst, or a licensed psychologist who is qualified to practice behavior analysis, to submit, among other things, an application subject to board approval, fingerprints for a state and federal criminal background check, and payment of an application

fee. The bill would make these approvals subject to renewal every 2 years and would require the payment of a renewal fee.

This bill would, until January 1, 2022, create the Behavior Analyst Committee within the jurisdiction of the board, and would require the committee to be composed of 5 members who shall be appointed as specified. The bill would authorize the committee to make recommendations to the board regarding the regulation of the practice of behavior analysis.

This bill would require the board to conduct disciplinary hearings, as specified. The bill, on and after July 1, 2019, would make it unlawful to, among other things, practice behavior analysis without being licensed by the board, except as specified

This bill would make a licensee or health care facility, as defined that fails or refuses to comply with an authorized client request or court order for the medical records of a client subject to a specified civil penalty, except as specified. The bill would also make a licensee or health care facility with multiple violations of those court orders subject to a crime. By creating a new crime, the bill would impose a state-mandated local program.

This bill would make a violation of the act a misdemeanor punishable by 6 months in the county jail or a fine not to exceed \$2,500, or by both imprisonment and a fine. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 27 of the Business and Professions Code
- 2 is amended to read:
- 3 27. (a) Each entity specified in subdivisions (c), (d), and (e)
- 4 shall provide on the Internet information regarding the status of
- 5 every license issued by that entity in accordance with the California
- 6 Public Records Act (Chapter 3.5 (commencing with Section 6250)
- 7 of Division 7 of Title 1 of the Government Code) and the

1 Information Practices Act of 1977 (Chapter 1 (commencing with  
2 Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).  
3 The public information to be provided on the Internet shall include  
4 information on suspensions and revocations of licenses issued by  
5 the entity and other related enforcement action, including  
6 accusations filed pursuant to the Administrative Procedure Act  
7 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
8 Division 3 of Title 2 of the Government Code) taken by the entity  
9 relative to persons, businesses, or facilities subject to licensure or  
10 regulation by the entity. The information may not include personal  
11 information, including home telephone number, date of birth, or  
12 social security number. Each entity shall disclose a licensee's  
13 address of record. However, each entity shall allow a licensee to  
14 provide a post office box number or other alternate address, instead  
15 of his or her home address, as the address of record. This section  
16 shall not preclude an entity from also requiring a licensee, who  
17 has provided a post office box number or other alternative mailing  
18 address as his or her address of record, to provide a physical  
19 business address or residence address only for the entity's internal  
20 administrative use and not for disclosure as the licensee's address  
21 of record or disclosure on the Internet.

22 (b) In providing information on the Internet, each entity specific  
23 in subdivisions (c) and (d) shall comply with the Department of  
24 Consumer Affairs' guidelines for access to public records.

25 (c) Each of the following entities within the Department of  
26 Consumer Affairs shall comply with the requirements of this  
27 section:

28 (1) The Board for Professional Engineers, Land Surveyors, and  
29 Geologists shall disclose information on its registrants and  
30 licensees.

31 (2) The Bureau of Automotive Repair shall disclose information  
32 on its licensees, including auto repair dealers, smog stations, lamp  
33 and brake stations, smog check technicians, and smog inspection  
34 certification stations

35 (3) The Bureau of Electronic and Appliance Repair, Home  
36 Furnishings, and Thermal Insulation shall disclose information on  
37 its licensees and registrants, including major appliance repair  
38 dealers, combination dealers (electronic and appliance), electronic  
39 repair dealers, service contract sellers, and service contract  
40 administrators.

1 (4) The Cemetery and Funeral Bureau shall disclose information  
2 on its licensees, including cemetery brokers, cemetery salespersons,  
3 cemetery managers, crematory managers, cemetery authorities,  
4 crematories, cremated remains disposers, embalmers, funeral  
5 establishments, and funeral directors.

6 (5) The Professional Fiduciaries Bureau shall disclose  
7 information on its licensees.

8 (6) The Contractors' State License Board shall disclose  
9 information on its licensees and registrants in accordance with  
10 Chapter 9 (commencing with Section 7000) of Division 3. In  
11 addition to information related to licenses as specified in  
12 subdivision (a), the board shall also disclose information provided  
13 to the board by the Labor Commissioner pursuant to Section 98.9  
14 of the Labor Code.

15 (7) The Bureau for Private Postsecondary Education shall  
16 disclose information on private postsecondary institutions under  
17 its jurisdiction, including disclosure of notices to comply issued  
18 pursuant to Section 94935 of the Education Code.

19 (8) The California Board of Accountancy shall disclose  
20 information on its licensees and registrants.

21 (9) The California Architects Board shall disclose information  
22 on its licensees, including architects and landscape architects.

23 (10) The State Athletic Commission shall disclose information  
24 on its licensees and registrants.

25 (11) The State Board of Barbering and Cosmetology shall  
26 disclose information on its licensees.

27 (12) The State Board of Guide Dogs for the Blind shall disclose  
28 information on its licensees and registrants.

29 (13) The Acupuncture Board shall disclose information on its  
30 licensees.

31 (14) The Board of Behavioral Sciences shall disclose  
32 information on its licensees, including licensed marriage and family  
33 therapists, licensed clinical social workers, licensed educational  
34 psychologists, and licensed professional clinical counselors.

35 (15) The Dental Board of California shall disclose information  
36 on its licensees.

37 (16) The State Board of Optometry shall disclose information  
38 regarding certificates of registration to practice optometry,  
39 statements of licensure, optometric corporation registrations, branch  
40 office licenses, and fictitious name permits of its licensee

1 (17) The Board of Psychology shall disclose information on its  
2 licensees, including psychologists, psychological assistants,  
3 registered psychologists, behavior analysts, assistant behavior  
4 analysts, behavior analysis technicians, and behavior analyst  
5 interns.

6 (d) The State Board of Chiropractic Examiners shall disclose  
7 information on its licensees.

8 (e) The Structural Pest Control Board shall disclose information  
9 on its licensees, including applicators, field representatives, and  
10 operators in the areas of fumigation, general pest and wood  
11 destroying pests and organisms, and wood roof cleaning and  
12 treatment.

13 (f) The Bureau of Medical Marijuana Regulation shall disclose  
14 information on its licensees.

15 (g) “Internet” for the purposes of this section has the meaning  
16 set forth in paragraph (6) of subdivision (f) of Section 17538.

17 SEC. 2. Section 2920 of the Business and Professions Code is  
18 amended to read:

19 2920. (a) The Board of Psychology shall enforce and  
20 administer this chapter and Chapter 6.7 (commencing with Section  
21 2999.10). The board shall consist of nine members, four of whom  
22 shall be public members.

23 (b) On and after July 1, 2018, notwithstanding subdivision (a),  
24 the board shall consist of 11 members, five of whom shall be public  
25 members.

26 (c) This section shall remain in effect only until January 1, 2017,  
27 and as of that date is repealed.

28 (d) Notwithstanding any other law, the repeal of this section  
29 renders the board subject to review by the appropriate policy  
30 committees of the Legislature.

31 SEC. 3. Section 2922 of the Business and Professions Code is  
32 amended to read:

33 2922. (a) In appointing the members of the board, except the  
34 public members, the Governor shall use his or her judgment to  
35 select psychologists who represent, as widely as possible, the varied  
36 professional interests of psychologists in California.

37 (b) The Governor shall appoint two of the public members and  
38 the five licensed members of the board qualified as provided in  
39 Section 2923. The Senate Committee on Rules and the Speaker of  
40 the Assembly shall each appoint a public member.



1 (c) This section shall become inoperative on July 1, 2018, and,  
2 as of January 1, 2019, is repealed.

3 SEC. 4. Section 2922 is added to the Business and Professions  
4 Code, to read:

5 2922. (a) In appointing the licensed members of the board,  
6 the Governor shall use his or her judgment to select psychologists  
7 and behavior analysts who represent, as widely as possible, the  
8 varied professional interests of psychologists and behavior analysts  
9 in California.

10 (b) The Governor shall appoint three of the public members and  
11 the six licensed members of the board qualified as provided in  
12 Section 2923. The Senate Committee on Rules and the Speaker of  
13 the Assembly shall each appoint a public member.

14 (c) This section shall become operative on July 1, 2018.

15 SEC. 5. Section 2923 of the Business and Professions Code is  
16 amended to read:

17 2923. (a) Each member of the board shall have all of the  
18 following qualifications

19 (1) He or she shall be a resident of this state.

20 (2) Each member appointed, except the public members, shall  
21 be a licensed psychologist.

22 (b) The public members shall not be licentiates of the board or  
23 of any board under this division or of any board referred to in the  
24 Chiropractic Act or the Osteopathic Act.

25 (c) This section shall become inoperative on July 1, 2018, and,  
26 as of January 1, 2019, is repealed.

27 SEC. 6. Section 2923 is added to the Business and Professions  
28 Code, to read:

29 2923. (a) Each member of the board shall be a resident of this  
30 state.

31 (b) Five members of the board shall be licensed as psychologists  
32 under this chapter.

33 (c) One member shall be licensed as a psychologist and qualifie  
34 to practice behavior analysis, as defined in Section 2999.12, as  
35 follows:

36 (1) For the first appointment after the operative date of this  
37 section, the member shall hold a certificate as a certified behavior  
38 analyst from a certifying entity, as defined in Section 2999.12

1 (2) For subsequent appointments, the member shall be licensed  
2 as a behavior analyst under Chapter 6.7 (commencing with Section  
3 2999.10).

4 (d) The public members shall not be licentiates of the board or  
5 of any board under this division or of any board referred to in the  
6 Chiropractic Act or the Osteopathic Act.

7 (e) This section shall become operative on July 1, 2018.

8 SEC. 7. Section 2927 of the Business and Professions Code is  
9 amended to read:

10 2927. (a) Five members of the board shall at all times  
11 constitute a quorum.

12 (b) This section shall become inoperative on July 1, 2018, and,  
13 as of January 1, 2019, is repealed.

14 SEC. 8. Section 2927 is added to the Business and Professions  
15 Code, to read:

16 2927. (a) Six members of the board shall at all times constitute  
17 a quorum.

18 (b) This section shall become operative on July 1, 2018.

19 SEC. 9. Chapter 6.7 (commencing with Section 2999.10) is  
20 added to Division 2 of the Business and Professions Code, to read:

21  
22 CHAPTER 6.7. BEHAVIOR ANALYSTS

23  
24 Article 1. General Provisions

25  
26 2999.10. This chapter shall be known, and may be cited, as the  
27 Behavior Analyst Act.

28 2999.11. (a) The Legislature finds and declares that the practice  
29 of behavior analysis in California affects the public health, safety,  
30 and welfare, and is subject to regulation to protect the public from  
31 the unauthorized and unqualified practice of behavior analysis,  
32 and unprofessional, unethical, or harmful conduct by persons  
33 licensed to practice behavior analysis.

34 (b) It is the intent of the Legislature that the board begin  
35 accepting applications for behavior analyst licensure, assistant  
36 behavior analyst licensure, behavior analysis technician approval,  
37 and behavior analyst intern registration no later than January 1,  
38 2018, provided that the funds necessary to implement this chapter  
39 have been appropriated by the Legislature as specified in Section  
40 2999.98.

1 2999.12. For purposes of this chapter, the following terms have  
2 the following meanings:

3 (a) “Behavior analysis technician” means an individual who  
4 works directly with a client to implement applied behavior analysis  
5 services under the direction and supervision of a licensed behavior  
6 analyst, a licensed assistant behavior analyst, or a licensed  
7 psychologist who is qualified to practice behavior analysis, and  
8 has successfully completed the application requirements described  
9 in Section 2999.36.

10 (b) “Board” means the Board of Psychology.

11 (c) “Certifying entity” means the Behavior Analyst Certificatio  
12 Board or its successor, or another national credentialing  
13 organization with behavior analyst certification programs approved  
14 by the board and accredited by the National Commission for  
15 Certifying Agencies.

16 (d) “Committee” means the Behavior Analyst Committee.

17 (e) “Department” means the Department of Consumer Affairs.

18 (f) “Licensed assistant behavior analyst” means a person licensed  
19 under this chapter to practice behavior analysis under the  
20 supervision of a licensed behavior analyst or a licensed  
21 psychologist who is qualified to practice beh vior analysis.

22 (g) “Behavior analyst intern” means a person registered under  
23 this chapter to practice behavior analysis under the supervision of  
24 a licensed behavior analyst or a licensed psychologist who is  
25 qualified to practice beh vior analysis.

26 (h) “Licensed behavior analyst” means a person licensed under  
27 this chapter to practice behavior analysis.

28 (i) “Practice of behavior analysis” or “to practice behavior  
29 analysis” means the design, implementation, and evaluation of  
30 instructional and environmental modifications to produce socially  
31 significant improvements in human behavior and includes the  
32 empirical identification of functional relations between behavior  
33 and environmental factors, known as functional assessment and  
34 analysis, interventions based on scientific research and the direct  
35 observation and measurement of behavior and the environment,  
36 and utilization of contextual factors, motivating operations,  
37 antecedent stimuli, positive reinforcement, and other consequences  
38 to help people develop new behaviors, increase or decrease existing  
39 behaviors, and emit behaviors under specific environmental  
40 conditions.

1 (1) The practice of behavior analysis does not include  
 2 psychological testing and assessment, diagnosis of a mental or  
 3 physical disorder, neuropsychology, psychotherapy, cognitive  
 4 therapy, sex therapy, psychoanalysis, hypnotherapy, counseling,  
 5 prescribing drugs, performing surgery, or administering  
 6 electroconvulsive therapy.

7 (2) The Legislature recognizes that the scopes of practice of  
 8 healing arts licensees regulated under this division sometimes  
 9 contain similar practices. However, nothing herein shall be  
 10 construed to allow a licensed behavior analyst or a licensed  
 11 assistant behavior analyst to engage in those practices, including,  
 12 but not limited to, assessments, other than specific to their scope  
 13 of practice within behavior analysis as described herein. Any  
 14 person practicing behavior analysis under this chapter who violates  
 15 this provision is subject to disciplinary action by both the Board  
 16 of Psychology and the board overseeing the relevant practice.

17  
 18 Article 2. Administration

19  
 20 2999.20. (a) The Board of Psychology is vested with the power  
 21 to administer the provisions and requirements of this chapter, and  
 22 may make and enforce rules and regulations that are reasonably  
 23 necessary to carry out its provisions.

24 (b) This section shall remain in effect only until January 1, 2022,  
 25 and as of that date is repealed. Notwithstanding any other law, the  
 26 repeal of this section renders the board subject to review by the  
 27 appropriate policy committees of the Legislature.

28 2999.21. Protection of the public shall be the highest priority  
 29 for the board in exercising its licensing, regulatory, and disciplinary  
 30 functions pursuant to this chapter. Whenever the protection of the  
 31 public is inconsistent with other interests sought to be promoted,  
 32 the protection of the public shall be paramount.

33 2999.22. The board shall adopt, amend, and repeal regulations  
 34 to implement the requirements of this chapter. All regulations  
 35 adopted by the board shall comply with the provisions of Chapter  
 36 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
 37 Title 2 of the Government Code.

38 2999.23. The board shall adopt a program of consumer and  
 39 professional education in matters relevant to the ethical practice  
 40 of behavior analysis. The board shall establish standards of ethical

1 conduct relating to the practice of behavior analysis that are based  
2 on current standards published by a national credentialing  
3 organization with behavior analyst certification programs approved  
4 by the board and accredited by the National Commission for  
5 Certifying Agencies. These standards shall be applied by the board  
6 as the accepted standard of ethics in all law and ethics licensing  
7 examination development and in all board enforcement policies  
8 and disciplinary case evaluations involving the practice of behavior  
9 analysis.

10 2999.24. The board may employ, subject to civil service and  
11 other laws, employees as may be necessary to carry out the  
12 provisions of this chapter under the direction of the executive  
13 officer of the board

14 2999.25. The board shall maintain, and make available to the  
15 public, a list of all licensees. The board shall make available on  
16 its Internet Web site information regarding the status of every  
17 license issued by the board under this chapter pursuant to Section  
18 27.

19 2999.26. (a) The Behavior Analyst Committee is hereby  
20 created within the jurisdiction of the board to make  
21 recommendations to the board regarding the regulation of the  
22 practice of behavior analysis in the state in order to protect the  
23 public from the unauthorized and unqualified practice of applied  
24 behavior analysis, and unprofessional, unethical, or harmful  
25 conduct by persons licensed to practice behavior analysis.

26 (b) The committee shall consist of five members. Two members  
27 shall be licensed behavior analysts, one of which shall also be a  
28 member of the board. One member shall be a psychologist licensed  
29 under Chapter 6.6 (commencing with Section 2900) and who holds  
30 a current certification from a certifying entity as a behavior analyst.  
31 One member shall be a licensed assistant behavior analyst. One  
32 member shall be a public member who is not licensed under this  
33 chapter, under any chapter within this division, or by any board  
34 referred to in the Chiropractic Act or the Osteopathic Act.

35 (c) The Governor shall appoint one licensed behavior analyst  
36 member, the licensed psychologist member, and the licensed  
37 assistant behavior analyst member. The Senate Committee on  
38 Rules shall appoint the public member, and the Speaker of the  
39 Assembly shall appoint one licensed behavior analyst member.

1 (d) Notwithstanding subdivisions (b) and (c), the initial  
2 appointed members of the committee shall be appointed as follows:

3 (1) The initial members appointed by the Governor shall be as  
4 follows:

5 (A) One member shall be currently certified by a certifying  
6 entity as a certified behavior analyst and shall serve an initial term  
7 of one year.

8 (B) One member shall be currently certified by a certifying  
9 entity as a certified assistant behavior analyst and shall serve an  
10 initial term of two years.

11 (C) One member shall be a licensed psychologist who is  
12 currently certified by a certifying entity as a certified behavior  
13 analyst and shall serve an initial term of three years.

14 (2) The initial member appointed by the Senate Committee on  
15 Rules shall serve a term of four years.

16 (3) The initial member appointed by the Speaker of the  
17 Assembly shall be currently certified by a certifying entity as a  
18 certified behavior analyst and shall serve an initial term of four  
19 years.

20 (e) Except as provided in subdivision (d), each member of the  
21 committee shall hold office for a term of four years, and shall serve  
22 until the appointment of his or her successor or until one year has  
23 elapsed since the expiration of the term for which he or she was  
24 appointed, whichever occurs first. Vacancies shall be filled by the  
25 appointing power for the unexpired portion of the terms in which  
26 they occur. A member shall not serve for more than two  
27 consecutive terms.

28 (f) All terms shall begin on July 1 and expire on June 30.

29 (g) Each member of the committee shall receive per diem and  
30 expenses as provided in Sections 103 and 113.

31 (h) Three members of the committee shall at all times constitute  
32 a quorum.

33 (i) This section shall become operative on July 1, 2018.

34 (j) This section shall remain in effect only until January 1, 2022,  
35 and as of that date is repealed.

36 2999.27. The committee shall do all of the following:

37 (a) Meet at least once per quarter. All meetings of the committee  
38 shall be public meetings. Notice of each regular meeting of the  
39 committee shall be given in accordance with the Bagley-Keene  
40 Open Meeting Act (Article 9 (commencing with Section 11120))

1 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government  
2 Code).

3 (b) Committee meetings may be called upon reasonable notice  
4 at the discretion of the chair, and shall be called at any time upon  
5 reasonable notice by a written request of two committee members  
6 to the chair.

7 (c) The committee shall elect a chair and a vice chair from  
8 among its members at the first meeting held in each fiscal year.  
9 The chair shall preside at all meetings of the committee and shall  
10 work with the executive officer of the board to coordinate the  
11 committee's business. If the chair is unable to attend a meeting,  
12 the vice chair shall preside at the meeting.

13 2999.28. (a) The committee may make recommendations to  
14 the board regarding licensing and practice standards.

15 (b) The committee may make recommendations to the board  
16 regarding the adoption, amendment, and repeal of regulations to  
17 implement the requirements of this chapter including, but not  
18 limited to, the setting of fees and the establishment of disciplinary  
19 guidelines.

20

21

### Article 3. Licensing

22

23 2999.30. To qualify for licensure as a licensed behavior analyst  
24 or a licensed assistant behavior analyst, each applicant shall meet  
25 the board's requirements for behavior analyst or assistant behavior  
26 analyst licensure, as applicable, including all of the following:

27 (a) The applicant has not committed acts or crimes constituting  
28 grounds for denial of licensure under Section 480.

29 (b) The board shall not issue a license or registration to any  
30 person who has been convicted of a crime in this state, or another  
31 state, or in a territory of the United States that involves sexual  
32 abuse of a child, or who is required to register pursuant to Section  
33 290 of the Penal Code or the equivalent in another state or territory.

34 (c) The applicant has successfully passed a state and federal  
35 level criminal offender record information search conducted  
36 through the Department of Justice, as follows:

37 (1) The board shall request from the Department of Justice  
38 subsequent arrest notification service, pursuant to Section 11105.2  
39 of the Penal Code, for each person who submitted information  
40 pursuant to this subdivision.

1 (2) The Department of Justice shall charge a fee sufficient to  
2 cover the cost of processing the request described in this section.  
3 2999.31. (a) In order to obtain a license as a behavior analyst,  
4 an individual shall submit an application on a form approved by  
5 the board accompanied by the fees required by the board as  
6 specified in Section 2999.93  
7 (b) An applicant shall include, with the application, verificatio  
8 from the certifying entity that the applicant meets both of the  
9 following requirements:  
10 (1) Has passed the Board Certified Behavior Analyst  
11 examination or an equivalent examination administered by the  
12 certifying entity.  
13 (2) Maintains an active status as a certified behavior analyst  
14 with the certifying entity.  
15 (c) Each applicant shall obtain a passing score on a California  
16 law and ethics examination administered by the board.  
17 (d) This section shall become inoperative on July 1, 2019. An  
18 applicant who submits his or her application prior to July 1, 2019,  
19 shall be required to meet the requirements of this section to be  
20 licensed by the board.  
21 (e) This section shall remain in effect only until January 1, 2020,  
22 and as of that date is repealed.  
23 2999.32. (a) In order to obtain a license as a behavior analyst,  
24 an individual shall submit an application on a form approved by  
25 the board accompanied by the fees required by the board as  
26 specified in Section 2999.93  
27 (b) An applicant shall include, with the application, verificatio  
28 from the certifying entity that the applicant meets both of the  
29 following requirements:  
30 (1) Has passed the Board Certified Behavior Analyst  
31 examination or an equivalent examination administered by the  
32 certifying entity.  
33 (2) Maintains an active status as a certified behavior analyst  
34 with the certifying entity.  
35 (c) Each applicant shall obtain a passing score on a California  
36 law and ethics examination administered by the board.  
37 (d) The applicant shall meet one of the following requirements:  
38 (1) Possess a master’s degree or higher level of education from  
39 an institution, which meets the requirements described in Section



1 2999.35, that was conferred in behavior analysis, psychology, or  
2 education.

3 (2) Possess a master’s degree or higher level of education, which  
4 meets the requirements described in Section 2999.35, and  
5 completed a behavior analysis course sequence approved by the  
6 certifying entity.

7 (e) In addition to subdivisions (a) to (d), inclusive, an individual  
8 shall meet one of the following paragraphs in order to be licensed  
9 under this chapter:

10 (1) An individual shall have completed both of the following:

11 (A) Two hundred seventy hours of classroom graduate-level  
12 instruction in all of the following content areas:

13 (i) Ethical and professional conduct coursework consisting of  
14 45 hours. The content must be taught in one or more freestanding  
15 courses devoted to ethical and professional conduct of behavior  
16 analysts.

17 (ii) Concepts and principles of behavior analysis consisting of  
18 45 hours.

19 (iii) Research methods in behavior analysis, consisting of 25  
20 hours of measurement, including data analysis, and 20 hours of  
21 experimental design.

22 (iv) Applied behavior analysis, consisting of 45 hours of  
23 fundamental elements of behavior change and specific behavior  
24 change procedures, 30 hours of identification of the problem and  
25 assessment, 10 hours of intervention and behavior change  
26 considerations, 10 hours of behavior change systems, and 10 hours  
27 of implementation, management, and supervision.

28 (v) Elective coursework in behavior analysis consisting of 30  
29 hours.

30 (B) Supervised experiential training by any of the following:

31 (i) One thousand five hundred hours of independent field work  
32 in behavior analysis supervised in accordance with the requirements  
33 of the certifying entity.

34 (ii) One thousand hours of supervised practicum in behavior  
35 analysis within a university practicum approved by the certifying  
36 entity, taken for graduate academic credit, and completed with a  
37 passing grade.

38 (iii) Seven hundred fifty hours of supervised intensive practicum  
39 in behavior analysis within a university practicum approved by

1 the certifying entity, taken for graduate academic credit, and  
2 completed with a passing grade.

3 (iv) A combination of the supervised experience in clause (i),  
4 (ii), or (iii). Hours may be completed in any combination of the  
5 categories of supervised experience. Hours accrued through a  
6 combination of supervised experience shall be proportionately  
7 calculated.

8 (2) An individual shall meet all of the following requirements:

9 (A) Have a faculty appointment of at least three years,  
10 cumulatively, of full-time work as a faculty member at a fully  
11 accredited higher education institution within a five-year period.

12 (B) Taught at least five sections or iterations of behavior analysis  
13 coursework. An applicant shall have taught at least two behavior  
14 analysis content areas, which are concepts and principles of  
15 behavior, single-subject research methods, applied behavior  
16 analysis, and ethics in behavior analysis, in separate courses. Each  
17 course taught shall have been exclusively or primarily devoted to  
18 behavior analysis content, and shall have been taught at the  
19 graduate level. An applicant shall submit proof of completion of  
20 the faculty appointment and teaching requirements from a  
21 department head, including the syllabus for each course taught, to  
22 the board.

23 (C) Published one article with all of the following  
24 characteristics:

25 (i) Behavior analytic in nature.

26 (ii) Includes at least one experimental evaluation.

27 (iii) Published in a high-quality, peer reviewed journal.

28 (iv) The applicant is the first, second, or corresponding author.

29 (v) The article may have been published at any time during the  
30 applicant's career.

31 (D) Obtained supervised experiential training by any of the  
32 following:

33 (i) One thousand five hundred hours of independent field work  
34 in behavior analysis supervised in accordance with the requirements  
35 of the certifying entity.

36 (ii) One thousand hours of supervised practicum in behavior  
37 analysis within a university practicum approved by the certifying  
38 entity, taken for graduate academic credit, and completed with a  
39 passing grade.

1 (iii) Seven hundred fifty hours of supervised intensive practicum  
2 in behavior analysis within a university practicum approved by  
3 the certifying entity, taken for graduate credit, and completed with  
4 a passing grade.

5 (iv) A combination of the supervised experience in clause (i),  
6 (ii), or (iii). Hours may be completed in any combination of the  
7 categories of supervised experience. Hours accrued through a  
8 combination of supervised experience shall be proportionately  
9 calculated.

10 (3) An individual shall have completed all of the following:

11 (A) A doctoral degree in behavior analysis, psychology, or  
12 education from an accredited higher education institution.

13 (B) Ten years of postdoctoral experience practicing behavior  
14 analysis. The duration of practice shall be at least 10 years,  
15 cumulatively, of full-time practice. An applicant's practice shall  
16 have occurred under a relevant state professional credential or  
17 license.

18 (C) At least 500 hours of supplemental supervised experiential  
19 training that meets current experience standards of the certifying  
20 entity, commencing after the 10 years of postdoctoral experience  
21 required in paragraph (b).

22 (f) This section shall become operative on July 1, 2019.

23 2999.33. (a) To obtain a license as an assistant behavior  
24 analyst, an individual shall submit an application on a form  
25 approved by the board accompanied by the fees required by the  
26 board as specified in Section 2999.93

27 (b) An applicant shall include, with the application, verificatio  
28 from the certifying entity that the applicant meets all of the  
29 following requirements:

30 (1) Has passed the Board Certified Assistant Behavior Analyst  
31 examination or equivalent examination administered by the  
32 certifying entity.

33 (2) Maintains an active status as a certified assistant behavior  
34 analyst with the certifying entity.

35 (c) Each applicant shall obtain a passing score on a California  
36 law and ethics examination administered by the board.

37 (d) Each applicant shall provide proof to the board of ongoing  
38 supervision by a licensed behavior analyst or a licensed  
39 psychologist who is qualified to practice behavior analysis in a

1 manner consistent with the certifying entity’s requirements for  
2 supervision of assistant behavior analysts.

3 (e) This section shall become inoperative on July 1, 2019. An  
4 applicant who submits his or her application prior to July 1, 2019,  
5 shall be required to meet the requirements of this section to be  
6 licensed by the board.

7 (f) This section shall remain in effect only until January 1, 2020,  
8 and as of that date is repealed.

9 2999.34. (a) In order for an individual to be licensed as an  
10 assistant behavior analyst under this chapter, he or she shall possess  
11 a baccalaureate degree or higher level of education from an  
12 institution that meets the requirements described in Section  
13 2999.35.

14 (b) An applicant shall include, with the application, verificatio  
15 from the certifying entity that the applicant meets both of the  
16 following requirements:

17 (1) Has passed the Board Certified Assistant Behavior Analyst  
18 examination or an equivalent examination administered by the  
19 certifying entity.

20 (2) Maintains an active status as a certified assistant behavior  
21 analyst with the certifying entity.

22 (c) Each applicant shall obtain a passing score on a California  
23 law and ethics examination administered by the board.

24 (d) Each applicant shall provide proof to the board of ongoing  
25 supervision by a licensed behavior analyst or a licensed  
26 psychologist who is qualified to practice behavior analysis in a  
27 manner consistent with the certifying entity’s requirements for  
28 supervision of assistant behavior analysts.

29 (e) In addition to subdivisions (a) to (d), inclusive, an individual  
30 shall meet all of the following requirements in order to be licensed  
31 under this chapter:

32 (1) Completed a baccalaureate degree or higher level of  
33 education from an institution that meets the requirements in Section  
34 2999.35.

35 (2) An applicant shall meet both of the following:

36 (A) Completed 180 classroom hours of undergraduate or  
37 graduate level instruction in all of the following content areas:

38 (i) Ethical and professional conduct coursework of behavior  
39 analysis consisting of 15 hours.

1 (ii) Concepts and principles of behavior analysis consisting of  
2 45 hours.

3 (iii) Research methods in behavior analysis, consisting of 10  
4 hours of measurement, including data analysis, and fi e hours of  
5 experimental design.

6 (iv) Applied behavior analysis, consisting of 45 hours of  
7 fundamental elements of behavior change and specific behavior  
8 change procedures, 30 hours of identification of the problem and  
9 assessment, fi e hours of intervention and behavior change  
10 considerations, fi e hours of behavior change systems, and fi e  
11 hours of implementation, management, and supervision.

12 (v) Elective coursework in behavior analysis consisting of 15  
13 hours.

14 (B) Obtained supervised experiential training by any of the  
15 following:

16 (i) One thousand hours of independent field work in behavior  
17 analysis supervised in accordance with the requirements of the  
18 certifying entity, taken for academic credit, and completed with a  
19 passing grade.

20 (ii) Six hundred seventy hours of supervised practicum in  
21 behavior analysis within a university practicum approved by the  
22 certifying entity, taken for academic credit, and completed with a  
23 passing grade.

24 (iii) Five hundred hours of supervised intensive practicum in  
25 behavior analysis within a university practicum approved by the  
26 certifying entity, taken for academic credit, and completed with a  
27 passing grade.

28 (iv) A combination of the supervised experience in clause (i),  
29 (ii), or (iii). Hours may be completed in any combination of the  
30 categories of supervised experience. Hours accrued through a  
31 combination of supervised experience shall be proportionately  
32 calculated.

33 (f) This section shall become operative on July 1, 2019.

34 2999.35. The education required to obtain a behavior analyst  
35 license or an assistant behavior analyst license shall be from any  
36 of the following:

37 (a) A United States institution of higher education listed by the  
38 Council for Higher Education Accreditation.

1 (b) A Canadian institution of higher education that is a member  
2 of the Association of Universities and Colleges of Canada or the  
3 Association of Canadian Community Colleges.

4 (c) An applicant for licensure trained in an educational  
5 institution outside the United States or Canada shall demonstrate  
6 to the satisfaction of the board that he or she possesses a degree  
7 in a relevant subject that is equivalent to a degree earned from a  
8 regionally accredited university in the United States or Canada.  
9 Such an applicant shall provide to the board a comprehensive  
10 evaluation of the degree performed by a foreign credential service  
11 that is a member of the National Association of Credential  
12 Evaluation Services (NACES), and any other documentation that  
13 the board deems necessary.

14 2999.35.5. (a) A person other than a licensed behavior analyst,  
15 licensed assistant behavior analyst, or approved behavior analysis  
16 technician may be registered as a behavior analyst intern by the  
17 board in order to prepare for licensure as a behavior analyst. The  
18 behavior analyst intern shall be supervised in accordance with the  
19 board's regulations by a licensed behavior analyst or a licensed  
20 psychologist who is qualified to practice behavior analysis in order  
21 to perform behavior analysis services provided that all of the  
22 following apply:

23 (1) The person's title is "behavior analyst intern."

24 (2) The person meets one of the following requirements:

25 (A) Is enrolled in a defined program of study, course, practicum,  
26 internship, or postdoctoral program that meets the requirements  
27 of subdivision (d) of Section 2999.32.

28 (B) Has completed a defined program of study, course, or  
29 postdoctoral traineeship that meets the requirements of subdivision  
30 (d) of Section 2999.32 and is currently completing supervised  
31 experiential training in accordance with this chapter.

32 (b) The behavior analyst intern's supervisor shall be responsible  
33 for ensuring that the extent, kind, and quality of the behavior  
34 analysis services the behavior analyst intern performs are consistent  
35 with his or her training and experience and shall be responsible  
36 for the behavior analyst intern's compliance with this chapter and  
37 regulations duly adopted hereunder, including those provisions set  
38 forth in Section 2999.62.

39 (c) The behavior analyst intern shall be registered by the board.  
40 In order to register as a behavior analyst intern an individual shall:

1 (1) Submit fingerprint images to the California Department of  
2 Justice for a state and federal criminal background report within  
3 14 days from the date of application.

4 (2) Pay an application fee, in an amount not to exceed a  
5 reasonable regulatory cost, to be determined by the board.

6 (3) Renew his or her application every two years by submitting  
7 to the board verification of continued practice, as specified in this  
8 section, and by paying to the board a renewal fee in an amount  
9 that is 50 percent of the application fee.

10 (4) An individual may only practice as a behavior analyst intern  
11 for up to six years from the date of initial registration.

12 (d) No licensed behavior analyst or licensed psychologist who  
13 is qualified to practice behavior analysis may supervise more than  
14 four behavior analyst interns at any given time unless specificall  
15 authorized to do so by the board. No behavior analyst intern may  
16 provide behavior analysis services to the public except as a  
17 supervisee of a licensed behavior analyst or licensed psychologist  
18 who is qualified to practice beh vior analysis.

19 2999.36. (a) Behavior analysis technicians practicing in this  
20 state under the direction and supervision of an individual licensed  
21 under this chapter or a licensed psychologist who is qualified to  
22 practice behavior analysis shall satisfy all of the following  
23 requirements:

24 (1) Be at least 18 years of age and possess a minimum of a high  
25 school diploma or its equivalent.

26 (2) Submit an application on a form approved by the board.

27 (3) Submit fingerprint images to the California Department of  
28 Justice for a state and federal criminal background report within  
29 14 days from the date of application.

30 (4) Pay an application fee, in an amount not to exceed a  
31 reasonable regulatory cost, to be determined by the board.

32 (5) Renew his or her application every two years by submitting  
33 to the board verification of continued practice as a behavior  
34 analysis technician and by paying to the board a renewal fee in an  
35 amount that is 50 percent of the application fee.

36 (b) The board may deny or revoke acceptance of an application  
37 or the renewal of an application under this section if it is  
38 determined to be in the best interest of public safety and welfare,  
39 as described in Section 2999.21.

1 2999.37. On and after July 1, 2019, it shall be unlawful for any  
2 person to engage in any of the following acts:

3 (a) Engage in the practice of behavior analysis, as defined in  
4 Section 2999.12, without first having complied with the provisions  
5 of this chapter and without holding a current, valid, and active  
6 license as required by this chapter.

7 (b) Represent himself or herself by using the title “licensed  
8 behavior analyst,” or “licensed assistant behavior analyst” without  
9 being duly licensed according to the provisions of this chapter.

10 (c) Make any use of any title, words, letters, or abbreviations  
11 that may reasonably be confused with a designation provided by  
12 this chapter to denote a standard of professional or occupational  
13 competence without being duly licensed.

14 (d) Materially refuse to furnish the board information or records  
15 required or requested pursuant to this chapter.

16 2999.38. This chapter does not apply to any of the following:

17 (a) An individual licensed to practice psychology in this state  
18 under Chapter 6.6 (commencing with Section 2900), if the practice  
19 of behavior analysis engaged in by the licensed psychologist is  
20 within the licensed psychologist’s training and competence.

21 (b) A speech-language pathologist or an audiologist licensed  
22 under Chapter 5.3 (commencing with Section 2530), an  
23 occupational therapist licensed under Chapter 5.6 (commencing  
24 with Section 2570), a physical therapist licensed under Chapter  
25 5.7 (commencing with Section 2600), a marriage and family  
26 therapist licensed under Chapter 13 (commencing with Section  
27 4980), an educational psychologist licensed under Chapter 13.5  
28 (commencing with Section 4989.10), a clinical social worker  
29 licensed under Chapter 14 (commencing with Section 4991), or a  
30 professional clinical counselor licensed under Chapter 16  
31 (commencing with Section 4999.10), if the services provided by  
32 any of those licensees are within his or her licensed scope of  
33 practice and within the scope of his or her training and competence,  
34 provided that he or she does not represent himself or herself as a  
35 licensed behavior analyst or licensed assistant behavior analyst.

36 (c) A parent or guardian, or his or her designee, of a recipient  
37 of behavior analysis services who acts under the direction of a  
38 licensed behavior analyst or an individual exempt pursuant to  
39 subdivision (a) or (b) for that recipient.



1 (d) An individual who teaches behavior analysis or conducts  
2 behavior analysis research, provided that such teaching or research  
3 does not involve the direct delivery of behavior analysis services.

4 (e) A behavior analyst licensed in another state or certified by  
5 the certifying entity to practice independently, and who temporarily  
6 provides behavior analysis services in California during a period  
7 of not more than 90 days in a calendar year.

8 ~~(f) An individual who is vendorized by one or more regional  
9 centers of the State Department of Developmental Services while  
10 practicing behavior analysis services authorized under that  
11 vendorization. That individual shall not represent himself or herself  
12 as a licensed behavior analyst or licensed assistant behavior analyst  
13 unless he or she holds a license under this chapter, and shall not  
14 offer behavior analysis services to any person or entity other than  
15 the regional centers with which he or she is vendorized or accept  
16 remuneration for providing behavior analysis services other than  
17 the remuneration received from those regional centers unless he  
18 or she holds a license under this chapter.~~

19 (g)

20 (f) An individual employed or contracted by a local educational  
21 agency, or a nonpublic agency or school with a contract with a  
22 local educational agency, for the purpose of serving students with  
23 behavioral and developmental issues when in classroom and other  
24 school settings. This individual shall not represent himself or  
25 herself as a licensed behavior analyst or licensed assistant behavior  
26 analyst unless he or she holds a license under this chapter, and  
27 shall not offer behavior analysis services to any person or entity  
28 other than the local education agencies with which he or she has  
29 a contract or accept remuneration for providing behavior analysis  
30 services other than the remuneration received from those local  
31 education agencies unless he or she holds a license under this  
32 chapter.

33 2999.41. A licensee shall give written notice to the board of a  
34 name change within 30 days after each change, giving both the  
35 old and new names. A copy of the legal document authorizing the  
36 name change, such as a court order or marriage certificate, shall  
37 be submitted with the notice.

38 2999.44. (a) A license shall expire and become invalid two  
39 years after it is issued at 12 midnight on the last day of the month  
40 in which it was issued, if not renewed.

1 (b) To renew an unexpired license, the licensee shall, on or  
 2 before the date on which it would otherwise expire, apply for  
 3 renewal on a form provided by the board, accompanied by the  
 4 renewal fee set by the board. The licensee shall include verificatio  
 5 from the certifying entity that he or she maintains an active  
 6 certification status with the ren wal form.

7 (c) To renew an assistant behavior analyst license, in addition  
 8 to the requirements in subdivision (b), the licensee shall submit  
 9 proof of ongoing supervision by a licensed behavior analyst or a  
 10 licensed psychologist who is qualified to practice behavior analysis  
 11 in a manner consistent with the board’s requirements for  
 12 supervision of assistant behavior analysts.

13 2999.45. (a) A license that has expired may be renewed at any  
 14 time within three years after its expiration by applying for renewal  
 15 on a form provided by the board, payment of all accrued and unpaid  
 16 renewal fees, and the delinquency fee specified in Section 2999.93.  
 17 The licensee shall include verification from the certifying entity  
 18 that he or she maintains an active certification status with the  
 19 renewal form.

20 (b) Except as provided in Section 2999.47, a license that is not  
 21 renewed within three years of its expiration shall not be renewed,  
 22 restored, or reinstated, and the license shall be canceled  
 23 immediately upon expiration of the three-year period.

24 2999.46. (a) The board shall not issue any renewal license, a  
 25 new license after expiration of an expired license, or a reinstatement  
 26 license unless the applicant submits proof that he or she has  
 27 completed not less than 32 hours of approved continuing education  
 28 in the preceding two-year licensure cycle for licensed behavior  
 29 analysts and 20 hours of approved continuing education in the  
 30 preceding two-year licensure cycle for licensed assistant behavior  
 31 analysts.

32 (b) Each person renewing or reinstating his or her license or  
 33 obtaining a new license after expiration of a prior license issued  
 34 pursuant to this chapter shall submit proof of compliance with this  
 35 section to the board.

36 (c) A person applying for renewal, a new license after expiration  
 37 of a prior license, or reinstatement to an active license status shall  
 38 certify under penalty of perjury that he or she is in compliance  
 39 with this section.

1 (d) The board may recognize continuing education courses that  
2 have been approved by the certifying entity.

3 (e) The board shall adopt regulations as necessary for  
4 implementation of this section.

5 2999.47. (a) A suspended license is subject to expiration and  
6 shall be renewed as provided in this article, but such renewal does  
7 not entitle the licensee, while the license remains suspended, and  
8 until it is reinstated, to engage in the licensed activity or in any  
9 other activity or conduct in violation of the order or judgment by  
10 which the license was suspended.

11 (b) A license revoked on disciplinary grounds is subject to  
12 expiration as provided in this article, but it may not be renewed.  
13 If it is reinstated after its expiration, the licensee, as a condition  
14 of reinstatement, shall pay a reinstatement fee in an amount equal  
15 to the renewal fee, plus the delinquency fee, and any fees accrued  
16 at the time of its revocation.

17  
18 Article 4. Enforcement  
19

20 2999.60. The board may on its own, and shall, upon the receipt  
21 of a complaint from any person, investigate the actions of any  
22 licensee. The board shall review a licensee's alleged violation of  
23 statute, regulation, or any other law and any other complaint  
24 referred to it by the public, a public agency, or the department,  
25 and may upon a finding of a violation take disciplinary action  
26 under this article.

27 2999.61. A license issued under this chapter may be denied,  
28 revoked, or otherwise sanctioned upon demonstration of  
29 ineligibility for licensure, including, but not limited to, failure to  
30 maintain active certification by the certifying entity or falsificatio  
31 of documentation submitted to the board for licensure or submitted  
32 to the certifying authority for certification

33 2999.62. The board may refuse to issue a registration or license,  
34 or may issue a registration or license with terms and conditions,  
35 or may suspend or revoke the registration or license of any  
36 registrant or licensee if the applicant, registrant, or licensee has  
37 been guilty of unprofessional conduct. Unprofessional conduct  
38 shall include, but not be limited to:

- 1 (a) Conviction of a crime substantially related to the
- 2 qualifications, functions, or duties of a licensed behavior analyst
- 3 or a licensed assistant behavior analyst.
- 4 (b) Use of any controlled substance as defined in Division 10
- 5 (commencing with Section 11000) of the Health and Safety Code,
- 6 dangerous drug, or any alcoholic beverage to an extent or in a
- 7 manner dangerous to himself or herself, any other person, or the
- 8 public, or to an extent that this use impairs his or her ability to
- 9 safely perform the practice of behavior analysis.
- 10 (c) Fraudulently or neglectfully misrepresenting the type or
- 11 status of a license actually held.
- 12 (d) Impersonating another person holding a license or allowing
- 13 another person to use his or her license.
- 14 (e) Use of fraud or deception in applying for a license or in
- 15 passing any examination required by this chapter.
- 16 (f) Paying, offering to pay, accepting, or soliciting any
- 17 consideration, compensation, or remuneration, whether monetary
- 18 or otherwise, for the referral of clients.
- 19 (g) Violating Section 17500.
- 20 (h) Willful, unauthorized communication of information
- 21 received in professional confidence
- 22 (i) Violating any rule of professional conduct promulgated by
- 23 the board and set forth in regulations duly adopted under this
- 24 chapter.
- 25 (j) Being grossly negligent in the practice of his or her
- 26 profession.
- 27 (k) Violating any of the provisions of this chapter or regulations
- 28 duly adopted thereunder.
- 29 (l) The aiding or abetting of any person to engage in the unlawful
- 30 practice of behavior analysis.
- 31 (m) The suspension, revocation, or imposition of probationary
- 32 conditions or other disciplinary action by another state or country
- 33 of a license, certificate, or registration to practice behavior analysis
- 34 issued by that state or country to a person also holding a license
- 35 issued under this chapter if the act for which the disciplinary action
- 36 was taken constitutes a violation of this section. A certified copy
- 37 of the decision or judgment of the other state or country shall be
- 38 conclusive evidence of that action.
- 39 (n) The commission of any dishonest, corrupt, or fraudulent act.

- 1 (o) Any act of sexual abuse or sexual relations with a patient,  
2 with a former patient, or with a patient’s parent, guardian, or  
3 caregiver within two years following termination of therapy, or  
4 sexual misconduct that is related to the qualifications, functions,  
5 or duties of a licensed behavior analyst or a licensed assistant  
6 behavior analyst.
  - 7 (p) Functioning outside of his or her particular field or fields of  
8 competence as established by his or her education, training, and  
9 experience.
  - 10 (q) Willful failure to submit, on behalf of an applicant for  
11 licensure, verification of supervised experience to the board.
  - 12 (r) Repeated acts of negligence.
  - 13 (s) Failure to comply with all ethical and disciplinary standards  
14 published by the certifying entity.
- 15 2999.63. (a) Except as provided in subdivisions (b), (c), and  
16 (e), any accusation filed against a licensee pursuant to Section  
17 11503 of the Government Code shall be filed within three years  
18 from the date the board discovers the alleged act or omission that  
19 is the basis for disciplinary action, or within seven years from the  
20 date the alleged act or omission that is the basis for disciplinary  
21 action occurred, whichever occurs first
- 22 (b) An accusation filed against a licensee pursuant to Section  
23 11503 of the Government Code alleging the procurement of a  
24 license by fraud or misrepresentation is not subject to the  
25 limitations set forth in subdivision (a).
  - 26 (c) The limitation provided for by subdivision (a) shall be tolled  
27 for the length of time required to obtain compliance when a report  
28 required to be filed by the licensee or registrant with the board  
29 pursuant to Article 11 (commencing with Section 800) of Chapter  
30 1 is not filed in a timely fashion.
  - 31 (d) If an alleged act or omission involves a minor, the seven-year  
32 limitations period provided for by subdivision (a) and the 10-year  
33 limitations period provided for by subdivision (e) shall be tolled  
34 until the minor reaches the age of majority.
  - 35 (e) An accusation filed against a licensee pursuant to Section  
36 11503 of the Government Code alleging sexual misconduct shall  
37 be filed within three years after the board discovers the act or  
38 omission alleged as the ground for disciplinary action, or within  
39 10 years after the act or omission alleged as the ground for  
40 disciplinary action occurs, whichever occurs first

1 (f) The limitations period provided by subdivision (a) shall be  
2 tolled during any period if material evidence necessary for  
3 prosecuting or determining whether a disciplinary action would  
4 be appropriate is unavailable to the board due to an ongoing  
5 criminal investigation.

6 2999.64. Notwithstanding Section 2999.62, any proposed  
7 decision or decisions issued under this chapter in accordance with  
8 the procedures set forth in Chapter 5 (commencing with Section  
9 11500) of Part 1 of Division 3 of Title 2 of the Government Code  
10 that contains any finding of fact that the licensee engaged in any  
11 act of sexual contact, as defined in Section 728, when that act is  
12 with a patient, with a former patient, or with a patient's parent,  
13 guardian, or caregiver within two years following termination of  
14 services, shall contain an order of revocation. The revocation shall  
15 not be stayed by the administrative law judge.

16 2999.66. The board may deny an application for, or issue  
17 subject to terms and conditions, or suspend or revoke, or impose  
18 probationary conditions upon, a license or registration after a  
19 hearing as provided in Section 2999.70.

20 2999.67. A plea or verdict of guilty or a conviction following  
21 a plea of nolo contendere made to a charge which is substantially  
22 related to the qualifications, functions, and duties of a licensed  
23 behavior analyst or licensed assistant behavior analyst is deemed  
24 to be a conviction within the meaning of this article. The board  
25 may order the license suspended or revoked, or may decline to  
26 issue a license when the time for appeal has elapsed, the judgment  
27 of conviction has been affirmed on appeal, or when an order  
28 granting probation is made suspending the imposition of sentence,  
29 irrespective of a subsequent order under Section 1203.4 of the  
30 Penal Code allowing the person to withdraw his or her plea of  
31 guilty and to enter a plea of not guilty, or setting aside the verdict  
32 of guilty, or dismissing the accusation, information, or indictment.

33 2999.68. Any person required to register as a sex offender  
34 pursuant to Section 290 of the Penal Code, is not eligible for  
35 licensure by the board.

36 2999.69. An administrative disciplinary decision that imposes  
37 terms of probation may include, among other things, a requirement  
38 that the licensee who is being placed on probation pay the monetary  
39 costs associated with monitoring the probation.

1 2999.70. The proceedings under this article shall be conducted  
2 by the board in accordance with Chapter 5 (commencing with  
3 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
4 Code.

5 2999.80. A person who violates any of the provisions of this  
6 chapter is guilty of a misdemeanor punishable by imprisonment  
7 in a county jail not exceeding six months or by a fine not exceeding  
8 two thousand five hundred dollars (\$2,500), or by both that fine  
9 and imprisonment.

10 2999.81. In addition to other proceedings provided in this  
11 chapter, whenever any person has engaged, or is about to engage,  
12 in any acts or practices that constitute, or will constitute, an offense  
13 against this chapter, the superior court in and for the county  
14 wherein the acts or practices take place, or are about to take place,  
15 may issue an injunction or other appropriate order restraining that  
16 conduct on application of the board, the Attorney General, or the  
17 district attorney of the county. Proceedings under this section shall  
18 be governed by Chapter 3 (commencing with Section 525) of Title  
19 7 of Part 2 of the Code of Civil Procedure, except that it shall be  
20 presumed that there is no adequate remedy at law and that  
21 irreparable damage will occur if the continued violation is not  
22 restrained or enjoined. On the written request of the board, or on  
23 its own motion, the board may commence an action in the superior  
24 court under this section.

25 2999.83. (a) (1) A licensee who fails or refuses to comply  
26 with a request for the medical records of a client, that is  
27 accompanied by that client's written authorization for release of  
28 those records to the board, within 15 days of receiving the request  
29 and authorization, shall pay to the board a civil penalty of one  
30 thousand dollars (\$1,000) per day for each day that the documents  
31 have not been produced after the 15th day, unless the licensee is  
32 unable to provide the documents within this time period for good  
33 cause.

34 (2) A health care facility shall comply with a request for the  
35 medical records of a client that is accompanied by that client's  
36 written authorization for release of records to the board together  
37 with a notice citing this section and describing the penalties for  
38 failure to comply with this section. Failure to provide the  
39 authorizing client's medical records to the board within 30 days  
40 of receiving the request, authorization, and notice shall subject the

1 health care facility to a civil penalty, payable to the board, of up  
2 to one thousand dollars (\$1,000) per day for each day that the  
3 documents have not been produced after the 30th day, up to ten  
4 thousand dollars (\$10,000), unless the health care facility is unable  
5 to provide the documents within this time period for good cause.  
6 This paragraph shall not require health care facilities to assist the  
7 board in obtaining the client’s authorization. The board shall pay  
8 the reasonable costs of copying the medical records.

9 (b) (1) A licensee who fails or refuses to comply with a court  
10 order, issued in the enforcement of a subpoena, mandating the  
11 release of records to the board shall pay to the board a civil penalty  
12 of one thousand dollars (\$1,000) per day for each day that the  
13 documents have not been produced after the date by which the  
14 court order requires the documents to be produced, unless it is  
15 determined that the order is unlawful or invalid. Any statute of  
16 limitations applicable to the filing of an accusation by the board  
17 shall be tolled during the period the licensee is out of compliance  
18 with the court order and during any related appeals.

19 (2) Any licensee who fails or refuses to comply with a court  
20 order, issued in the enforcement of a subpoena, mandating the  
21 release of records to the board, shall be subject to a civil penalty,  
22 payable to the board, in an amount not to exceed five thousand  
23 dollars (\$5,000). The amount of the penalty shall be added to the  
24 licensee’s renewal fee if it is not paid by the next succeeding  
25 renewal date. Any statute of limitations applicable to the filing of  
26 an accusation by the board shall be tolled during the period the  
27 licensee is out of compliance with the court order and during any  
28 related appeals.

29 (3) A health care facility that fails or refuses to comply with a  
30 court order, issued in the enforcement of a subpoena, mandating  
31 the release of client records to the board, that is accompanied by  
32 a notice citing this section and describing the penalties for failure  
33 to comply with this section, shall pay to the board a civil penalty  
34 of up to one thousand dollars (\$1,000) per day for each day that  
35 the documents have not been produced, up to ten thousand dollars  
36 (\$10,000), after the date by which the court order requires the  
37 documents to be produced, unless it is determined that the order  
38 is unlawful or invalid. Any statute of limitations applicable to the  
39 filing of an accusation by the board against a licensee shall be



1 tolled during the period the health care facility is out of compliance  
2 with the court order and during any related appeals.

3 (4) Any health care facility that fails or refuses to comply with  
4 a court order, issued in the enforcement of a subpoena, mandating  
5 the release of records to the board, shall be subject to a civil  
6 penalty, payable to the board, in an amount not to exceed fi e  
7 thousand dollars (\$5,000). Any statute of limitations applicable to  
8 the filing of an accusation by the board against a licensee shall be  
9 tolled during the period the health care facility is out of compliance  
10 with the court order and during any related appeals.

11 (c) Multiple acts by a licensee in violation of subdivision (b)  
12 shall be a misdemeanor punishable by a fine not to exceed fi e  
13 thousand dollars (\$5,000) or by imprisonment in a county jail not  
14 exceeding six months, or by both that fine and imprisonment.  
15 Multiple acts by a health care facility in violation of subdivision  
16 (b) shall be a misdemeanor punishable by a fine not to exceed fi e  
17 thousand dollars (\$5,000) and shall be reported to the State  
18 Department of Health Care Services and shall be considered as  
19 grounds for disciplinary action with respect to licensure, including  
20 suspension or revocation of the license or certificate

21 (d) A failure or refusal of a licensee to comply with a court  
22 order, issued in the enforcement of a subpoena, mandating the  
23 release of records to the board constitutes unprofessional conduct  
24 and is grounds for suspension or revocation of his or her license.

25 (e) The imposition of the civil penalties authorized by this  
26 section shall be in accordance with the Administrative Procedure  
27 Act (Chapter 5 (commencing with Section 11500) of Part 1 of  
28 Division 3 of Title 2 of the Government Code).

29 (f) For purposes of this section, “health care facility” means a  
30 clinic or health facility licensed or exempt from licensure pursuant  
31 to Division 2 (commencing with Section 1200) of the Health and  
32 Safety Code.

33  
34 Article 5. Revenue

35  
36 2999.90. The board shall report each month to the Controller  
37 the amount and source of all revenue received pursuant to this  
38 chapter and at the same time deposit the entire amount thereof in  
39 the State Treasury for credit to the Psychology Fund established  
40 by Section 2980.

1 2999.91. (a) The moneys credited to the Psychology Fund  
2 under Section 2999.90 shall, upon appropriation by the Legislature,  
3 be used for the purposes of carrying out and enforcing the  
4 provisions of this chapter.

5 (b) The board shall keep records that will reasonably ensure  
6 that funds expended in the administration of each licensing  
7 category bear a reasonable relation to the revenue derived from  
8 each category, and shall so notify the department no later than  
9 May 31 of each year.

10 2999.93. The board shall establish fees for the application for  
11 and the issuance and renewal of licenses to cover, but not exceed,  
12 the reasonable regulatory costs of the board related to administering  
13 this chapter. The fees shall be fixed by the board in regulations  
14 that are duly adopted under this chapter. Fees assessed pursuant  
15 to this section shall not exceed the following:

16 (a) The delinquency fee shall be 50 percent of the biennial  
17 renewal fee.

18 (b) The fee for rescoring an examination shall be twenty dollars  
19 (\$20).

20 (c) The fee for issuance of a replacement license shall be twenty  
21 dollars (\$20).

22 (d) The fee for issuance of a certificate or letter of good standing  
23 shall be twenty-five dollars (\$25).

24 2999.94. (a) A person licensed under this chapter is exempt  
25 from the payment of the renewal fee in any one of the following  
26 instances:

27 (1) While engaged in full-time active service in the United States  
28 Army, Navy, Air Force, or Marine Corps.

29 (2) While in the United States Public Health Service.

30 (3) While a volunteer in the Peace Corps or AmeriCorps VISTA.

31 (b) Every person exempted from the payment of the renewal  
32 fee by this section shall not engage in any private practice and  
33 shall become liable for the fee for the current renewal period upon  
34 the completion of his or her period of full-time active service and  
35 shall have a period of 60 days after becoming liable within which  
36 to pay the fee before the delinquency fee becomes applicable. Any  
37 person who completes his or her period of full-time active service  
38 within 60 days of the end of a renewal period is exempt from the  
39 payment of the renewal fee for that period.

1 (c) The time spent in that full-time active service or full-time  
2 training and active service shall not be included in the computation  
3 of the three-year period for renewal of an expired license specific  
4 in Section 2999.45.

5 (d) The exemption provided by this section shall not be  
6 applicable if the person engages in any practice for compensation  
7 other than full-time service in the United States Army, Navy, Air  
8 Force, or Marine Corps, in the United States Public Health Service,  
9 or the Peace Corps or AmeriCorps VISTA.

10 2999.98. The licensing and regulatory program under this  
11 chapter shall be supported from fees assessed to applicants and  
12 licensees. Startup funds to implement this program shall be derived,  
13 as a loan, from the Psychology Fund, subject to an appropriation  
14 by the Legislature in the annual Budget Act. The board shall not  
15 implement this chapter until funds have been appropriated.

16 SEC. 10. No reimbursement is required by this act pursuant  
17 to Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.

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## ACCEPTABLE DEGREE DEFINITIONS

### Behavior Analysis:

The degree or program name must include the term “behavior analysis” (or a functional equivalent). Graduate programs accredited by Association for Behavior Analysis International meet this requirement.

### Education:

The degree or program name must include the words “education” or “educational.” Applicants with education degrees that do not meet this requirement must submit documentation clearly illustrating that (a) the coursework was focused on education and (b) the degree was offered by a department of education. Department is defined as the local collection of academic faculty responsible for mounting a specialized curriculum within a college/school.

### Psychology:

The degree or program name must include the word “psychology” or “psychological.” Applicants with psychology degrees that do not meet this requirement must submit documentation clearly illustrating that (a) the coursework was focused on psychology and (b) the degree was offered by a department of psychology. Department is defined as the local collection of academic faculty responsible for mounting a specialized curriculum within a college/school. Note: Degrees in forms of counseling and other mental health areas must meet this definition.

### Degree Program in Which the Candidate

### Completed a BACB Approved Course Sequence:

Applicants who seek to exercise this option must demonstrate that (a) they completed a single BACB approved course sequence (BCBA-level) as part of their degree requirements and that (b) the approved coursework was offered by the department in which the program was housed and was included in the degree program's official plan of study. Note: approved courses may have been offered either as core requirements or elective courses, but they must have been offered by program faculty.

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**CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES**

**BILL ANALYSIS**

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**BILL NUMBER: SB 1195**

**VERSION: AMENDED APRIL 6, 2016**

**AUTHOR: HILL**

**SPONSOR: AUTHOR**

**RECOMMENDED POSITION: NONE**

**SUBJECT: PROFESSIONS AND VOCATIONS: BOARD ACTIONS: COMPETITIVE IMPACT**

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**Summary:** This bill seeks to ensure that boards under the Department of Consumer Affairs (DCA) are in compliance with the recent Supreme Court ruling, *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. This ruling stated that state licensing boards consisting of market participants in the industry regulated by the board can be held liable for violations of antitrust law unless their anti-competitive decision meets two requirements. The anti-competitive action or decision must be based on a clearly articulated and affirmatively expressed state policy; and the board decision must be actively supervised by the state.

**Existing Law:**

- 1) States that the decisions of any board under DCA with respect to setting standards, conducting exams, passing candidates, and revoking licenses are final and not subject to review by the director, except in certain specified circumstances.  
(Business and Professions Code (BPC) §109(a))
- 2) Provides the following exceptions to the statute listed above (BPC §§109(b) and (c)):
  - a) The director may initiate an investigation of allegations of misconduct in the preparation, administration, or scoring of a board-administered exam or in the review of licensing qualifications.
  - b) The director may intervene when the Division of Investigation discloses probable cause that the conduct or activity of a board, its members, or employees has violated criminal law.
- 3) Allows the director to audit and review inquiries and complaints regarding the following for the Medical Board, the allied health professional boards, and the Board of Podiatric Medicine (BPC §116):
  - a) Licensees;
  - b) Dismissals of disciplinary cases;
  - c) The opening, conduct, or closure of investigations;
  - d) Informal conferences; and

- e) Discipline short of formal accusation.
- 4) Allows the director to review a proposed regulation and disapprove it based on the grounds that it is injurious to public health, safety, or welfare, but the board within a specified period can override the director's disapproval. (BPC §313.1)
- 5) Requires a public entity to pay a judgment against an employee or former employee resulting from a claim or action for an injury arising out of an act or omission occurring within the scope of his or her employment with the public entity, under certain specified circumstances and prohibits the payment of punitive or exemplary damages. (Government Code (GC) §825)
- 6) Sets forth the procedures required to adopt, amend, or repeal a regulation. (GC §11346.5)
- 7) Sets forth requirements that the Office of Administrative Law (OAL) must utilize when reviewing proposed regulations. (GC §11349)

**This Bill:**

- 1) Requires the director of DCA, on his own initiative, or upon request by a consumer or licensee, to review any board decision or other action to determine whether it unreasonably restrains trade. (BPC §109(c))
- 2) Outlines the steps for the director to follow when conducting such a review (BPC §109(c)):
  - a. Assess whether the board's action or decision reflects a clearly articulated and affirmatively expressed state law. If it does not, the director shall disprove the action;
  - b. Determine whether the action was the result of the board's exercise of ministerial or discretionary judgment;
  - c. If the board exercised discretionary judgment, the director must review the board action or decision with respect to the markets impacted, and determine whether the anticompetitive effects of the action or decision are outweighed by the benefit to the public. The director may employ or contract with independent antitrust or economic experts to do this.
  - d. If the board action or decision was not previously subject to public comment, the director must release the subject matter of the investigation for a 30-day public comment period.
  - e. Based on the findings, the director may approve, disapprove, or modify the action or decision, and issue a final written decision within 90 days.
- 3) States that the decision of the director is final, unless the state or federal constitution requires an appeal. (BPC §109(c))



- 4) States that the review conducted by the director as noted above does not apply when an individual seeks review of disciplinary or other action pertaining solely to that individual. (BPC §109(d))
- 5) States that this process shall not be construed to affect, impede, or delay any disciplinary actions of a board. (BPC §109(g))
- 6) Allows the director to audit and review inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by any board or bureau within DCA. (BPC §116)
- 7) Requires the director to review proposed regulations with respect to markets impacted and potential anticompetitive effects. Allows the director to modify a rule or regulation as a condition of approval. (BPC §313.1)
- 8) Requires a public entity to pay for a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a board member. (GC §825(g))
- 9) Requires that if a state board has a controlling number of decision makers as active market participants, any regulation it submits to OAL must be reviewed for competitive impact. (GC §11349.1)
- 10) Defines “competitive impact” as a demonstration that the regulation is authorized by a clearly articulated and affirmatively expressed state law, that the regulation furthers the public protection mission of the state agency, and that the impact on competition is justified in light of the rationale for the regulation. (GC §11349)
- 11) Requires OAL to reject a regulation proposal that does not demonstrate the regulation is authorized by a clearly articulated and affirmatively expressed state law, does not further public protection, or the impact on competition is not justified by the rationale. (GC §11349.1(d)(6))
- 12) Allows OAL to employ or contract for the services of independent antitrust or economic experts when reviewing proposed regulations for competitive impact. (GC §11349.1(h))
- 13) This bill also serves as the sunset bill for the Veterinary Medical Board (VMB).

**Comment:**

- 1) **Intent.** This bill is a response to a recent Supreme Court ruling, *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.

With this ruling, the Supreme Court provided that when the majority of members of a regulatory board are active market participants, then “board members are entitled to state-action antitrust immunity only if they act pursuant to a clearly articulated and

affirmatively expressed state policy and their decisions are actively supervised by the state<sup>1</sup>.”

The Supreme Court stated that “active supervision” requires “that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.” They also noted that “the supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it.” The FTC has subsequently released guidance materials on active supervision.

DCA has subsequently begun work with the Legislature to ensure that its boards are in compliance with the Supreme Court ruling. It has outlined three concepts, which this bill addresses, in order to ensure active state supervision of its boards.

**Attachment A** contains the DCA policy concepts memo.

- 2) Composition of Board of Behavioral Sciences.** The membership of this Board is prescribed in statute. BPC §4990 sets the membership at 13 individuals, 6 of whom are to be licensees representing the Board’s various professions, and 7 being public members.

This Board, unlike many others under DCA, is a public majority board. Nonetheless, as pointed out by both the AG and in the FTC Staff Guidance, the inquiry into anti-competitive impact rests more strongly on control of the board by active market participants rather than the make-up of the board.

Additionally, if the Board was acting with any public members absent, or any public slots unfilled, and the controlling number of decision makers were active market participants, any regulations approved at that time would still be subject to competitive impact review by OAL.

- 3) DCA Director Authority.** Currently, DCA’s director can only investigate board matters when there have been allegations of misconduct or when there is probable cause of criminal conduct. The director is authorized to disprove a regulation on the grounds that it is injurious to public health, safety, or welfare.

This bill would give new powers to the director as follows:

- Authority to review any board decision or other action to determine whether it unreasonably restrains trade;
- Authority to audit and review inquiries and complaints regarding licensees, disciplinary case dismissals, the opening, conduct, or closure of investigations, informal conferences, and discipline by any DCA board or bureau; and

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<sup>1</sup> Memo from DCA Director Awet Kidane, “North Carolina Board of Dental Examiners v. Federal Trade Commission: Policy Concepts,” March 25, 2016.

- Authority to review regulations with respect to markets impacted and potential anticompetitive effects, and to approve, disprove, or modify the regulation.

**4) Effect on Licensing and Disciplinary Decisions.** This bill requires the director of DCA to review on his own initiative, or upon request of a consumer or licensee, any board decision or other action to determine whether it unreasonably restrains trade.

The bill contains language that the review requirements shall not be construed to affect, impede, or delay any disciplinary actions of the Board. The bill also states that the anticompetitive effects review does not apply when an individual seeks review of a disciplinary order solely pertaining to that individual.

However, the power granted to the director to review licensure and disciplinary decisions is new. If such a request was made, the director would be required to:

- Assess whether the action or decision reflects a clearly articulated and affirmatively expressed state law;
- Assess whether the action or decision was the result of the Board's exercise of ministerial or discretionary judgment;
- Conduct a full review of the anticompetitive effects of the action or decision (this would not apply to disciplinary decisions, as they are exempted, but would apply to all other decisions); and
- Post his or her final written decision approving, modifying, or disapproving the action or decision with an explanation. The director's decision is final.

The Board makes decisions regarding issuance of a license or provision of discipline by examining the circumstances of each particular case (education and experience for licensure, and nature and pattern of the violations for disciplinary) against current law. The proposed authority would create an appeal process that would likely be used by every licensee and applicant receiving an unfavorable outcome.

Disciplinary cases already have the benefit of review by an administrative law judge and if appealed, by the Superior Court. For licensing cases, the Board already consults with a subject matter expert who specializes in mental health education when it is unclear if an individual's particular degree qualifies him or her for licensure. A comparable review by the Director would result in a duplication of efforts and the expenditure of additional financial resources.

**5) Definition of "Clearly Articulated and Affirmatively Expressed" State Law.**

This bill requires that board decisions, actions, or regulatory proposals be authorized by a clearly articulated and affirmatively expressed state law.

While the board always strives to accurately reflect the intent of the law, sometimes the law has ambiguities, and reasonable persons may interpret it in different ways. While regulations are generally run based on expressed authority, often times they

are run based on implied authority as well. Use of the above statement calls into question whether a Board may still propose regulations based on implied authority. In many cases, regulations must be run based on implied authority, because there is no way that law can account for all scenarios that may arise, and as written the authority is therefore implied. Therefore, staff suggests an amendment redefining “competitive impact,” with regards to reviewing regulations, as follows:

GC §11349(g) “Competitive impact” is assessed by a review of the record of the rulemaking proceeding or other documentation that demonstrates that the regulation is authorized by express or implied state law, that the regulation furthers the public protection mission of the state agency, and that the impact on competition is justified in light of the applicable regulatory rationale for the regulation.

## 6) Support and Opposition.

### Support

- University of California – Davis School of Veterinary Medicine

### Support if Amended

- California Veterinary Medical Association

### Opposition

- None at this time.

## 7) History.

### **2016**

04/19/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (April 18). Re-referred to Com. on APPR.

04/06/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.

03/29/16 Set for hearing April 18.

03/03/16 Referred to Com. on B., P. & E.D.

02/19/16 From printer. May be acted upon on or after March 20.

02/18/16 Introduced. Read first time. To Com. on RLS. for assignment. To print.

## 8) Attachments.

**Attachment A:** Memo from DCA Director Awet Kidane, “North Carolina Board of Dental Examiners v. Federal Trade Commission: Policy Concepts,” March 25, 2016.

AMENDED IN SENATE APRIL 6, 2016

**SENATE BILL**

**No. 1195**

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**Introduced by Senator Hill**

February 18, 2016

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An act to amend Sections ~~4800 and 4804.5~~ of 109, 116, 153, 307, 313.1, 2708, 4800, 4804.5, 4825.1, 4830, and 4846.5 of, and to add Sections 4826.3, 4826.5, 4826.7, 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections 825, 11346.5, 11349, and 11349.1 of the Government Code, relating to ~~healing arts~~ professional regulation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Hill. ~~Veterinary Medical Board: executive office~~. Professions and vocations: board actions: competitive impact.

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction. Existing law makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified and provides that those decisions are not subject to review by the Director of Consumer Affairs. Existing law authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case. Existing law requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or monitoring and evaluation. Existing law authorizes the director to contract for services of experts and consultants where necessary.

*Existing law requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. Existing law prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified*

*This bill would instead authorize the director, upon his or her own initiative, and require the director, upon the request of a consumer or licensee, to review a decision or other action, except as specified, of a board within the department to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified. The bill would require the director to post on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee. The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specific committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect. The bill would prohibit any rule or regulation from having any force or effect if the director does not approve the regulation because it has an impermissible anticompetitive effect.*

*(2) Existing law, until January 1, 2018, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing, which is within the Department of Consumer Affairs, and requires the board to appoint an executive officer who is a nurse currently licensed by the board.*

*This bill would instead prohibit the executive officer from being a licensee of the board.*

~~The~~

(3) *The Veterinary Medicine Practice Act provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive office , as specified. Existing law repeals the provisions establishing the board and authorizing the board to appoint an executive officer as of January 1, 2017. That act exempts certain persons from the requirements of the act, including a veterinarian employed by the University of California or the Western University of Health Sciences while engaged in the performance of specified duties. That act requires all premises where veterinary medicine, dentistry, and surgery is being practiced to register with the board. That act requires all fees collected on behalf of the board to be deposited into the Veterinary Medical Board Contingent Fund, which continuously appropriates fees deposited into the fund. That act makes a violation of any provision of the act punishable as a misdemeanor.*

*This bill would extend the operation of the board and the authorization of the board to appoint an executive officer to January 1, 2021. The bill would authorize a veterinarian and registered veterinary technician who is under the direct supervision of a veterinarian with a current and active license to compound a drug for anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board, as specified. The bill would authorize the California State Board of Pharmacy and the board to ensure compliance with these requirements. The bill would instead require veterinarians engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences while engaged in the performance of specified duties to be licensed as a veterinarian in the state or hold a university license issued by the board. The bill would require an applicant for a university license to meet certain requirements, including that the applicant passes a specified exam. The bill would also prohibit a premise registration that is not renewed within 5 years after its expiration from being renewed, restored, reissued, or reinstated; however, the bill would authorize a new premise registration to be issued to an applicant if no fact, circumstance, or condition exists that would justify the revocation or suspension of the registration if the registration was issued and if specified fees are paid. By requiring*

*additional persons to be licensed and pay certain fees that would go into a continuously appropriated fund, this bill would make an appropriation. By requiring additional persons to be licensed under the act that were previously exempt, this bill would expand the definition of an existing crime and would, therefore, result in a state-mandated local program.*

*(4) Existing law, except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action.*

*This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board.*

*(5) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. That act requires the review by the office to follow certain standards, including, among others, necessity, as defined. That act requires an agency proposing to adopt, amend, or repeal a regulation to prepare a notice to the public that includes specified information, including reference to the authority under which the regulation is proposed.*

*This bill would add competitive impact, as defined, as an additional standard for the office to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits. The bill would authorize the office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. The bill would require state boards on which a controlling number of decisionmakers are active market participants*



*in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy.*

*(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 109 of the Business and Professions Code  
2     is amended to read:

3     ~~109. (a) The decisions of any of the boards comprising the~~  
4     ~~department with respect to setting standards, conducting~~  
5     ~~examinations, passing candidates, and revoking licenses, are not~~  
6     ~~subject to review by the director, but are final within the limits~~  
7     ~~provided by this code which are applicable to the particular board,~~  
8     ~~except as provided in this section.~~

9     ~~(b)~~

10    109. (a) The director may initiate an investigation of any  
11    allegations of misconduct in the preparation, administration, or  
12    scoring of an examination which is administered by a board, or in  
13    the review of qualifications which are a part of the licensing process  
14    of any board. A request for investigation shall be made by the  
15    director to the Division of Investigation through the chief of the  
16    division or to any law enforcement agency in the jurisdiction where  
17    the alleged misconduct occurred.

18    ~~(c)~~

19    (b) (1) The director may intervene in any matter of any board  
20    where an investigation by the Division of Investigation discloses  
21    probable cause to believe that the conduct or activity of a board,  
22    or its members or employees constitutes a violation of criminal  
23    law.

24    ~~The~~

1 (2) ~~The term “intervene,” as used in paragraph (c) of this section~~  
2 (1) may include, but is not limited to, an application for a  
3 restraining order or injunctive relief as specified in Section 123.5,  
4 or a referral or request for criminal prosecution. For purposes of  
5 this section, the director shall be deemed to have standing under  
6 Section 123.5 and shall seek representation of the Attorney  
7 General, or other appropriate counsel in the event of a conflict in  
8 pursuing that action.

9 (c) *The director may, upon his or her own initiative, and shall,*  
10 *upon request by a consumer or licensee, review any board decision*  
11 *or other action to determine whether it unreasonably restrains*  
12 *trade. Such a review shall proceed as follows:*

13 (1) *The director shall assess whether the action or decision*  
14 *reflects a clearly articulated and affirmatively expressed state law.*  
15 *If the director determines that the action or decision does not*  
16 *reflect a clearly articulated and affirmatively expressed state law,*  
17 *the director shall disapprove the board action or decision and it*  
18 *shall not go into effect.*

19 (2) *If the action or decision is a reflection of clearly articulated*  
20 *and affirmatively expressed state law, the director shall assess*  
21 *whether the action or decision was the result of the board’s*  
22 *exercise of ministerial or discretionary judgment. If the director*  
23 *finds no exercise of discretionary judgment, but merely the direct*  
24 *application of statutory or constitutional provisions, the director*  
25 *shall close the investigation and review of the board action or*  
26 *decision.*

27 (3) *If the director concludes under paragraph (2) that the board*  
28 *exercised discretionary judgment, the director shall review the*  
29 *board action or decision as follows:*

30 (A) *The director shall conduct a full review of the board action*  
31 *or decision using all relevant facts, data, market conditions, public*  
32 *comment, studies, or other documentary evidence pertaining to*  
33 *the market impacted by the board’s action or decision and*  
34 *determine whether the anticompetitive effects of the action or*  
35 *decision are clearly outweighed by the benefit to the public. The*  
36 *director may seek, designate, employ, or contract for the services*  
37 *of independent antitrust or economic experts pursuant to Section*  
38 *307. These experts shall not be active participants in the market*  
39 *affected by the board action or decision.*

1 (B) If the board action or decision was not previously subject  
2 to a public comment period, the director shall release the subject  
3 matter of his or her investigation for a 30-day public comment  
4 period and shall consider all comments received.

5 (C) If the director determines that the action or decision furthers  
6 the public protection mission of the board and the impact on  
7 competition is justified, the director may approve the action or  
8 decision.

9 (D) If the director determines that the action furthers the public  
10 protection mission of the board and the impact on competition is  
11 justified, the director may approve the action or decision. If the  
12 director finds the action or decision does not further the public  
13 protection mission of the board or finds that the action or decision  
14 is not justified, the director shall either refuse to approve it or  
15 shall modify the action or decision to ensure that any restraints  
16 of trade are related to, and advance, clearly articulated state law  
17 or public policy.

18 (4) The director shall issue, and post on the department's  
19 Internet Web site, his or her final written decision approving,  
20 modifying, or disapproving the action or decision with an  
21 explanation of the reasons and rationale behind the director's  
22 decision within 90 days from receipt of the request from a  
23 consumer or licensee. Notwithstanding any other law, the decision  
24 of the director shall be final, except if the state or federal  
25 constitution requires an appeal of the director's decision.

26 (d) The review set forth in paragraph (3) of subdivision (c) shall  
27 not apply when an individual seeks review of disciplinary or other  
28 action pertaining solely to that individual.

29 (e) The director shall report to the Chairs of the Senate Business,  
30 Professions, and Economic Development Committee and the  
31 Assembly Business and Professions Committee annually,  
32 commencing March 1, 2017, regarding his or her disapprovals,  
33 modifications, or findings from any audit, review, or monitoring  
34 and evaluation conducted pursuant to this section. That report  
35 shall be submitted in compliance with Section 9795 of the  
36 Government Code.

37 (f) If the director has already reviewed a board action or  
38 decision pursuant to this section or Section 313.1, the director  
39 shall not review that action or decision again.

1 (g) *This section shall not be construed to affect, impede, or*  
 2 *delay any disciplinary actions of any board.*

3 *SEC. 2. Section 116 of the Business and Professions Code is*  
 4 *amended to read:*

5 116. (a) The director may audit and review, upon his or her  
 6 own initiative, or upon the request of a consumer or licensee,  
 7 inquiries and complaints regarding licensees, dismissals of  
 8 disciplinary cases, the opening, conduct, or closure of  
 9 investigations, informal conferences, and discipline short of formal  
 10 accusation by the ~~Medical Board of California, the allied health~~  
 11 ~~professional boards, and the California Board of Podiatric~~  
 12 ~~Medicine. The director may make recommendations for changes~~  
 13 ~~to the disciplinary system to the appropriate board, the Legislature,~~  
 14 ~~or both.~~ *any board or bureau within the department.*

15 (b) The director shall report to the ~~Chairpersons~~ *Chairs* of the  
 16 ~~Senate Business and Professions~~ *Business, Professions, and*  
 17 *Economic Development* Committee and the ~~Assembly Health~~  
 18 ~~Business and Professions~~ Committee annually, commencing March  
 19 1, ~~1995,~~ 2017, regarding his or her findings from any audit, review,  
 20 or monitoring and evaluation conducted pursuant to this section.  
 21 *This report shall be submitted in compliance with Section 9795 of*  
 22 *the Government Code.*

23 *SEC. 3. Section 153 of the Business and Professions Code is*  
 24 *amended to read:*

25 153. The director may investigate the work of the several  
 26 boards in his department and may obtain a copy of all records and  
 27 full and complete data in all official matters in possession of the  
 28 boards, their members, officers, or ~~employees, other than~~  
 29 ~~examination questions prior to submission to applicants at~~  
 30 ~~scheduled examinations.~~ *employees.*

31 *SEC. 4. Section 307 of the Business and Professions Code is*  
 32 *amended to read:*

33 307. The director may contract for the services of experts and  
 34 consultants where necessary to carry out ~~the provisions of this~~  
 35 chapter and may provide compensation and reimbursement of  
 36 expenses for ~~such~~ *those* experts and consultants in accordance with  
 37 state law.

38 *SEC. 5. Section 313.1 of the Business and Professions Code*  
 39 *is amended to read:*

1 313.1. (a) Notwithstanding any other ~~provision~~ of law to the  
2 contrary, no rule or ~~regulation~~, ~~except those relating to~~  
3 ~~examinations and qualifications for licensure~~, *regulation* and no  
4 fee change proposed or promulgated by any of the boards,  
5 commissions, or committees within the department, shall take  
6 effect pending compliance with this section.

7 (b) The director shall be formally notified of and shall ~~be~~  
8 ~~provided a full opportunity to review~~, in accordance with the  
9 requirements of Article 5 (commencing with Section 11346) of  
10 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government  
11 Code, *the requirements in subdivision (c) of Section 109*, and this  
12 section, all of the following:

13 (1) All notices of proposed action, any modifications and  
14 supplements thereto, and the text of proposed regulations.

15 (2) Any notices of sufficiently related changes to regulations  
16 previously noticed to the public, and the text of proposed  
17 regulations showing modifications to the text.

18 (3) Final rulemaking records.

19 (4) *All relevant facts, data, public comments, market conditions,*  
20 *studies, or other documentary evidence pertaining to the market*  
21 *impacted by the proposed regulation. This information shall be*  
22 *included in the written decision of the director required under*  
23 *paragraph (4) of subdivision (c) of Section 109.*

24 (c) The submission of all notices and final rulemaking records  
25 to the director and the ~~completion of the director's review,~~  
26 *approval*, as authorized by this section, shall be a precondition to  
27 the filing of any rule or regulation with the Office of Administrative  
28 Law. The Office of Administrative Law shall have no jurisdiction  
29 to review a rule or regulation subject to this section until after the  
30 ~~completion of the director's review and only then if the director~~  
31 ~~has not disapproved it.~~ *approval*. The filing of any document with  
32 the Office of Administrative Law shall be accompanied by a  
33 certification that the board, commission, or committee has complied  
34 with the requirements of this section.

35 (d) Following the receipt of any final rulemaking record subject  
36 to subdivision (a), the director shall have the authority for a period  
37 of 30 days to *approve a proposed rule or regulation or disapprove*  
38 *a proposed rule or regulation on the ground that it is injurious to*  
39 *the public health, safety, or* ~~welfare~~. *welfare, or has an*  
40 *impermissible anticompetitive effect. The director may modify a*

1 rule or regulation as a condition of approval. Any modification  
 2 to regulations by the director shall be subject to a 30-day public  
 3 comment period before the director issues a final decision  
 4 regarding the modified regulation. If the director does not approve  
 5 the rule or regulation within the 30-day period, the rule or  
 6 regulation shall not be submitted to the Office of Administrative  
 7 Law and the rule or regulation shall have no effect.

8 (e) Final rulemaking records shall be filed with the director  
 9 within the one-year notice period specified in Section 11346.4 of  
 10 the Government Code. If necessary for compliance with this  
 11 section, the one-year notice period may be extended, as specified  
 12 by this subdivision.

13 (1) In the event that the one-year notice period lapses during  
 14 the director's 30-day review period, or within 60 days following  
 15 the notice of the director's disapproval, it may be extended for a  
 16 maximum of 90 days.

17 (2) If the director approves the final rulemaking record or  
 18 declines to take action on it within 30 days, record, the board,  
 19 commission, or committee shall have five days from the receipt  
 20 of the record from the director within which to file it with the  
 21 Office of Administrative Law.

22 (3) If the director disapproves a rule or regulation, it shall have  
 23 no force or effect unless, within 60 days of the notice of  
 24 disapproval, (A) the disapproval is overridden by a unanimous  
 25 vote of the members of the board, commission, or committee, and  
 26 (B) the board, commission, or committee files the final rulemaking  
 27 record with the Office of Administrative Law in compliance with  
 28 this section and the procedures required by Chapter 3.5  
 29 (commencing with Section 11340) of Part 1 of Division 3 of Title  
 30 2 of the Government Code. *This paragraph shall not apply to any*  
 31 *decision disapproved by the director under subdivision (c) of*  
 32 *Section 109.*

33 (f) ~~Nothing in this~~ This section shall *not* be construed to prohibit  
 34 the director from affirmatively approving a proposed rule,  
 35 regulation, or fee change at any time within the 30-day period after  
 36 it has been submitted to him or her, in which event it shall become  
 37 effective upon compliance with this section and the procedures  
 38 required by Chapter 3.5 (commencing with Section 11340) of Part  
 39 1 of Division 3 of Title 2 of the Government Code.

1     *SEC. 6. Section 2708 of the Business and Professions Code is*  
2 *amended to read:*

3     2708. (a) The board shall appoint an executive officer who  
4 shall perform the duties delegated by the board and who shall be  
5 responsible to it for the accomplishment of those duties.

6     (b) The executive officer shall *not* be a ~~nurse currently licensed~~  
7 *licensee* under this chapter and shall possess other qualification  
8 as determined by the board.

9     (c) The executive officer shall not be a member of the board

10     (d) This section shall remain in effect only until January 1, 2018,  
11 and as of that date is repealed, unless a later enacted statute, that  
12 is enacted before January 1, 2018, deletes or extends that date.

13     ~~SECTION 1.~~

14     *SEC. 7. Section 4800 of the Business and Professions Code is*  
15 *amended to read:*

16     4800. (a) There is in the Department of Consumer Affairs a  
17 Veterinary Medical Board in which the administration of this  
18 chapter is vested. The board consists of the following members:

19     (1) Four licensed veterinarians.

20     (2) One registered veterinary technician.

21     (3) Three public members.

22     (b) This section shall remain in effect only until January 1, 2021,  
23 and as of that date is repealed.

24     (c) Notwithstanding any other law, the repeal of this section  
25 renders the board subject to review by the appropriate policy  
26 committees of the Legislature. However, the review of the board  
27 shall be limited to those issues identified by the appropriate policy  
28 committees of the Legislature and shall not involve the preparation  
29 or submission of a sunset review document or evaluative  
30 questionnaire.

31     ~~SEC. 2.~~

32     *SEC. 8. Section 4804.5 of the Business and Professions Code*  
33 *is amended to read:*

34     4804.5. (a) The board may appoint a person exempt from civil  
35 service who shall be designated as an executive officer and who  
36 shall exercise the powers and perform the duties delegated by the  
37 board and vested in him or her by this chapter.

38     (b) This section shall remain in effect only until January 1, 2021,  
39 and as of that date is repealed.

1     *SEC. 9. Section 4825.1 of the Business and Professions Code*  
2     *is amended to read:*

3     4825.1. These definitions shall govern the construction of this  
4     chapter as it applies to veterinary medicine.

5     (a) “Diagnosis” means the act or process of identifying or  
6     determining the health status of an animal through examination  
7     and the opinion derived from that examination.

8     (b) “Animal” means any member of the animal kingdom other  
9     than humans, and includes fowl, fish, and reptiles, wild or  
10    domestic, whether living or dead.

11    (c) “Food animal” means any animal that is raised for the  
12    production of an edible product intended for consumption by  
13    humans. The edible product includes, but is not limited to, milk,  
14    meat, and eggs. Food animal includes, but is not limited to, cattle  
15    (beef or dairy), swine, sheep, poultry, fish, and amphibian species.

16    (d) “Livestock” includes all animals, poultry, aquatic and  
17    amphibian species that are raised, kept, or used for profit. It does  
18    not include those species that are usually kept as pets such as dogs,  
19    cats, and pet birds, or companion animals, including equines.

20    (e) “*Compounding*,” for the purposes of veterinary medicine,  
21    shall have the same meaning given in Section 1735 of Title 16 of  
22    the California Code of Regulations, except that every reference  
23    therein to “pharmacy” and “pharmacist” shall be replaced with  
24    “veterinary premises” and “veterinarian,” and except that only  
25    a licensed veterinarian or a licensed registered veterinarian  
26    technician under direct supervision of a veterinarian may perform  
27    compounding and shall not delegate to or supervise any part of  
28    the performance of compounding by any other person.

29    *SEC. 10. Section 4826.3 is added to the Business and*  
30    *Professions Code, to read:*

31    4826.3. (a) *Notwithstanding Section 4051, a veterinarian or*  
32    *registered veterinarian technician under the direct supervision of*  
33    *a veterinarian with a current and active license may compound a*  
34    *drug for anesthesia, the prevention, cure, or relief of a wound,*  
35    *fracture, bodily injury, or disease of an animal in a premises*  
36    *currently and actively registered with the board and only under*  
37    *the following conditions:*

38    (1) *Where there is no FDA-approved animal or human drug*  
39    *that can be used as labeled or in an appropriate extralabel manner*



1 to properly treat the disease, symptom, or condition for which the  
2 drug is being prescribed.

3 (2) Where the compounded drug is not available from a  
4 compounding pharmacy, outsourcing facility, or other  
5 compounding supplier in a dosage form and concentration to  
6 appropriately treat the disease, symptom, or condition for which  
7 the drug is being prescribed.

8 (3) Where the need and prescription for the compounded  
9 medication has arisen within an established  
10 veterinarian-client-patient relationship as a means to treat a  
11 specific occurrence of a disease, symptom, or condition observed  
12 and diagnosed by the veterinarian in a specific animal that  
13 threatens the health of the animal or will cause suffering or death  
14 if left untreated.

15 (4) Where the quantity compounded does not exceed a quantity  
16 demonstrably needed to treat a patient with which the veterinarian  
17 has a current veterinarian-client-patient relationship.

18 (5) Except as specified in subdivision (c), where the compound  
19 is prepared only with commercially available FDA-approved  
20 animal or human drugs as active ingredients.

21 (b) A compounded veterinary drug may be prepared from an  
22 FDA-approved animal or human drug for extralabel use only when  
23 there is no approved animal or human drug that, when used as  
24 labeled or in an appropriate extralabel manner will, in the  
25 available dosage form and concentration, treat the disease,  
26 symptom, or condition. Compounding from an approved human  
27 drug for use in food-producing animals is not permitted if an  
28 approved animal drug can be used for compounding.

29 (c) A compounded veterinary drug may be prepared from bulk  
30 drug substances only when:

31 (1) The drug is compounded and dispensed by the veterinarian  
32 to treat an individually identified animal patient under his or her  
33 care.

34 (2) The drug is not intended for use in food-producing animals.

35 (3) If the drug contains a bulk drug substance that is a  
36 component of any marketed FDA-approved animal or human drug,  
37 there is a change between the compounded drug and the  
38 comparable marketed drug made for an individually identify  
39 animal patient that produces a clinical difference for that  
40 individually identified animal patient, as determined by the

1 veterinarian prescribing the compounded drug for his or her  
2 patient.

3 (4) There are no FDA-approved animal or human drugs that  
4 can be used as labeled or in an appropriate extralabel manner to  
5 properly treat the disease, symptom, or condition for which the  
6 drug is being prescribed.

7 (5) All bulk drug substances used in compounding are  
8 manufactured by an establishment registered under Section 360  
9 of Title 21 of the United States Code and are accompanied by a  
10 valid certificate of analysis

11 (6) The drug is not sold or transferred by the veterinarian  
12 compounding the drug, except that the veterinarian shall be  
13 permitted to administer the drug to a patient under his or her care  
14 or dispense it to the owner or caretaker of an animal under his or  
15 her care.

16 (7) Within 15 days of becoming aware of any product defect or  
17 serious adverse event associated with any drug compounded by  
18 the veterinarian from bulk drug substances, the veterinarian shall  
19 report it to the federal Food and Drug Administration on Form  
20 FDA 1932a.

21 (8) In addition to any other requirements, the label of any  
22 veterinary drug compounded from bulk drug substances shall  
23 indicate the species of the intended animal patient, the name of  
24 the animal patient, and the name of the owner or caretaker of the  
25 patient.

26 (d) Each compounded veterinary drug preparation shall meet  
27 the labeling requirements of Section 4076 and Sections 1707.5  
28 and 1735.4 of Title 16 of the California Code of Regulations, except  
29 that every reference therein to “pharmacy” and “pharmacist”  
30 shall be replaced by “veterinary premises” and “veterinarian,”  
31 and any reference to “patient” shall be understood to refer to the  
32 animal patient. In addition, each label on a compounded veterinary  
33 drug preparation shall include withdrawal and holding times, if  
34 needed, and the disease, symptom, or condition for which the drug  
35 is being prescribed. Any compounded veterinary drug preparation  
36 that is intended to be sterile, including for injection, administration  
37 into the eye, or inhalation, shall in addition meet the labeling  
38 requirements of Section 1751.2 of Title 16 of the California Code  
39 of Regulations, except that every reference therein to “pharmacy”  
40 and “pharmacist” shall be replaced by “veterinary premises” and

1 “veterinarian,” and any reference to “patient” shall be understood  
2 to refer to the animal patient.

3 (e) Any veterinarian, registered veterinarian technician who is  
4 under the direct supervision of a veterinarian, and veterinary  
5 premises engaged in compounding shall meet the compounding  
6 requirements for pharmacies and pharmacists stated by the  
7 provisions of Article 4.5 (commencing with Section 1735) of Title  
8 16 of the California Code of Regulations, except that every  
9 reference therein to “pharmacy” and “pharmacist” shall be  
10 replaced by “veterinary premises” and “veterinarian,” and any  
11 reference to “patient” shall be understood to refer to the animal  
12 patient:

13 (1) Section 1735.1 of Title 16 of the California Code of  
14 Regulations.

15 (2) Subdivisions (d), (e), (f), (g), (h), (i), (j), (k), and (l) of Section  
16 1735.2 of Title 16 of the California Code of Regulations.

17 (3) Section 1735.3 of Title 16 of the California Code of  
18 Regulations, except that only a licensed veterinarian or registered  
19 veterinarian technician may perform compounding and shall not  
20 delegate to or supervise any part of the performance of  
21 compounding by any other person.

22 (4) Section 1735.4 of Title 16 of the California Code of  
23 Regulations.

24 (5) Section 1735.5 of Title 16 of the California Code of  
25 Regulations.

26 (6) Section 1735.6 of Title 16 of the California Code of  
27 Regulations.

28 (7) Section 1735.7 of Title 16 of the California Code of  
29 Regulations.

30 (8) Section 1735.8 of Title 16 of the California Code of  
31 Regulations.

32 (f) Any veterinarian, registered veterinarian technician under  
33 the direct supervision of a veterinarian, and veterinary premises  
34 engaged in sterile compounding shall meet the sterile compounding  
35 requirements for pharmacies and pharmacists under Article 7  
36 (commencing with Section 1751) of Title 16 of the California Code  
37 of Regulations, except that every reference therein to “pharmacy”  
38 and “pharmacist” shall be replaced by “veterinary premises” and  
39 “veterinarian,” and any reference to “patient” shall be understood  
40 to refer to the animal patient.

1 (g) *The California State Board of Pharmacy shall have authority*  
 2 *with the board to ensure compliance with this section and shall*  
 3 *have the right to inspect any veterinary premises engaged in*  
 4 *compounding, along with or separate from the board, to ensure*  
 5 *compliance with this section. The board is specifically charged*  
 6 *with enforcing this section with regard to its licensees.*

7 *SEC. 11. Section 4826.5 is added to the Business and*  
 8 *Professions Code, to read:*

9 *4826.5. Failure by a licensed veterinarian, registered*  
 10 *veterinarian technician, or veterinary premises to comply with the*  
 11 *provisions of this article shall be deemed unprofessional conduct*  
 12 *and constitute grounds for discipline.*

13 *SEC. 12. Section 4826.7 is added to the Business and*  
 14 *Professions Code, to read:*

15 *4826.7. The board may adopt regulations to implement the*  
 16 *provisions of this article.*

17 *SEC. 13. Section 4830 of the Business and Professions Code*  
 18 *is amended to read:*

19 4830. (a) This chapter does not apply to:

20 (1) Veterinarians while serving in any armed branch of the  
 21 military service of the United States or the United States  
 22 Department of Agriculture while actually engaged and employed  
 23 in their official capacity.

24 (2) Regularly licensed veterinarians in actual consultation from  
 25 other states.

26 (3) Regularly licensed veterinarians actually called from other  
 27 states to attend cases in this state, but who do not open an office  
 28 or appoint a place to do business within this state.

29 ~~(4) Veterinarians employed by the University of California~~  
 30 ~~while engaged in the performance of duties in connection with the~~  
 31 ~~College of Agriculture, the Agricultural Experiment Station, the~~  
 32 ~~School of Veterinary Medicine, or the agricultural extension work~~  
 33 ~~of the university or employed by the Western University of Health~~  
 34 ~~Sciences while engaged in the performance of duties in connection~~  
 35 ~~with the College of Veterinary Medicine or the agricultural~~  
 36 ~~extension work of the university.~~

37 ~~(5)~~

38 (4) Students in the School of Veterinary Medicine of the  
 39 University of California or the College of Veterinary Medicine of  
 40 the Western University of Health Sciences who participate in

1 diagnosis and treatment as part of their educational experience,  
2 including those in off-campus educational programs under the  
3 direct supervision of a licensed veterinarian in good standing, as  
4 defined in paragraph (1) of subdivision (b) of Section 4848,  
5 appointed by the University of California, Davis, or the Western  
6 University of Health Sciences.

7 ~~(6)~~

8 (5) A veterinarian who is employed by the Meat and Poultry  
9 Inspection Branch of the California Department of Food and  
10 Agriculture while actually engaged and employed in his or her  
11 official capacity. A person exempt under this paragraph shall not  
12 otherwise engage in the practice of veterinary medicine unless he  
13 or she is issued a license by the board.

14 ~~(7)~~

15 (6) Unlicensed personnel employed by the Department of Food  
16 and Agriculture or the United States Department of Agriculture  
17 when in the course of their duties they are directed by a veterinarian  
18 supervisor to conduct an examination, obtain biological specimens,  
19 apply biological tests, or administer medications or biological  
20 products as part of government disease or condition monitoring,  
21 investigation, control, or eradication activities.

22 (b) (1) For purposes of paragraph (3) of subdivision (a), a  
23 regularly licensed veterinarian in good standing who is called from  
24 another state by a law enforcement agency or animal control  
25 agency, as defined in Section 31606 of the Food and Agricultural  
26 Code, to attend to cases that are a part of an investigation of an  
27 alleged violation of federal or state animal fighting or animal  
28 cruelty laws within a single geographic location shall be exempt  
29 from the licensing requirements of this chapter if the law  
30 enforcement agency or animal control agency determines that it  
31 is necessary to call the veterinarian in order for the agency or  
32 officer to conduct the investigation in a timely, efficient, and  
33 effective manner. In determining whether it is necessary to call a  
34 veterinarian from another state, consideration shall be given to the  
35 availability of veterinarians in this state to attend to these cases.  
36 An agency, department, or officer that calls a veterinarian pursuant  
37 to this subdivision shall notify the board of the investigation.

38 (2) Notwithstanding any other provision of this chapter, a  
39 regularly licensed veterinarian in good standing who is called from  
40 another state to attend to cases that are a part of an investigation

1 described in paragraph (1) may provide veterinary medical care  
2 for animals that are affected by the investigation with a temporary  
3 shelter facility, and the temporary shelter facility shall be exempt  
4 from the registration requirement of Section 4853 if all of the  
5 following conditions are met:

6 (A) The temporary shelter facility is established only for the  
7 purpose of the investigation.

8 (B) The temporary shelter facility provides veterinary medical  
9 care, shelter, food, and water only to animals that are affected by  
10 the investigation.

11 (C) The temporary shelter facility complies with Section 4854.

12 (D) The temporary shelter facility exists for not more than 60  
13 days, unless the law enforcement agency or animal control agency  
14 determines that a longer period of time is necessary to complete  
15 the investigation.

16 (E) Within 30 calendar days upon completion of the provision  
17 of veterinary health care services at a temporary shelter facility  
18 established pursuant to this section, the veterinarian called from  
19 another state by a law enforcement agency or animal control agency  
20 to attend to a case shall file a report with the board. The report  
21 shall contain the date, place, type, and general description of the  
22 care provided, along with a listing of the veterinary health care  
23 practitioners who participated in providing that care.

24 (c) For purposes of paragraph (3) of subdivision (a), the board  
25 may inspect temporary facilities established pursuant to this  
26 section.

27 *SEC. 14. Section 4846.5 of the Business and Professions Code*  
28 *is amended to read:*

29 4846.5. (a) Except as provided in this section, the board shall  
30 issue renewal licenses only to those applicants that have completed  
31 a minimum of 36 hours of continuing education in the preceding  
32 two years.

33 (b) (1) Notwithstanding any other law, continuing education  
34 hours shall be earned by attending courses relevant to veterinary  
35 medicine and sponsored or cosponsored by any of the following:

36 (A) American Veterinary Medical Association (AVMA)  
37 accredited veterinary medical colleges.

38 (B) Accredited colleges or universities offering programs  
39 relevant to veterinary medicine.

40 (C) The American Veterinary Medical Association.

1 (D) American Veterinary Medical Association recognized  
2 specialty or affiliated allied groups

3 (E) American Veterinary Medical Association's affiliated state  
4 veterinary medical associations.

5 (F) Nonprofit annual conferences established in conjunction  
6 with state veterinary medical associations.

7 (G) Educational organizations affiliated with the American  
8 Veterinary Medical Association or its state affiliated veterinary  
9 medical associations.

10 (H) Local veterinary medical associations affiliated with the  
11 California Veterinary Medical Association.

12 (I) Federal, state, or local government agencies.

13 (J) Providers accredited by the Accreditation Council for  
14 Continuing Medical Education (ACCME) or approved by the  
15 American Medical Association (AMA), providers recognized by  
16 the American Dental Association Continuing Education  
17 Recognition Program (ADA CERP), and AMA or ADA affiliate  
18 state, local, and specialty organizations.

19 (2) Continuing education credits shall be granted to those  
20 veterinarians taking self-study courses, which may include, but  
21 are not limited to, reading journals, viewing video recordings, or  
22 listening to audio recordings. The taking of these courses shall be  
23 limited to no more than six hours biennially.

24 (3) The board may approve other continuing veterinary medical  
25 education providers not specified in paragraph (1)

26 (A) The board has the authority to recognize national continuing  
27 education approval bodies for the purpose of approving continuing  
28 education providers not specified in paragraph (1)

29 (B) Applicants seeking continuing education provider approval  
30 shall have the option of applying to the board or to a  
31 board-recognized national approval body.

32 (4) For good cause, the board may adopt an order specifying,  
33 on a prospective basis, that a provider of continuing veterinary  
34 medical education authorized pursuant to paragraph (1) or (3) is  
35 no longer an acceptable provider.

36 (5) Continuing education hours earned by attending courses  
37 sponsored or cosponsored by those entities listed in paragraph (1)  
38 between January 1, 2000, and January 1, 2001, shall be credited  
39 toward a veterinarian's continuing education requirement under  
40 this section.

1 (c) Every person renewing his or her license issued pursuant to  
2 Section 4846.4, or any person applying for relicensure or for  
3 reinstatement of his or her license to active status, shall submit  
4 proof of compliance with this section to the board certifying that  
5 he or she is in compliance with this section. Any false statement  
6 submitted pursuant to this section shall be a violation subject to  
7 Section 4831.

8 (d) This section shall not apply to a veterinarian's first license  
9 renewal. This section shall apply only to second and subsequent  
10 license renewals granted on or after January 1, 2002.

11 (e) The board shall have the right to audit the records of all  
12 applicants to verify the completion of the continuing education  
13 requirement. Applicants shall maintain records of completion of  
14 required continuing education coursework for a period of four  
15 years and shall make these records available to the board for  
16 auditing purposes upon request. If the board, during this audit,  
17 questions whether any course reported by the veterinarian satisfies  
18 the continuing education requirement, the veterinarian shall provide  
19 information to the board concerning the content of the course; the  
20 name of its sponsor and cosponsor, if any; and specify the specific  
21 curricula that was of benefit to the veterinarian.

22 (f) A veterinarian desiring an inactive license or to restore an  
23 inactive license under Section 701 shall submit an application on  
24 a form provided by the board. In order to restore an inactive license  
25 to active status, the veterinarian shall have completed a minimum  
26 of 36 hours of continuing education within the last two years  
27 preceding application. The inactive license status of a veterinarian  
28 shall not deprive the board of its authority to institute or continue  
29 a disciplinary action against a licensee.

30 (g) Knowing misrepresentation of compliance with this article  
31 by a veterinarian constitutes unprofessional conduct and grounds  
32 for disciplinary action or for the issuance of a citation and the  
33 imposition of a civil penalty pursuant to Section 4883.

34 (h) The board, in its discretion, may exempt from the continuing  
35 education requirement any veterinarian who for reasons of health,  
36 military service, or undue hardship cannot meet those requirements.  
37 Applications for waivers shall be submitted on a form provided  
38 by the board.

39 (i) The administration of this section may be funded through  
40 professional license and continuing education provider fees. The



1 fees related to the administration of this section shall not exceed  
2 the costs of administering the corresponding provisions of this  
3 section.

4 (j) For those continuing education providers not listed in  
5 paragraph (1) of subdivision (b), the board or its recognized  
6 national approval agent shall establish criteria by which a provider  
7 of continuing education shall be approved. The board shall initially  
8 review and approve these criteria and may review the criteria as  
9 needed. The board or its recognized agent shall monitor, maintain,  
10 and manage related records and data. The board may impose an  
11 application fee, not to exceed two hundred dollars (\$200)  
12 biennially, for continuing education providers not listed in  
13 paragraph (1) of subdivision (b).

14 (k) (1) ~~On or after~~ *Beginning* January 1, 2018, a licensed  
15 veterinarian who renews his or her license shall complete a  
16 minimum of one credit hour of continuing education on the  
17 judicious use of medically important antimicrobial drugs every  
18 four years as part of his or her continuing education requirements.

19 (2) For purposes of this subdivision, “medically important  
20 antimicrobial drug” means an antimicrobial drug listed in Appendix  
21 A of the federal Food and Drug Administration’s Guidance for  
22 Industry #152, including critically important, highly important,  
23 and important antimicrobial drugs, as that appendix may be  
24 amended.

25 *SEC. 15. Section 4848.1 is added to the Business and*  
26 *Professions Code, to read:*

27 *4848.1. (a) A veterinarian engaged in the practice of veterinary*  
28 *medicine, as defined in Section 4826, employed by the University*  
29 *of California while engaged in the performance of duties in*  
30 *connection with the School of Veterinary Medicine or employed*  
31 *by the Western University of Health Sciences while engaged in the*  
32 *performance of duties in connection with the College of Veterinary*  
33 *Medicine shall be licensed in California or shall hold a university*  
34 *license issued by the board.*

35 *(b) An applicant is eligible to hold a university license if all of*  
36 *the following are satisfied*

37 *(1) The applicant is currently employed by the University of*  
38 *California or Western University of Health Sciences as defined in*  
39 *subdivision (a).*

1 (2) *Passes an examination concerning the statutes and*  
 2 *regulations of the Veterinary Medicine Practice Act, administered*  
 3 *by the board, pursuant to subparagraph (C) of paragraph (2) of*  
 4 *subdivision (a) of Section 4848.*

5 (3) *Successfully completes the approved educational curriculum*  
 6 *described in paragraph (5) of subdivision (b) of Section 4848 on*  
 7 *regionally specific and important diseases and conditions*

8 (c) *A university license:*

9 (1) *Shall be numbered as described in Section 4847.*

10 (2) *Shall cease to be valid upon termination of employment by*  
 11 *the University of California or by the Western University of Health*  
 12 *Sciences.*

13 (3) *Shall be subject to the license renewal provisions in Section*  
 14 *4846.4.*

15 (4) *Shall be subject to denial, revocation, or suspension pursuant*  
 16 *to Sections 4875 and 4883.*

17 (d) *An individual who holds a University License is exempt from*  
 18 *satisfying the license renewal requirements of Section 4846.5.*

19 SEC. 16. *Section 4853.7 is added to the Business and*  
 20 *Professions Code, to read:*

21 4853.7. *A premise registration that is not renewed within fiv*  
 22 *years after its expiration may not be renewed and shall not be*  
 23 *restored, reissued, or reinstated thereafter. However, an*  
 24 *application for a new premise registration may be submitted and*  
 25 *obtained if both of the following conditions are met:*

26 (a) *No fact, circumstance, or condition exists that, if the premise*  
 27 *registration was issued, would justify its revocation or suspension.*

28 (b) *All of the fees that would be required for the initial premise*  
 29 *registration are paid at the time of application.*

30 SEC. 17. *Section 825 of the Government Code is amended to*  
 31 *read:*

32 825. (a) *Except as otherwise provided in this section, if an*  
 33 *employee or former employee of a public entity requests the public*  
 34 *entity to defend him or her against any claim or action against him*  
 35 *or her for an injury arising out of an act or omission occurring*  
 36 *within the scope of his or her employment as an employee of the*  
 37 *public entity and the request is made in writing not less than 10*  
 38 *days before the day of trial, and the employee or former employee*  
 39 *reasonably cooperates in good faith in the defense of the claim or*  
 40 *action, the public entity shall pay any judgment based thereon or*

1 any compromise or settlement of the claim or action to which the  
2 public entity has agreed.

3 If the public entity conducts the defense of an employee or  
4 former employee against any claim or action with his or her  
5 reasonable good-faith cooperation, the public entity shall pay any  
6 judgment based thereon or any compromise or settlement of the  
7 claim or action to which the public entity has agreed. However,  
8 where the public entity conducted the defense pursuant to an  
9 agreement with the employee or former employee reserving the  
10 rights of the public entity not to pay the judgment, compromise,  
11 or settlement until it is established that the injury arose out of an  
12 act or omission occurring within the scope of his or her  
13 employment as an employee of the public entity, the public entity  
14 is required to pay the judgment, compromise, or settlement only  
15 if it is established that the injury arose out of an act or omission  
16 occurring in the scope of his or her employment as an employee  
17 of the public entity.

18 Nothing in this section authorizes a public entity to pay that part  
19 of a claim or judgment that is for punitive or exemplary damages.

20 (b) Notwithstanding subdivision (a) or any other provision of  
21 law, a public entity is authorized to pay that part of a judgment  
22 that is for punitive or exemplary damages if the governing body  
23 of that public entity, acting in its sole discretion except in cases  
24 involving an entity of the state government, finds all of the  
25 following:

26 (1) The judgment is based on an act or omission of an employee  
27 or former employee acting within the course and scope of his or  
28 her employment as an employee of the public entity.

29 (2) At the time of the act giving rise to the liability, the employee  
30 or former employee acted, or failed to act, in good faith, without  
31 actual malice and in the apparent best interests of the public entity.

32 (3) Payment of the claim or judgment would be in the best  
33 interests of the public entity.

34 As used in this subdivision with respect to an entity of state  
35 government, “a decision of the governing body” means the  
36 approval of the Legislature for payment of that part of a judgment  
37 that is for punitive damages or exemplary damages, upon  
38 recommendation of the appointing power of the employee or  
39 former employee, based upon the finding by the Legislature and  
40 the appointing authority of the existence of the three conditions

1 for payment of a punitive or exemplary damages claim. The  
2 provisions of subdivision (a) of Section 965.6 shall apply to the  
3 payment of any claim pursuant to this subdivision.

4 The discovery of the assets of a public entity and the introduction  
5 of evidence of the assets of a public entity shall not be permitted  
6 in an action in which it is alleged that a public employee is liable  
7 for punitive or exemplary damages.

8 The possibility that a public entity may pay that part of a  
9 judgment that is for punitive damages shall not be disclosed in any  
10 trial in which it is alleged that a public employee is liable for  
11 punitive or exemplary damages, and that disclosure shall be  
12 grounds for a mistrial.

13 (c) Except as provided in subdivision (d), if the provisions of  
14 this section are in conflict with the provisions of a memorandum  
15 of understanding reached pursuant to Chapter 10 (commencing  
16 with Section 3500) of Division 4 of Title 1, the memorandum of  
17 understanding shall be controlling without further legislative action,  
18 except that if those provisions of a memorandum of understanding  
19 require the expenditure of funds, the provisions shall not become  
20 effective unless approved by the Legislature in the annual Budget  
21 Act.

22 (d) The subject of payment of punitive damages pursuant to this  
23 section or any other provision of law shall not be a subject of meet  
24 and confer under the provisions of Chapter 10 (commencing with  
25 Section 3500) of Division 4 of Title 1, or pursuant to any other  
26 law or authority.

27 (e) Nothing in this section shall affect the provisions of Section  
28 818 prohibiting the award of punitive damages against a public  
29 entity. This section shall not be construed as a waiver of a public  
30 entity's immunity from liability for punitive damages under Section  
31 1981, 1983, or 1985 of Title 42 of the United States Code.

32 (f) (1) Except as provided in paragraph (2), a public entity shall  
33 not pay a judgment, compromise, or settlement arising from a  
34 claim or action against an elected official, if the claim or action is  
35 based on conduct by the elected official by way of tortiously  
36 intervening or attempting to intervene in, or by way of tortiously  
37 influencing or attempting to influence the outcome of, any judicial  
38 action or proceeding for the benefit of a particular party by  
39 contacting the trial judge or any commissioner, court-appointed  
40 arbitrator, court-appointed mediator, or court-appointed special

1 referee assigned to the matter, or the court clerk, bailiff, or marshal  
2 after an action has been filed, unless he or she was counsel of  
3 record acting lawfully within the scope of his or her employment  
4 on behalf of that party. Notwithstanding Section 825.6, if a public  
5 entity conducted the defense of an elected official against such a  
6 claim or action and the elected official is found liable by the trier  
7 of fact, the court shall order the elected official to pay to the public  
8 entity the cost of that defense.

9 (2) If an elected official is held liable for monetary damages in  
10 the action, the plaintiff shall first seek recovery of the judgment  
11 against the assets of the elected official. If the elected official's  
12 assets are insufficient to satisfy the total judgment, as determined  
13 by the court, the public entity may pay the deficiency if the public  
14 entity is authorized by law to pay that judgment.

15 (3) To the extent the public entity pays any portion of the  
16 judgment or is entitled to reimbursement of defense costs pursuant  
17 to paragraph (1), the public entity shall pursue all available  
18 creditor's remedies against the elected official, including  
19 garnishment, until that party has fully reimbursed the public entity.

20 (4) This subdivision shall not apply to any criminal or civil  
21 enforcement action brought in the name of the people of the State  
22 of California by an elected district attorney, city attorney, or  
23 attorney general.

24 *(g) Notwithstanding subdivision (a), a public entity shall pay*  
25 *for a judgment or settlement for treble damage antitrust awards*  
26 *against a member of a regulatory board for an act or omission*  
27 *occurring within the scope of his or her employment as a member*  
28 *of a regulatory board.*

29 *SEC. 18. Section 11346.5 of the Government Code is amended*  
30 *to read:*

31 11346.5. (a) The notice of proposed adoption, amendment, or  
32 repeal of a regulation shall include the following:

33 (1) A statement of the time, place, and nature of proceedings  
34 for adoption, amendment, or repeal of the regulation.

35 (2) Reference to the authority under which the regulation is  
36 proposed and a reference to the particular code sections or other  
37 provisions of law that are being implemented, interpreted, or made  
38 specific

1 (3) An informative digest drafted in plain English in a format  
2 similar to the Legislative Counsel’s digest on legislative bills. The  
3 informative digest shall include the following:

4 (A) A concise and clear summary of existing laws and  
5 regulations, if any, related directly to the proposed action and of  
6 the effect of the proposed action.

7 (B) If the proposed action differs substantially from an existing  
8 comparable federal regulation or statute, a brief description of the  
9 significant differences and the full citation of the federal regulations  
10 or statutes.

11 (C) A policy statement overview explaining the broad objectives  
12 of the regulation and the specific benefits anticipated by the  
13 proposed adoption, amendment, or repeal of a regulation, including,  
14 to the extent applicable, nonmonetary benefits such as the  
15 protection of public health and safety, worker safety, or the  
16 environment, the prevention of discrimination, the promotion of  
17 fairness or social equity, and the increase in openness and  
18 transparency in business and government, among other things.

19 (D) An evaluation of whether the proposed regulation is  
20 inconsistent or incompatible with existing state regulations.

21 (4) Any other matters as are prescribed by statute applicable to  
22 the specific state agency or to any specific regulation or class of  
23 regulations.

24 (5) A determination as to whether the regulation imposes a  
25 mandate on local agencies or school districts and, if so, whether  
26 the mandate requires state reimbursement pursuant to Part 7  
27 (commencing with Section 17500) of Division 4.

28 (6) An estimate, prepared in accordance with instructions  
29 adopted by the Department of Finance, of the cost or savings to  
30 any state agency, the cost to any local agency or school district  
31 that is required to be reimbursed under Part 7 (commencing with  
32 Section 17500) of Division 4, other nondiscretionary cost or  
33 savings imposed on local agencies, and the cost or savings in  
34 federal funding to the state.

35 For purposes of this paragraph, “cost or savings” means  
36 additional costs or savings, both direct and indirect, that a public  
37 agency necessarily incurs in reasonable compliance with  
38 regulations.

39 (7) If a state agency, in proposing to adopt, amend, or repeal  
40 any administrative regulation, makes an initial determination that

1 the action may have a significant, statewide adverse economic  
2 impact directly affecting business, including the ability of  
3 California businesses to compete with businesses in other states,  
4 it shall include the following information in the notice of proposed  
5 action:

6 (A) Identification of the types of businesses that would be  
7 affected.

8 (B) A description of the projected reporting, recordkeeping, and  
9 other compliance requirements that would result from the proposed  
10 action.

11 (C) The following statement: “The (name of agency) has made  
12 an initial determination that the (adoption/amendment/repeal) of  
13 this regulation may have a significant, statewide adverse economic  
14 impact directly affecting business, including the ability of  
15 California businesses to compete with businesses in other states.  
16 The (name of agency) (has/has not) considered proposed  
17 alternatives that would lessen any adverse economic impact on  
18 business and invites you to submit proposals. Submissions may  
19 include the following considerations:

20 (i) The establishment of differing compliance or reporting  
21 requirements or timetables that take into account the resources  
22 available to businesses.

23 (ii) Consolidation or simplification of compliance and reporting  
24 requirements for businesses.

25 (iii) The use of performance standards rather than prescriptive  
26 standards.

27 (iv) Exemption or partial exemption from the regulatory  
28 requirements for businesses.”

29 (8) If a state agency, in adopting, amending, or repealing any  
30 administrative regulation, makes an initial determination that the  
31 action will not have a significant, statewide adverse economic  
32 impact directly affecting business, including the ability of  
33 California businesses to compete with businesses in other states,  
34 it shall make a declaration to that effect in the notice of proposed  
35 action. In making this declaration, the agency shall provide in the  
36 record facts, evidence, documents, testimony, or other evidence  
37 upon which the agency relies to support its initial determination.

38 An agency’s initial determination and declaration that a proposed  
39 adoption, amendment, or repeal of a regulation may have or will  
40 not have a significant, adverse impact on businesses, including the

1 ability of California businesses to compete with businesses in other  
2 states, shall not be grounds for the office to refuse to publish the  
3 notice of proposed action.

4 (9) A description of all cost impacts, known to the agency at  
5 the time the notice of proposed action is submitted to the office  
6 that a representative private person or business would necessarily  
7 incur in reasonable compliance with the proposed action.

8 If no cost impacts are known to the agency, it shall state the  
9 following:

10 “The agency is not aware of any cost impacts that a  
11 representative private person or business would necessarily incur  
12 in reasonable compliance with the proposed action.”

13 (10) A statement of the results of the economic impact  
14 assessment required by subdivision (b) of Section 11346.3 or the  
15 standardized regulatory impact analysis if required by subdivision  
16 (c) of Section 11346.3, a summary of any comments submitted to  
17 the agency pursuant to subdivision (f) of Section 11346.3 and the  
18 agency’s response to those comments.

19 (11) The finding prescribed by subdivision (d) of Section  
20 11346.3, if required.

21 (12) (A) A statement that the action would have a significant  
22 effect on housing costs, if a state agency, in adopting, amending,  
23 or repealing any administrative regulation, makes an initial  
24 determination that the action would have that effect.

25 (B) The agency officer designated in paragraph ~~(14)~~ (15) shall  
26 make available to the public, upon request, the agency’s evaluation,  
27 if any, of the effect of the proposed regulatory action on housing  
28 costs.

29 (C) The statement described in subparagraph (A) shall also  
30 include the estimated costs of compliance and potential benefit  
31 of a building standard, if any, that were included in the initial  
32 statement of reasons.

33 (D) For purposes of model codes adopted pursuant to Section  
34 18928 of the Health and Safety Code, the agency shall comply  
35 with the requirements of this paragraph only if an interested party  
36 has made a request to the agency to examine a specific section for  
37 purposes of estimating the costs of compliance and potential  
38 benefits for that section, as described in Section 11346.2

39 (13) *If the regulatory action is submitted by a state board on*  
40 *which a controlling number of decisionmakers are active market*



1 *participants in the market the board regulates, a statement that*  
2 *the adopting agency has evaluated the impact of the proposed*  
3 *regulation on competition, and that the proposed regulation*  
4 *further a clearly articulated and affirmatively expressed state law*  
5 *to restrain competition.*

6 ~~(13)~~

7 (14) A statement that the adopting agency must determine that  
8 no reasonable alternative considered by the agency or that has  
9 otherwise been identified and brought to the attention of the agency  
10 would be more effective in carrying out the purpose for which the  
11 action is proposed, would be as effective and less burdensome to  
12 affected private persons than the proposed action, or would be  
13 more cost effective to affected private persons and equally effective  
14 in implementing the statutory policy or other provision of law. For  
15 a major regulation, as defined by Section 11342.548, proposed on  
16 or after November 1, 2013, the statement shall be based, in part,  
17 upon the standardized regulatory impact analysis of the proposed  
18 regulation, as required by Section 11346.3, as well as upon the  
19 benefits of the proposed regulation identified pursuant to  
20 subparagraph (C) of paragraph (3).

21 ~~(14)~~

22 (15) The name and telephone number of the agency  
23 representative and designated backup contact person to whom  
24 inquiries concerning the proposed administrative action may be  
25 directed.

26 ~~(15)~~

27 (16) The date by which comments submitted in writing must  
28 be received to present statements, arguments, or contentions in  
29 writing relating to the proposed action in order for them to be  
30 considered by the state agency before it adopts, amends, or repeals  
31 a regulation.

32 ~~(16)~~

33 (17) Reference to the fact that the agency proposing the action  
34 has prepared a statement of the reasons for the proposed action,  
35 has available all the information upon which its proposal is based,  
36 and has available the express terms of the proposed action, pursuant  
37 to subdivision (b).

38 ~~(17)~~

39 (18) A statement that if a public hearing is not scheduled, any  
40 interested person or his or her duly authorized representative may

1 request, no later than 15 days prior to the close of the written  
2 comment period, a public hearing pursuant to Section 11346.8.

3 ~~(18)~~

4 (19) A statement indicating that the full text of a regulation  
5 changed pursuant to Section 11346.8 will be available for at least  
6 15 days prior to the date on which the agency adopts, amends, or  
7 repeals the resulting regulation.

8 ~~(19)~~

9 (20) A statement explaining how to obtain a copy of the fina  
10 statement of reasons once it has been prepared pursuant to  
11 subdivision (a) of Section 11346.9.

12 ~~(20)~~

13 (21) If the agency maintains an Internet Web site or other similar  
14 forum for the electronic publication or distribution of written  
15 material, a statement explaining how materials published or  
16 distributed through that forum can be accessed.

17 ~~(21)~~

18 (22) If the proposed regulation is subject to Section 11346.6, a  
19 statement that the agency shall provide, upon request, a description  
20 of the proposed changes included in the proposed action, in the  
21 manner provided by Section 11346.6, to accommodate a person  
22 with a visual or other disability for which effective communication  
23 is required under state or federal law and that providing the  
24 description of proposed changes may require extending the period  
25 of public comment for the proposed action.

26 (b) The agency representative designated in paragraph~~(14)~~ (15)  
27 of subdivision (a) shall make available to the public upon request  
28 the express terms of the proposed action. The representative shall  
29 also make available to the public upon request the location of  
30 public records, including reports, documentation, and other  
31 materials, related to the proposed action. If the representative  
32 receives an inquiry regarding the proposed action that the  
33 representative cannot answer, the representative shall refer the  
34 inquiry to another person in the agency for a prompt response.

35 (c) This section shall not be construed in any manner that results  
36 in the invalidation of a regulation because of the alleged inadequacy  
37 of the notice content or the summary or cost estimates, or the  
38 alleged inadequacy or inaccuracy of the housing cost estimates, if  
39 there has been substantial compliance with those requirements.

1     *SEC. 19. Section 11349 of the Government Code is amended*  
2 *to read:*

3     11349. The following definitions govern the interpretation of  
4 this chapter:

5     (a) “Necessity” means the record of the rulemaking proceeding  
6 demonstrates by substantial evidence the need for a regulation to  
7 effectuate the purpose of the statute, court decision, or other  
8 provision of law that the regulation implements, interprets, or  
9 makes specific, taking into account the totality of the record. For  
10 purposes of this standard, evidence includes, but is not limited to,  
11 facts, studies, and expert opinion.

12     (b) “Authority” means the provision of law which permits or  
13 obligates the agency to adopt, amend, or repeal a regulation.

14     (c) “Clarity” means written or displayed so that the meaning of  
15 regulations will be easily understood by those persons directly  
16 affected by them.

17     (d) “Consistency” means being in harmony with, and not in  
18 conflict with or contradictory to, existing statutes, court decisions,  
19 or other provisions of law.

20     (e) “Reference” means the statute, court decision, or other  
21 provision of law which the agency implements, interprets, or makes  
22 specific by adopting, amending, or repealing a r gulation.

23     (f) “Nonduplication” means that a regulation does not serve the  
24 same purpose as a state or federal statute or another regulation.  
25 This standard requires that an agency proposing to amend or adopt  
26 a regulation must identify any state or federal statute or regulation  
27 which is overlapped or duplicated by the proposed regulation and  
28 justify any overlap or duplication. This standard is not intended  
29 to prohibit state agencies from printing relevant portions of  
30 enabling legislation in regulations when the duplication is necessary  
31 to satisfy the clarity standard in paragraph (3) of subdivision (a)  
32 of Section 11349.1. This standard is intended to prevent the  
33 indiscriminate incorporation of statutory language in a regulation.

34     (g) *“Competitive impact” means that the record of the*  
35 *rulemaking proceeding or other documentation demonstrates that*  
36 *the regulation is authorized by a clearly articulated and*  
37 *affirmatively expressed state law, that the regulation furthers the*  
38 *public protection mission of the state agency, and that the impact*  
39 *on competition is justified in light of the applicable regulatory*  
40 *rationale for the regulation.*

1     *SEC. 20. Section 11349.1 of the Government Code is amended*  
2 *to read:*

3     11349.1. (a) The office shall review all regulations adopted,  
4 amended, or repealed pursuant to the procedure specified in Article  
5 5 (commencing with Section 11346) and submitted to it for  
6 publication in the California Code of Regulations Supplement and  
7 for transmittal to the Secretary of State and make determinations  
8 using all of the following standards:

9     (1) Necessity.

10    (2) Authority.

11    (3) Clarity.

12    (4) Consistency.

13    (5) Reference.

14    (6) Nonduplication.

15    (7) *For those regulations submitted by a state board on which*  
16 *a controlling number of decisionmakers are active market*  
17 *participants in the market the board regulates, the office shall*  
18 *review for competitive impact.*

19     In reviewing regulations pursuant to this section, the office shall  
20 restrict its review to the regulation and the record of the rulemaking  
21 ~~proceeding~~ *except as directed in subdivision (h)*. The office shall  
22 approve the regulation or order of repeal if it complies with the  
23 standards set forth in this section and with this chapter.

24     (b) In reviewing proposed regulations for the criteria in  
25 subdivision (a), the office may consider the clarity of the proposed  
26 regulation in the context of related regulations already in existence.

27     (c) The office shall adopt regulations governing the procedures  
28 it uses in reviewing regulations submitted to it. The regulations  
29 shall provide for an orderly review and shall specify the methods,  
30 standards, presumptions, and principles the office uses, and the  
31 limitations it observes, in reviewing regulations to establish  
32 compliance with the standards specified in subdivision (a). The  
33 regulations adopted by the office shall ensure that it does not  
34 substitute its judgment for that of the rulemaking agency as  
35 expressed in the substantive content of adopted regulations.

36     (d) The office shall return any regulation subject to this chapter  
37 to the adopting agency if any of the following occur:

38     (1) The adopting agency has not prepared the estimate required  
39 by paragraph (6) of subdivision (a) of Section 11346.5 and has not

1 included the data used and calculations made and the summary  
2 report of the estimate in the file of the rulemaking

3 (2) The agency has not complied with Section 11346.3.  
4 “Noncompliance” means that the agency failed to complete the  
5 economic impact assessment or standardized regulatory impact  
6 analysis required by Section 11346.3 or failed to include the  
7 assessment or analysis in the file of the rulemaking proceeding as  
8 required by Section 11347.3.

9 (3) The adopting agency has prepared the estimate required by  
10 paragraph (6) of subdivision (a) of Section 11346.5, the estimate  
11 indicates that the regulation will result in a cost to local agencies  
12 or school districts that is required to be reimbursed under Part 7  
13 (commencing with Section 17500) of Division 4, and the adopting  
14 agency fails to do any of the following:

15 (A) Cite an item in the Budget Act for the fiscal year in which  
16 the regulation will go into effect as the source from which the  
17 Controller may pay the claims of local agencies or school districts.

18 (B) Cite an accompanying bill appropriating funds as the source  
19 from which the Controller may pay the claims of local agencies  
20 or school districts.

21 (C) Attach a letter or other documentation from the Department  
22 of Finance which states that the Department of Finance has  
23 approved a request by the agency that funds be included in the  
24 Budget Bill for the next following fiscal year to reimburse local  
25 agencies or school districts for the costs mandated by the  
26 regulation.

27 (D) Attach a letter or other documentation from the Department  
28 of Finance which states that the Department of Finance has  
29 authorized the augmentation of the amount available for  
30 expenditure under the agency’s appropriation in the Budget Act  
31 which is for reimbursement pursuant to Part 7 (commencing with  
32 Section 17500) of Division 4 to local agencies or school districts  
33 from the unencumbered balances of other appropriations in the  
34 Budget Act and that this augmentation is sufficient to reimburse  
35 local agencies or school districts for their costs mandated by the  
36 regulation.

37 (4) The proposed regulation conflicts with an existing state  
38 regulation and the agency has not identified the manner in which  
39 the conflict may be resolved.

1 (5) The agency did not make the alternatives determination as  
2 required by paragraph (4) of subdivision (a) of Section 11346.9.

3 (6) *The office decides that the record of the rulemaking*  
4 *proceeding or other documentation for the proposed regulation*  
5 *does not demonstrate that the regulation is authorized by a clearly*  
6 *articulated and affirmatively expressed state law, that the*  
7 *regulation does not further the public protection mission of the*  
8 *state agency, or that the impact on competition is not justified in*  
9 *light of the applicable regulatory rationale for the regulation.*

10 (e) The office shall notify the Department of Finance of all  
11 regulations returned pursuant to subdivision (d).

12 (f) The office shall return a rulemaking file to the submitting  
13 agency if the file does not comply with subdivisions (a) and (b)  
14 of Section 11347.3. Within three state working days of the receipt  
15 of a rulemaking file, the office shall notify the submitting agency  
16 of any deficiency identified. If no notice of deficiency is mailed  
17 to the adopting agency within that time, a rulemaking file shall be  
18 deemed submitted as of the date of its original receipt by the office  
19 A rulemaking file shall not be deemed submitted until each  
20 deficiency identified under this subdivision has been corrected.

21 (g) Notwithstanding any other law, return of the regulation to  
22 the adopting agency by the office pursuant to this section is the  
23 exclusive remedy for a failure to comply with subdivision (c) of  
24 Section 11346.3 or paragraph (10) of subdivision (a) of Section  
25 11346.5.

26 (h) *The office may designate, employ, or contract for the services*  
27 *of independent antitrust or applicable economic experts when*  
28 *reviewing proposed regulations for competitive impact. When*  
29 *reviewing a regulation for competitive impact, the office shall do*  
30 *all of the following:*

31 (1) *If the Director of Consumer Affairs issued a written decision*  
32 *pursuant to subdivision (c) of Section 109 of the Business and*  
33 *Professions Code, the office shall review and consider the decision*  
34 *and all supporting documentation in the rulemaking file.*

35 (2) *Consider whether the anticompetitive effects of the proposed*  
36 *regulation are clearly outweighed by the public policy merits.*

37 (3) *Provide a written opinion setting forth the office's finding*  
38 *and substantive conclusions under paragraph (2), including, but*  
39 *not limited to, whether rejection or modification of the proposed*  
40 *regulation is necessary to ensure that restraints of trade are related*

1 *to and advance the public policy underlying the applicable*  
2 *regulatory rationale.*

3 *SEC. 21. No reimbursement is required by this act pursuant*  
4 *to Section 6 of Article XIII B of the California Constitution because*  
5 *the only costs that may be incurred by a local agency or school*  
6 *district will be incurred because this act creates a new crime or*  
7 *infraction, eliminates a crime or infraction, or changes the penalty*  
8 *for a crime or infraction, within the meaning of Section 17556 of*  
9 *the Government Code, or changes the definition of a crime within*  
10 *the meaning of Section 6 of Article XIII B of the California*  
11 *Constitution.*


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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | March 25, 2016   |
| <b>TO</b>      | Executive Officers<br>Department of Consumer Affairs   |
| <b>FROM</b>    | Awet Kidane, Director<br>Department of Consumer Affairs  |
| <b>SUBJECT</b> | <b><i>North Carolina Board of Dental Examiners v. Federal Trade Commission: Policy Concepts</i></b>  |

This memorandum is intended to serve as a follow up to the meeting held on March 7, 2016, in which we discussed the potential policy concepts that the Department of Consumer Affairs (Department) was considering in response to the *North Carolina Board of Dental Examiners v. Federal Trade Commission (North Carolina)* decision.

As you are aware, the *North Carolina* case established that when a controlling number of decision makers are active market participants, board members are entitled to state-action antitrust immunity only if they act pursuant to a clearly articulated and affirmatively expressed state policy and their decisions are actively supervised by the state. After careful analysis and consideration, the Department believes the three policy concepts, discussed in our meeting and set out below, will provide further active state supervision to boards as required by the *North Carolina* case and will provide important clarity regarding the payment of damages by the state.

First, the Department believes that removing the active license requirement for executive officer positions will assist with protecting the boards from antitrust liability. This change allows for a nonmarket participant to serve in that critical role thereby minimizing the impact an active market participant executive officer may have on the board's operations.

Second, the existing regulatory review process should be strengthened. Under current law, the Director reviews board regulations and has the authority to disapprove them if they are "injurious to the public health, safety or welfare." Current law does not specifically authorize the Director to disapprove regulations for anticompetitive impacts that do not further a clearly articulated state policy. In order to ensure appropriate state supervision, the Department believes that the Director should have the specific authority to disapprove regulations for anticompetitive impacts without the possibility of a veto override.

And third, the indemnification for board members in antitrust cases needs to be addressed. Specifically, the Attorney General's opinion on the *North Carolina* case indicated that provisions providing indemnity to state actors should be clarified to ensure that treble damages resulting from antitrust violations are not considered punitive and may be paid by the state. This would leave no question that the state will pay treble damages awarded for violations of antitrust law in the same way it pays damages for board members in other types of lawsuits.

The concepts that I discussed with you in our meeting were also shared with the legislative committees during the Department's Joint Legislative Sunset Review hearing on March 9, 2016. The Department is committed to assisting the boards in this area and is continuing to work with the Legislature and Administration to address this important issue.

If you have questions or concerns regarding any of the information provided in this memo, please contact Melinda McClain at (916) 574-7800 or [Melinda.McClain@dca.ca.gov](mailto:Melinda.McClain@dca.ca.gov), or your assigned legal counsel.

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**To:** Board Members

**Date:** May 2, 2016

**From:** Rosanne Helms  
Legislative Analyst

**Telephone:** (916) 574-7897

**Subject:** Legislative Update

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The Board is currently sponsoring the following legislative proposals:

1. **AB 1917 (Obernolte): Educational Requirements for Marriage and Family Therapists and Professional Clinical Counselor Applicants**

This bill proposes modifications to the education required to become an LPCC or an LMFT as follows:

1. It amends the coursework and practicum required of LPCC applicants in order to ensure that the degree was designed to qualify the applicant to practice professional clinical counseling.
2. It amends the law to define education gained out-of-state based on the location of the school, instead of based on the residence of the applicant.

*Status: This bill has passed the Assembly and is now in the Senate.*

2. **SB 1478 (Senate Business, Professions, and Economic Development Committee): Healing Arts (Omnibus Bill)**

This bill proposal, approved by the Board at its November 20, 2015 meeting, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

The proposal to change the marriage and family therapist and professional clinical counselor "intern" title to "associate," also approved by the Board at its November 20, 2015 meeting, is also included in this bill.

*Status: This bill is in the Senate Appropriations Committee.*

The Board staff is watching the following legislative proposals:

1. **AB 1084 (Bonilla): Social Workers: Examination**

This is a spot bill which contains a provision that is already included in the omnibus bill. Staff expects that AB 1084 will be amended to address a different topic.

2. **AB 2649 (Jones): Marriage and Family Therapist Intern and Professional Clinical Counselor Intern: Renaming**

This Board is seeking these amendments in the omnibus bill. Staff expects that AB 2649 will be amended to address a different topic.

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**To:** Board Members

**Date:** May 2, 2016

**From:** Christy Berger  
Regulatory Analyst

**Telephone:** (916) 574-7817

**Subject:** Status of Rulemaking Proposals

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## CURRENT REGULATORY PROPOSALS

### **Standards of Practice for Telehealth: Add Title 16, CCR Section 1815.5**

This proposal addresses the use of telehealth in the provision of psychotherapy, and clarifies questions, such as when a California license is needed, actions a licensee must take in order to protect the client in a telehealth setting, and that failure to follow telehealth requirements is considered unprofessional conduct.

The final proposal was approved by the Board at its meeting in May 2015. It was published in the California Regulatory Notice Register on July 10, 2015. The 45-day public comment period has ended, and the public hearing was held on August 25, 2015. In response to comments received, modifications were made to the proposal and the 15-day public comment period ended on September 24, 2015. This proposal is currently under final review by the Office of Administrative Law.

### **English as a Second Language: Additional Examination Time: Add Title 16, CCR Section 1805.2**

This proposal would allow the Board to grant time-and-a-half (1.5x) on a Board-administered examination to an English as a second language (ESL) applicant, if the applicant meets specific criteria demonstrating limited English proficiency.

The final proposal was approved by the Board at its meeting in November 2015. It was published in the California Regulatory Notice Register on January 1, 2016. The 45-day public comment period has ended, and the public hearing was held on February 15, 2016. This proposal is currently under review by the Department of Consumer Affairs.

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**To:** Board Members

**Date:** April 21, 2016

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject:** Ethical Decision Making Presentation

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Dianne R. Dobbs, DCA Legal Counsel, will conduct a presentation on *Ethical Decision Making*.

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**To:** Board Members

**Date:** April 21, 2016

**From:** Kim Madsen  
 Executive Officer

**Telephone:** (916) 574-7841

**Subject:** Election of Officers

Business and Professions Code section 4990 requires the Board to elect a Chair and Vice-Chair prior to June 1 of each year. Currently, Christina Wong serves as the Board Chair, and Deborah Brown is the Vice-Chair.

In order to comply with existing law, the Board members should elect both a chair and a vice-chair at this meeting for 2016-2017.

Below is a list of board members and the date on which their term will expire:

| Board Member              | Type   | Authority | Date Appointed | Reappointed | Term Expires | Grace Expires |
|---------------------------|--------|-----------|----------------|-------------|--------------|---------------|
| Dr. Christine Wietlisbach | Public | Senate    | 2/4/2010       | 7/16/2015   | 6/1/2019     | 6/1/2020      |
| Samara Ashley             | Public | Governor  | 1/21/2010      | 7/12/2013   | 6/1/2017     | 8/1/2017      |
| Betty Connolly            | LEP    | Governor  | 8/22/2012      |             | 6/1/2016     | 8/1/2016      |
| Sarita Kohli              | LMFT   | Governor  | 6/7/2011       | 6/13/2014   | 6/1/2018     | 8/1/2018      |
| Patricia Lock-Dawson      | Public | Governor  | 1/13/2010      | 7/12/2013   | 6/1/2017     | 8/1/2017      |
| Renee Lonner              | LCSW   | Governor  | 1/17/2007      | 7/25/2014   | 6/1/2018     | 8/1/2018      |
| Karen Pines               | LMFT   | Governor  | 4/5/2011       | 7/2/2013    | 6/1/2017     | 8/1/2017      |
| Christina Wong            | LCSW   | Governor  | 5/18/2011      | 7/2/2013    | 6/1/2017     | 8/1/2017      |
| Dr. Leah Brew             | LPCC   | Governor  | 8/28/2012      |             | 6/1/2016     | 8/1/2016      |
| Deborah Brown             | Public | Governor  | 8/23/2012      | 7/2/2013    | 6/1/2017     | 8/1/2017      |
| Dr. Scott Bowling         | Public | Governor  | 9/11/2014      |             | 6/1/2018     | 8/1/2018      |
| Dr. Peter Chiu            | Public | Governor  | 10/30/2013     | 6/3/2015    | 6/1/2019     | 8/1/2019      |
| Max Disposti              | Public | Assembly  | 3/8/2016       |             | 6/1/2019     | 6/1/2020      |

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