



Board of Behavioral Sciences

# Memo

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Board Members **Date:** October 21, 2020

**From:** Rosanne Helms  
Legislative Manager **Telephone:** (916) 574-7897

**Subject: Proposed Legislation: Technical Changes for 2021**

Each year, staff reviews the Board's statutes to if determine technical, minor or nonsubstantive clean-up amendments need to be made. Typically, such amendments can either be run in an omnibus bill that the legislature runs each year, or they can be run in the Board's sunset bill (if the Board is up for sunset that year).

This past 2020 legislative session was unconventional in that due to COVID-19, the Legislature had to suddenly shut down for part of its session. Due to this, it had to significantly pare down the number of bills it was able to consider. As a result, the Board did not get the opportunity to include items in an omnibus bill last year. The Board's sunset bill was also delayed until the next legislative session.

Staff is seeking consideration of several types amendments today, most likely for inclusion in either an omnibus bill, or the Board's sunset bill:

- I. New Amendments – Not Yet Approved by the Board
- II. Fee Related Amendments – Previously Approved by the Board as Part of Last Year's Fee Bill
- III. Amendments Approved by the Board in 2019-2020
- IV. Amendments Made for Consistency with AB 2138 (Approved by Board in 2019-2020)

## **I. NEW AMENDMENTS – NOT YET APPROVED BY THE BOARD**

**The following proposed amendments are new, and the Board has not considered them.**

### **1. Amend BPC Section 2290.5 – Associates and Telehealth**

Background: Current law related to telehealth specifies that MFT associates and trainees are included in the definition of a "health care provider" who can perform services via telehealth.

BPC §23.8 states that when “licensees” are referred to in the Business and Professions Code, the term also includes registrants.

This means when BPC §2290.5 defines a “health care provider” as anyone licensed under Division 2 of the Business and Professions Code, this also includes all registrants. Therefore, MFT, ASW, and PCC associates technically do not need to be specifically listed in the definition.

However, when BPC §2290.5 was amended several years back, the LMFT associations preferred that associates and trainees be specifically listed as being permitted to do telehealth, so that there was no confusion on the matter. (MFT trainees are also permitted by law to perform services via telehealth per §4980.43.3(i).)

However, excluding PCC and ASW associates from the list has led to questions from the public about whether they can perform services via telehealth. They can, because of BPC §23.8. However, this is a subtle distinction for those not familiar with law, and it may be helpful to clarify it by specifically listing them in BPC §2290.5 as being able to perform services via telehealth, since MFT associates are specifically listed as being permitted to do so.

Although MFT trainees are already included as providers who can perform services via telehealth in BPC §2290.5, at this time, whether or not PCC trainees should be permitted to perform services via telehealth is probably best left to the upcoming telehealth committee. The law is silent about it, and trainees are not included in the definition of “licensees” in BPC §23.8. Additionally, PCC trainees are not permitted to count pre-degree hours like MFT trainees are, and therefore their supervision requirements are different.

Recommendation: Include associate clinical social workers and associate professional clinical counselors in the definition of health care providers who may provide services via telehealth in BPC §2290.5.

## **2. Amend BPC Sections 4980.46 and 4998.2; Add BPC Section 4989.47 – Fictitious Business Names**

Background: LMFT, LCSW, and LPCC statutes contain provisions prohibiting utilization of a false, misleading, or deceptive fictitious business name for a private practice or professional corporation. They also require the practicing therapist to inform the patient of the owner’s name and license designation prior to beginning treatment, or that the business is conducted by a professional corporation (as applicable).

While most of the statutes pertaining to this law prohibit use of a fictitious business name “that is false, misleading, or deceptive”, the wording for one LMFT and one LCSW statute is slightly different in that it prohibits use of a fictitious

business name “which is false, misleading, or deceptive”. Staff proposes that for these two particular statutes, the word “which” should be changed to “that” for consistency.

In addition, LEP statute does not contain this provision prohibiting utilization of false, misleading, or deceptive business names. Staff recommends that the section be added to LEP statute.

Recommendation: Amend BPC §4980.46 (for LMFTs) and §4998.2 (for LCSWs) to use the word “that” instead of “which”, for consistency with other similar statutes pertaining to the use of fictitious business names. Add a fictitious business name statute for LEPs (§4989.47).

### **3. Amend BPC Sections 4984.7, 4989.32, 4989.68, 4996.3, and 4999.120 – Clarification of Frequency of Renewal Fees**

Background: Current statutes for LMFTs (§4984), LCSWs (§4996.6), and LPCCs (4999.102) specify actions that a licensee must take to renew an unexpired license. One of these specified actions is that the licensee must pay a two-year renewal fee prescribed by the Board.

LEP statute (§4989.32) also specifies actions that an LEP licensee must take to renew a license, but it just specifies that a renewal fee must be paid – it does not specify that it is a two-year renewal fee.

In addition, staff recommends that for clarity, the Board’s fee schedule for each license type (§4984.7, 4989.68, 4996.3, and 4999.120) be clarified to specify that associate registrations are renewed annually, and licenses are renewed every two years.

Recommendation: Amend the sections listed above to clarify that associate registrations are renewed annually, and licenses are renewed every two years, as needed.

### **4. Add BPC Section 4990.07 – Email Address Requirement for Applicants, Registrants, and Licensees**

Background: Several other DCA boards, including the Medical Board, Dental Board, Physical Therapy Board, and Psychology Board, have added requirements to their laws that applicants, registrants, and licensees provide the board with a current email address if they have one.

Board staff believes such a requirement would be useful as well. It would allow staff to communicate information about law changes to most of its licensee and registrant population (rather than hoping that they sign up for our email subscription, or check our social media pages). In addition, the Board’s

examination vendor communicates with applicants in the exam process via email. It is therefore essential that the Board has current email addresses for these applicants, so that they can receive timely updates about their exam status.

Recommendation: Add BPC §4990.07 to the Board's general administrative code sections, requiring that all applicants, registrants, and licensees who have an email address provide it to the board by July 1, 2022. The language also prohibits the Board from disclosing the email address to the public.

## **5. Add BPC Section 4990.27 – Law Waivers During State of Emergency**

Background: During the COVID-19 state of emergency, the Governor issued Executive Order N-39-20, allowing the Director of the California Department of Consumer Affairs (Director) to waive any statutory or regulatory requirements with respect to a professional license issued pursuant to Division 2 of the Business and Professions Code (BPC). This includes the Board's statutes and regulations.

The Director approved several law waivers for the Board due to COVID-19. However, the Board's requests for these waivers had to clear several levels of review at the Department. The reviewers were not as familiar with the Board's licensing laws as Board staff, resulting in delays.

Pharmacy Board has an existing provision in its laws allowing it to waive provisions of its statutes and regulations during a declared federal, state, or local emergency, if the waiver will aid public protection or patient care. This provision has been in Pharmacy Board's statute since 2003, when it was granted as part of their sunset bill.

Recommendation: Staff had previously asked the Policy and Advocacy Committee to consider adding BPC §4990.27 to the Board's licensing law, allowing the Board the ability to waive statutes or regulations during a state of emergency if the Board believes the waiver will aid public protection or patient care. At its October 9, 2020, the Policy and Advocacy Committee agreed that the Board should consider this.

However, as the COVID-19 State of Emergency and resulting DCA waiver process is still ongoing and evolving, it may be premature for the Board to pursue its own waiver process. Therefore, the Board may wish to consider deferring this proposal until after the State of Emergency has ended.

## **6. Amend BPC Section 4996.3(a)(3) – Correction of Maximum Fee Amount**

Background: The Board successfully pursued an increase of its licensing fees this past legislative session. The fee increase is effective at its base amounts beginning January 1, 2021.

At the time of the fee increase, a base fee was determined based on the fee audit. To allow room for future fee increases without running legislation, the base fee was doubled to determine the maximum fee. The maximum fee represents the maximum amount a particular fee can be increased in the future via regulations. After the maximum fee is reached, any further needed fee increases must be established via legislation instead of regulations.

It is believed that the maximum fee amounts will not be needed for many years.

An error was discovered in the calculation of the maximum fee for LCSW application for licensure fee. Across all license types, the current (base) fee was established at \$250. To determine the maximum fee, it should have been doubled to \$500. This was done for LMFT, LEP, and LPCC license types. However, for LCSWs, it was erroneously not doubled, and instead set at \$400.

Increasing this lower maximum fee to \$500 would have no effect currently on the LCSW application for licensure fee, which is currently established (and would stay) at \$250. However, having the maximum fee ceiling set too low by error could have an effect years down the road, if application fees for the other licensing types are set at \$500 and LCSW application fees can only be raised to \$400. This would create an unequal fee across the license types and could require the Board to pursue legislation in the future when it otherwise would not have been needed.

Recommendation: Correct the error in BPC §4996.3(a)(3) to have the maximum LCSW application fee set at \$500 instead of \$400. This is consistent with the base fee being doubled to determine the maximum fee for the Board's other fees, and it is consistent with the maximum application for licensure fee of \$500 for the Board's other three license types.

**7. Add BPC Sections 4996.61 and 4996.62; Amend BPC Sections 4989.38 and 4989.40 – Renewal of Suspended License and Reinstatement of Revoked License**

Background: LMFT, LEP, and LPCC statute all contain sections that outline the conditions for renewing a suspended license and also for reinstating a revoked license. However, LCSW law is missing these sections.

In addition, although LEP law contains these sections, they are not worded exactly the same as the statute for LMFTs and LPCCs.

Recommendation: Add the two sections to LCSW law regarding renewal of a suspended license, and reinstatement of a revoked license, so that this process is clear for LCSWs and consistent with the Board's LMFT and LPCC license types. Amend the two sections in LEP law so that the wording is consistent with corresponding sections for the Board's other license types.

**8. Amend Health and Safety Code Section 1374.72 and Insurance Code Section 10144.5 – Definition of a “Health Care Provider” in SB 855**

Background: SB 855 (Wiener, Health Coverage: Mental Health or Substance Use Disorders) was a bill the Board supported this past legislative session that the Governor recently signed into law.

This bill expands California’s 1999 Mental Health Parity Act. It requires health plans and insurers that provide hospital, medical or surgical coverage to cover all medically necessary treatment of mental health and substance use disorders under the same terms and conditions applied to other medical conditions.

This bill contains a definition of a “health care provider” in the two sections noted above. Separate from its position, the Board had ultimately decided to request that all of its associates be added to the definition of “health care provider”, but that trainees either be removed, or it be clarified that they are under supervision of a licensed person.

Due to the unusual circumstances of this past legislative session, the author was ultimately not able to make these amendments before session ended. They suggested, however, that the Board pursue them as part of the Health Committee’s omnibus bill this coming year.

Recommendation: Staff recommends pursuing an amendment to the definition of a “health care provider” as follows to address the Board’s concerns:

- Delete professional clinical counselor trainees from the definition (they cannot count pre-degree hours, and therefore are not necessarily under the supervision of a licensed professional.)
- Continue to include marriage and family therapist trainees in the definition, but clarify that they are performing activities and services as part of their supervised course of study as set out in §4980.42 of the Business and Professions Code. (In order to count pre-degree hours, MFT trainees must be supervised by a licensed person who meets the Board’s supervisor qualifications.)

## II. **FEE-RELATED AMENDMENTS – CLEAN UP PREVIOUSLY APPROVED BY THE BOARD TO RUN IN LAST YEAR’S FEE INCREASE BILL**

The following language had been approved by the Board to run as part of its fee increase bill last year. However, the Board’s fee bill was consolidated into a bill proposing to increase fees for several other boards as well due to COVID, and only the most urgent provisions were included. The provisions below were clean-up and were not included in the fee bill as previously intended:

### 1. **Amend BPC Sections 4980.54, 4989.34, 4996.22, 4999.76 - Authority to Charge Continuing Education Provider Fees**

Background: The Board’s authority to approve continuing education providers was removed on January 1, 2015 when its new continuing education (CE) regulations became effective. These regulations instead established the Board’s authority to accept CE credits from providers who have been approved or registered by a Board recognized “approval agency” or by an organization, institution, association or entity that has been recognized by the Board as a continuing education provider. This change in regulation entrusted the review and approval of CE providers, coursework and instructors to professional associations and other entities recognized by the Board, because these entities have extensive experience and expertise administering and approving continuing education programs that the Board does not have.

Because the Board no longer has the authority to approve CE providers, language allowing the board to establish continuing education provider fees to fund the approval of CE providers is no longer needed.

Recommendation: Remove obsolete language allowing the Board to charge continuing education provider fees.

### 2. **Amend BPC Sections 4989.36, 4989.40, 4999.104 - Renewal of Expired License and Reinstatement of License: Accumulated Fees**

Background: The Board does not charge accrued renewal or delinquency fees for expired or revoked licenses. However, LPCC and LEP statutes are written to permit this. At the same time, LMFT and LCSW statutes are not written to permit this.

This inconsistency was highlighted with AB 544 in 2019, which proposed prohibiting boards under DCA from requiring a person to pay accrued and unpaid renewal fees as a condition of reinstating an expired license or registration. The bill proposed making the correction in LPCC and LEP language. Although AB 544 died for other reasons, it highlighted the need to make this change in LEP and LPCC statute, so that the law is worded consistency across all of the Board’s license types.

Recommendation: Amend LEP and LPCC statutes to clarify that charging accrued renewal or delinquency fees is not permitted.

**3. Repeal BPC Section 4999.122 – Licensed Professional Clinical Counseling Program Startup Funds**

Background: The Board’s newest license type, licensed professional clinical counselors (LPCCs) was established via SB 788 (Chapter 619, Statutes of 2009) in 2010.

To start up the program before license fee revenue came in, the Board needed funds to hire staff and fund other administrative costs of establishing a new license type. This section allowed the Board to use its reserve funds to establish the LPCC program.

The LPCC licensing program has been established and operational for several years now. This section is no longer needed.

Recommendation: Delete BPC §4999.122 as it is obsolete.

**III. AMENDMENTS APPROVED BY THE BOARD IN 2019-2020**

**There were several amendments approved by the Board that were intended to run in either last year’s omnibus bill or sunset bill. Due to limitations in the number of bills the legislature was able to consider because of COVID-19, these items were not able to move forward in a bill, and therefore staff is proposing their inclusion in either this year’s omnibus bill or sunset bill. They are as follows:**

**1. Amend BPC Sections 4987.5, 4998, and 4999.123 – Professional Corporations**

Background: These three sections specify that licensed marriage and family therapist (LMFT), licensed clinical social worker (LCSW), and licensed professional clinical counselor (LPCC) corporations are authorized to render professional services as long as the corporation and its shareholders, officers, directors, and employees rendering professional services, who are certain specified license holders, are in compliance with the Moscone-Knox Professional Corporation act and other relevant statutes and regulations.

The sections go on to list which license types may be officers, directors, or employees rendering professional services. However, this list is already in §13401.5 of the Corporations Code. Occasionally, the legislature changes the list in the Corporations Code. For example, midwives and naturopathic doctors



are more recent additions that are listed in the Corporations Code, but not in the BPC sections cited above.

Recommendation: Staff recommends striking the list of professions in §§4987.5, 4998, and 4999.123 of the Business and Professions Code, as they are already listed in the Corporations Code. These sections already state that the shareholders, officers, directors, or professional employees must be in compliance with the Moscone-Knox Act, so re-stating the professions is duplicative.

## **2. Amend BPC Section 4980.43.3 - Renumbering**

Background: BPC §4980.43.3 contains a numbering error in subdivision (c). The two criteria listed as (1) and (2) should instead be labeled as subdivisions (A) and (B).

Recommendation: Renumber the contents of subdivision (c) in order to correct the error.

## **3. Amend BPC Sections 4980.43.2, 4996.23.1, 4999.46.2 – Definition of “One Hour of Direct Supervisor Contact”**

***Note: This item will not be pursued in this bill this year. It will now be discussed in the telehealth committee.***

Background: These sections define “one hour of direct supervisor contact” as a specified amount of face-to-face contact between one supervisor and their supervisees.

The term “face-to-face” contact appears to indicate that the supervisor and supervisee(s) meet in person for the supervision session. This is implied by reviewing subdivisions 4980.43.2(d), 4996.23.1(f), and 4999.46.2(d), which state that notwithstanding the definitions of “one hour of direct supervisor contact”, an associate working in an exempt setting may obtain their required weekly direct supervisor contact via videoconferencing.

The COVID-19 state of emergency highlighted a need for further evaluation and clarification of this matter. It has been deferred to the Telehealth Committee for a further in-depth discussion.

Recommendation: Defer this item to the Telehealth Committee.

**4. Amend BPC Sections 4980.01, 4996.14, 4999.22 – Notice to Clients About Filing a Complaint**

Background: Last year via AB 630, the Board amended the law to require that unlicensed or unregistered therapists in exempt settings provide their clients with information about where to file a complaint about the therapist.

In its review of the bill, the Senate Committee on Business, Professions, and Economic Development suggested that additional language also be included in the notice provided to clients of unlicensed or unregistered therapists:

*[The Board of Behavioral Sciences receives and responds to complaints regarding services provided by licensed or registered counselors. If you have a complaint and are unsure if your counselor is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance or utilize the Board's online license verification feature by visiting \[www.bbs.ca.gov\]\(http://www.bbs.ca.gov\).](#)*

Adding this language would provide a consumer who is unsure about their therapist's license status with an additional resource (the Board's contact number and website) so that they could check if their therapist is licensed or registered.

Recommendation: Amend the above statement into the notice required by §§4980.01, 4996.14, and 4999.22.

**5. Amend BPC Sections 4980.01, 4980.32, 4989.17, 4996.14, 4996.75, 4999.22 and 4999.71– Timing of Providing the Notice to Clients About Filing a Complaint**

Background: As written in AB 630, the law requires the practitioner to provide the notice to clients about where to file a complaint about their therapist prior to initiating psychotherapy services.

In most cases when the practitioner is beginning session based-therapy, this requirement will not be difficult to fulfill. However, stakeholders raised the concern that in crisis situations, it may not be feasible or appropriate to stop the delivery of immediate services to provide and/or discuss the required notice.

Therefore, the Board decided to propose clarifying the notice requirement (for both licensed and registered individuals and unlicensed and unregistered individuals). The proposed amendment states that the notice must be provided prior to initiating psychotherapy services, or as soon as practicably possible thereafter. This provides clarity that in a crisis situation with a new patient, the practitioner does not need to stop urgent services to provide the notice. Instead, they can provide the notice as soon as possible after the crisis has been addressed.

The suggested amendment allowing the notice to be provided “as soon as practicably possible” is similar to language used in the law regarding mandated reporting of child abuse (see Penal Code §11166) and elder and dependent adult abuse (see Welfare and Institutions Code §15630).

The Board also determined it would be helpful to include language affirmatively stating that the delivery of the notice shall be documented. (The provision of law regarding telehealth (BPC §2290.5) currently requires a patient’s consent for telehealth to be documented.)

Recommendation: Amend the above-referenced sections to require the notice be provide prior to initiating psychotherapy services, or as soon as practicably possible thereafter, and to require that the delivery of the notice to the client be documented.

## **6. Amend BPC Section 4990.30 - Petitions for Reinstatement or Modification of Penalty**

Background: The Board’s legal counsel has recommended clarifying certain provisions regarding the procedure for petitioning to terminate probation early or modify a penalty, in order to clear up some ambiguities in BPC §4990.30:

- Subdivision (b) currently specifies timeframes after which a petition can be filed with the Board. Until recently, the Board has operated under the assumption that time during which a probation is tolled also counts toward the specified timeframes. However, an administrative law judge challenged this assumption, stating it is incorrect. Staff wishes to clarify that the timeframes exclude any periods of probation tolling.
- Subdivision (c) states that that a petition may be heard either by the Board, or that the Board can assign the petition to an administrative law judge. However, subdivision (d) implies that the petitioner has some say in who hears the case, stating “The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.” While the intent of this is likely to provide that the petitioner may request their case to be heard, for example at a southern California board meeting if they live in southern California, it also possibly inadvertently implies that a petitioner can request the Board to hear a case, instead of an administrative law judge

Recommendation: Amend subdivision (b) to exclude periods of probation tolling from the required timeframes on or after which a petition can be filed. Amend subdivision (d) to clarify that a petitioner can only request a hearing location if the Board is hearing the case.

**7. Amend BPC Section 4996.22 – Acceptable LCSW Continuing Education Providers**

Background: Currently, the law states that social workers can only obtain continuing education from an accredited school if the school is accredited by the Commission on Accreditation of the Council of Social Work Education. It does not permit social workers to gain continuing education from a school accredited by the US Department of Education (USDE) or approved by the Bureau for Private Postsecondary Education (BPPE).

Staff believes this is unintentional and that social workers should be able to gain continuing education from a school accredited by USDE or approved by BPPE, just as LMFTs and LPCCs can.

Recommendation: Amend BPC §4996.22 to permit clinical social workers to obtain continuing education from a school accredited by an accrediting agency recognized by the US Department of Education (USDE) or approved by the Bureau for Private Postsecondary Education (BPPE).

**8. Amend BPC Section 4999.46.1 – Delete Duplicative Definition of Supervision**

Background: Currently, two sections of LPCC statute define “supervision.” These sections are BPC §4999.12 and §4999.46.1. BPC §4999.12 defines terms used throughout the LPCC licensing statute, and therefore the definition is most appropriate there. It does not need to be duplicated in §4999.46.1.

Recommendation: Delete the duplicative definition of “supervision” in BPC §4999.46.1.

**9. Amend BPC Sections 4983, 4989.66, 4996.12, and 4999.86 – Fines for Licensing Act Violations**

Background: LMFT and LPCC law both have provisions establishing a misdemeanor charge and a fine of \$2,500 and/or six months in county jail for violating the respective licensing acts.

LCSW law has this clause as well, however the fine amount is less, at \$1,000. LEP law states a violation of its chapter is a misdemeanor but does not specify a punishment of jail time or a fine.

Staff believes the stated punishment for a violation of the Board’s licensing acts should be consistent but has been unable to determine the reason for the inconsistency. Both the LMFT section establishing the \$2,500 fine, and the LCSW section establishing the \$1,000 fine were established in the mid-1980’s and have not been amended since. Legislative history that might explain the

reason for the differing fines is not available that far back. The LPCC licensing law was established in 2009 and was modeled after the LMFT licensing law, which explains why the LPCC and LMFT fines are consistent.

The Board of Psychology has a similar provision (BPC §2970) that establishes a fine of \$2,000. (It was also last amended in the mid-1980's).

The fines referenced above are court fines. BPC §125.9 grants boards the authority to establish a system for issuance of citations and administrative fines via regulations. The Board has done this in regulation §1886.40, which establishes fines of up to \$2,500 for citable offenses, or up to \$5,000 if the particular offense meets certain specified circumstances.

Recommendation: Amend LMFT, LEP, LCSW and LPCC law to specify the misdemeanor punishment for a licensing act violation is a fine as determined by the court and/or six months in jail. (Note: staff reached out to the Assembly Business and Professions Committee to see if this issue could be addressed as a clean-up amendment in the Board's upcoming sunset bill. They indicated a willingness to examine and possibly address the issue there as well.)

#### **10. Amend BPC Section 4996.17.2 – Correct Numbering Reference**

Background: BPC §4996.17.2(c) contains an incorrect reference. This subdivision, which discusses education requirements for out-of-state applicants who do not qualify for the new streamlined pathway to licensure provided by the passage of this year's SB 679, states that out-of-state applicants must either have a master's degree from an accredited school of social work, or they must comply with subdivision (g) of 4996.18.

The reference to §4996.18(g) is incorrect. That section was recently renumbered, and (g) now states that associates must inform their patients that they are under supervision prior to services. The correct reference is to §4996.18(e), which states that an out-of-country degree must be deemed equivalent to a Counsel on Social Work accredited degree.

Recommendation: Amend §4996.17.2(c) to correctly reference §4996.18(e).

**IV. AMENDMENTS MADE FOR CONSISTENCY WITH AB 2138 (Previously Approved by Board in 2019-2020):**

Upon passage of AB 2138, Board staff reviewed its licensing statutes to ensure that they were consistent with the provisions of that bill. Staff identified the need for several amendments. The below amendments were approved by the Board and were intended to run in either last year's omnibus bill or sunset bill. However, due to restrictions on legislation due to COVID-19, they were unable to be made last year. They are as follows:

**1. Amend BPC Sections 4980.40, 4989.20, 4996.2, 4996.18, 4999.42, and 4999.51 – Qualifications for Licensure or Registration**

Background: These sections list criteria needed to qualify for a license or registration. One of these criteria is that the person must not have committed any acts or crimes constituting grounds for denial of licensure under BPC §480. (BPC §480 outlines the reasons a board may deny a license, and it was significantly changed by AB 2138 (Chapter 995, Statutes of 2018).)

BPC §480 used to allow denial of licensure based on convictions or certain acts involving fraud, dishonesty, or deceit. However, that language has been changed, and now denial is permitted based on certain types of convictions or based on formal discipline due to professional misconduct that occurred within a specific time frame and that is substantially related to the profession.

Recommendation: Given the recent changes to BPC §480, strike the old language that the applicant must not have committed acts or crimes constituting grounds for denial under §480. Add an amendment that simply states that the person must not be subject to denial of licensure pursuant to §480.

**2. Amend BPC Sections 4980.40, 4989.24, 4996.2, 4999.42, and 4999.51 – Reference to Penal Code Section 290**

Background: Penal Code (PC) §290 specifies various types of crimes for which registration as a sex offender is required.

PC §290 is being reorganized effective January 1, 2021. Under the new version of that law, the types of sex offenses have been organized into three tiers, depending on the severity of the crime. The higher the tier, the longer the required registration as a sex offender.

AB 2138 amended BPC §480 to specify that only the two higher tier sex offenses in the new PC §290 are subject to license denial regardless of the seven-year age limitation. However, there are several sections in the Board's practice acts that specify denial for any required registration under PC 290. However, these are now overridden by the changes made in AB 2138.

Recommendation: Amend the above listed sections of the Business and Professions Code to specify that any denials due to PC §290 registration must also be in accordance with the conditions for denial specified in §480.

**3. Amend BPC Sections 4982, 4989.54, 4992.3, and 4999.90– Unprofessional Conduct Provisions**

Background: These sections contain a definition of a conviction. However, AB 2138 amended the definition of a conviction in BPC §7.5 for the purposes of denying a license pursuant to §480. Therefore, an amendment was made referencing that definition here.

These sections also contain language permitting suspension, revocation, or denial of a license regardless of whether a conviction has been dismissed pursuant to Penal Code §1203.4. However, due to amendments made in AB 2396 and AB 2138, denial of licensure is not permitted on the basis of this type of dismissed conviction. Therefore, instead of including this specific language, the Board has made an amendment stating actions to suspend, revoke, or deny a license must be in compliance with Division 1.5 of the Business and Professions Code (this Division contains §480 and contains the statutes governing denial, suspension, and revocation of licenses.)

Recommendation: Amend these unprofessional conduct sections to reference the definition of a conviction referenced in BPC §7.5. Also amend the sections to state that suspensions, revocations, or denials of a license or registration must be in accordance with Division 1.5 of the Business and Professions Code.

**4. Amend BPC Section 4999.80 – References to Statutes Governing License Denials, Suspensions, or Revocations**

Background: This section references laws governing license denials, suspensions, or revocations. BPC §490 governs license suspensions and revocations and is not included in the list of referenced sections. The Board believes it should be.

Recommendation: Amend BPC §4999.80 to include §490 in the list of referenced sections that pertain to license denials, suspensions, or revocations.

**Policy and Advocacy Committee Recommendation**

The Policy and Advocacy Committee considered the above proposed amendments at its October 9, 2020 meeting. The Committee directed staff to bring these proposed amendments to the Board for consideration as a legislative proposal.

## **Recommendation**

Conduct an open discussion about the proposed amendments. Direct staff to make any discussed changes and any non-substantive changes and pursue as a legislative proposal.

## **Attachments**

Attachment A: Proposed Language



**ATTACHMENT A  
TECHNICAL AMENDMENTS - 2021  
PROPOSED LANGUAGE**

***Note: All code sections are in the Business and Professions Code (BPC) unless otherwise noted***

**AMEND BPC §2290.5 TELEHEALTH; CONSENT REQUIREMENTS; EFFECT OF NONCOMPLIANCE ON HEALTH PRACTITIONER**

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means any of the following:

(A) A person who is licensed under this division.

(B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

[\(D\) An associate clinical social worker functioning pursuant to Section 4996.23.2 of the Business and Professions Code.](#)

[\(E\) An associate professional clinical counselor functioning pursuant to Section 4999.46.3 of the Business and Professions Code.](#)

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) “Telehealth” means 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. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) This section does not preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of a health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient’s rights to the patient’s medical information shall apply to telehealth interactions.

(g) All laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice that apply to a health care provider under the health care provider’s license shall apply to that health care provider while providing telehealth services.

(h) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(i) (1) Notwithstanding any other law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, “telehealth” shall include “telemedicine” as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

**AMEND BPC §4980.01. (Includes Chaptered Language From AB 630)**

(a) This chapter shall not be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, the Licensed Professional Clinical Counselor Act, or the Psychology Licensing Law.

(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of their pastoral or professional duties, or to any person who is admitted to practice law in the state, or a physician and surgeon who provides counseling services as part of their professional practice.

(c) This chapter shall not apply to an unlicensed or unregistered employee or volunteer working in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable if both of the following apply:

(1) The work of the employee or volunteer is performed solely under the supervision of the entity.

(2) On and after July 1, 2020, the employee or volunteer provides a client, prior to initiating psychotherapy services, or as soon as practicably possible thereafter, a notice written in at least 12-point type that is in substantially the following form:

**NOTICE TO CLIENTS**

The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered ~~counselor~~ practitioner providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).

The Board of Behavioral Sciences receives and responds to complaints regarding services provided by individuals licensed and registered by the Board. If you have a complaint and are unsure if your practitioner is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance or utilize the Board’s online license verification feature by visiting [www.bbs.ca.gov](http://www.bbs.ca.gov).

(3) The delivery of the notice to the client shall be documented.

(d) A marriage and family therapist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care provider subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

(e) Notwithstanding subdivisions (b) and (c), all persons registered as associates or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

### **AMEND BPC §4980.32.**

On and after July 1, 2020, a licensee or registrant shall provide a client with a notice written in at least 12-point type prior to initiating psychotherapy services, or as soon as practicably possible thereafter, that reads as follows:

#### **NOTICE TO CLIENTS**

The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of marriage and family therapists. You may contact the board online at [www.bbs.ca.gov](http://www.bbs.ca.gov), or by calling (916) 574-7830.

The delivery of the notice to the client shall be documented.

### **AMEND BPC §4980.40. QUALIFICATIONS**

An applicant for licensure shall satisfy all of the following qualifications:

- (a) Meet the educational requirements of Section 4980.36 or both Sections 4980.37 and 4980.41, as applicable.
- (b) Be at least 18 years of age.
- (c) Have at least two years of supervised experience as specified in this chapter and its corresponding regulations.
- (d) Successfully pass a California law and ethics examination and a clinical examination. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.
- (e) ~~Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.~~ Not be subject to denial of licensure pursuant to Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the

Penal Code or the equivalent in another state or territory, [in accordance with Section 480](#).

**AMEND BPC §4980.43.3. SUPERVISED EXPERIENCE: ACCEPTABLE SETTINGS; ACCEPTABLE SUPERVISION PRACTICES**

- (a) A trainee, associate, or applicant for licensure shall only perform mental health and related services as an employee or volunteer, and not as an independent contractor. The requirements of this chapter regarding hours of experience and supervision shall apply equally to employees and volunteers. A trainee, associate, or applicant for licensure shall not perform any services or gain any experience within the scope of practice of the profession, as defined in Section 4980.02, as an independent contractor. While an associate may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.
- (1) If employed, an associate shall provide the board, upon application for licensure, with copies of the W-2 tax forms for each year of experience claimed.
- (2) If volunteering, an associate shall provide the board, upon application for licensure, with a letter from his or her employer verifying the associate's status as a volunteer during the dates the experience was gained.
- (b) (1) A trainee shall not perform services in a private practice. A trainee may be credited with supervised experience completed in a setting that meets all of the following:
- (A) Is not a private practice.
- (B) Lawfully and regularly provides mental health counseling or psychotherapy.
- (C) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements in this chapter and is within the scope of practice for the profession, as defined in Section 4980.02.
- (2) Only experience gained in the position for which the trainee volunteers or is employed shall qualify as supervised experience.
- (c) [\(1\)](#) An associate may be credited with supervised experience completed in any setting that meets both of the following:
- ~~(1)~~[\(A\)](#) Lawfully and regularly provides mental health counseling or psychotherapy.

~~(2)~~(B) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements in this chapter and is within the scope of practice for the profession, as defined in Section 4980.02.

~~(3)~~(2) Only experience gained in the position for which the associate volunteers or is employed shall qualify as supervised experience.

~~(4)~~(3) An applicant for registration as an associate shall not be employed or volunteer in a private practice until he or she has been issued an associate registration by the board.

- (d) Any experience obtained under the supervision of a spouse, relative, or domestic partner shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.
- (e) A trainee, associate, or applicant for licensure shall not receive any remuneration from patients or clients and shall only be paid by his or her employer, if an employee.
- (f) A trainee, associate, or applicant for licensure shall have no proprietary interest in his or her employer's business and shall not lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of his or her employer.
- (g) A trainee, associate, or applicant for licensure who provides voluntary services in any lawful work setting other than a private practice and who only receives reimbursement for expenses actually incurred shall be considered an employee. The board may audit an applicant for licensure who receives reimbursement for expenses and the applicant for licensure shall have the burden of demonstrating that the payment received was for reimbursement of expenses actually incurred.
- (h) A trainee, associate, or applicant for licensure who receives a stipend or educational loan repayment from a program designed to encourage demographically underrepresented groups to enter the profession or to improve recruitment and retention in underserved regions or settings shall be considered an employee. The board may audit an applicant who receives a stipend or educational loan repayment and the applicant shall have the burden of demonstrating that the payment received was for the specified purposes.

- (i) An associate or a trainee may provide services via telehealth that are in the scope of practice outlined in this chapter.
- (j) Each educational institution preparing applicants pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital, conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her associates and trainees regarding the advisability of undertaking individual, marital, conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, educational institutions and supervisors are encouraged to assist the applicant to locate counseling or psychotherapy at a reasonable cost.

#### **AMEND BPC §4980.46. FICTITIOUS BUSINESS NAMES**

Any licensed marriage and family therapist who conducts a private practice under a fictitious business name shall not use any name ~~which~~that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.

#### **AMEND BPC §4980.54. CONTINUING EDUCATION**

(a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to ensure that an applicant is prepared and qualified to take the licensure examinations as specified in subdivision (d) of Section 4980.40 and, if ~~he or she~~ the applicant passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

(c) Except as provided in subdivision (e), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that ~~he or she~~ the applicant has completed not less than 36 hours of approved continuing education in or relevant to the field of marriage and family therapy in the preceding two years, as determined by the board.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as defined by the board.

(f) The continuing education shall be obtained from one of the following sources:

(1) An accredited school or state-approved school that meets the requirements set forth in Section 4980.36 or 4980.37. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, as specified by the board by regulation.

(g) The board shall establish, by regulation, a procedure for identifying acceptable providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (f), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.

(h) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of marriage and family therapy.

(2) Aspects of the discipline of marriage and family therapy in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy.

(i) A system of continuing education for licensed marriage and family therapists shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

~~(j) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (f) shall be deemed to be an approved provider.~~

~~(k)~~

(l) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.



## **AMEND BPC §4982. UNPROFESSIONAL CONDUCT (Includes AB 991 Chaptered Amendments)**

The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if the licensee or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

- (a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. ~~A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. A conviction has the same meaning as defined in section 7.5 of the Business and Professions Code.~~ The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, ~~irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.~~ All actions pursuant to this subdivision must be taken in accordance with Division 1.5 of this chapter.
- (b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.
- (c) Administering to themselves any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.
- (d) Gross negligence or incompetence in the performance of marriage and family therapy.

- (e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.
- (f) Misrepresentation as to the type or status of a license or registration held by the licensee or registrant or otherwise misrepresenting or permitting misrepresentation of the licensee's or registrant's education, professional qualifications, or professional affiliations to any person or entity.
- (g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use the licensee's or registrant's license or registration.
- (h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.
- (i) Intentionally or recklessly causing physical or emotional harm to any client.
- (j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.
- (k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.
- (l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee, registered associate, or applicant for licensure under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.
- (m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.
- (n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.
- (o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. This subdivision does not prevent collaboration among two or more licensees in a case or cases. However, a fee shall not be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered associate, trainee, or applicant for licensure by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform mental health services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee, registered associate, or applicant for licensure under one's supervision or control to perform, or permitting the trainee, registered associate, or applicant for licensure to hold themselves out as competent to perform, mental health services beyond the trainee's, registered associate's, or applicant for licensure's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(z) Failure to comply with Section 2290.5.

(aa) (1) Engaging in an act described in Section 261, 286, 287, or 289 of, or former Section 288a of, the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental

interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(ab) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

### **AMEND BPC §4983. VIOLATION; MISDEMEANOR; PUNISHMENT**

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine ~~not exceeding two thousand five hundred dollars (\$2,500)~~ as determined by the court, or by both.

### **AMEND BPC §4984.7. LICENSING AND EXAM FEES SCHEDULE**

(a) The board shall assess the following fees relating to the licensure of marriage and family therapists:

(1) The application fee for an associate registration shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).

(2) The annual renewal fee for an associate registration shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).

(3) The fee for the application for licensure shall be two hundred fifty dollars (\$250). The board may adopt regulations to set the fee at a higher amount, up to a maximum of five hundred dollars (\$500).

(4) (A) (i) The fee for the clinical examination shall be two hundred fifty dollars (\$250). The board may adopt regulations to set the fee at a higher amount, up to a maximum of five hundred dollars (\$500).

(ii) The fee for the California law and ethics examination shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).

(B) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fee.

(C) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

- (5) The fee for rescoring an examination shall be twenty dollars (\$20).
- (6) The fee for the issuance of an initial license shall be two hundred dollars (\$200). The board may adopt regulations to set the fee at a higher amount, up to a maximum of four hundred dollars (\$400).
- (7) The fee for the two-year license renewal shall be two hundred dollars (\$200). The board may adopt regulations to set the fee at a higher amount, up to a maximum of four hundred dollars (\$400).
- (8) The renewal delinquency fee shall be one-half of the fee for license renewal. A person who permits their license to expire is subject to the delinquency fee.
- (9) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars (\$20).
- (10) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25).
- (11) The fee for issuance of a retired license shall be forty dollars (\$40).
- (b) This section shall become operative on January 1, 2021.

#### **AMEND BPC §4987.5. DEFINITION**

A marriage and family therapy corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed marriage and family therapists, physicians and surgeons, psychologists, licensed professional clinical counselors, licensed clinical social workers, registered nurses, chiropractors, or acupuncturists are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and any other statute or regulation pertaining to that corporation and the conduct of its affairs. With respect to a marriage and family therapy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Behavioral Sciences.

#### **AMEND BPC §4989.17.**

On and after July 1, 2020, a licensee shall provide a client with a notice written in at least 12-point type prior to initiating psychological services, or as soon as practicably possible thereafter, that reads as follows:

## NOTICE TO CLIENTS

The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of licensed educational psychologists. You may contact the board online at [www.bbs.ca.gov](http://www.bbs.ca.gov), or by calling (916) 574-7830.

[The delivery of the notice to the client shall be documented.](#)

## AMEND BPC §4989.20. LICENSURE REQUIREMENTS

- (a) The board may issue a license as an educational psychologist if the applicant satisfies, with proof satisfactory to the board, the following requirements:
- (1) Possession of, at minimum, a master's degree in psychology, educational psychology, school psychology, counseling and guidance, or a degree deemed equivalent by the board. This degree shall be obtained from an educational institution approved by the board according to the regulations adopted under this chapter.
  - (2) Attainment of 18 years of age.
  - (3) ~~No commission of an act or crime constituting grounds for denial of licensure under Section 480.~~ Is not subject to denial of licensure pursuant to Section 480.
  - (4) Successful completion of 60 semester hours of postgraduate work in pupil personnel services.
  - (5) Two years of full-time, or the equivalent to full-time, experience as a credentialed school psychologist in the public schools. The applicant shall not be credited with experience obtained more than six years prior to filing the application for licensure.
  - (6) One of the following:
    - (A) One year of supervised professional experience in an accredited school psychology program.
    - (B) In addition to the requirements of paragraph (5), one year of full-time, or the equivalent to full-time, experience as a credentialed school psychologist in the public schools obtained under the direction of a licensed educational psychologist or a licensed psychologist.
  - (7) Passage of an examination specified by the board.

## **AMEND BPC §4989.24. CONVICTION INVOLVING SEXUAL ABUSE OF CHILDREN**

The board shall not issue a license to a person who has been convicted of a crime in this or any other state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory. [A denial issued pursuant to this section shall comply with the conditions for denial specified in section 480.](#)

## **AMEND BPC §4989.32. RENEWAL OF UNEXPIRED LICENSE**

To renew an unexpired license, the licensee shall, on or before the expiration date of the license, take all of the following actions:

- (a) Apply for renewal on a form prescribed by the board.
- (b) Pay a [two-year](#) renewal fee prescribed by the board.
- (c) Inform the board of whether he or she has been convicted, as defined in Section 490, of any misdemeanor or felony and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state after the prior issuance or renewal of his or her license.
- (d) Complete the continuing education requirements described in Section 4989.34.

## **AMEND BPC §4989.34. CONTINUING EDUCATION REQUIREMENTS**

- (a) To renew ~~his or her~~ [a](#) license, ~~a the~~ licensee shall certify to the board, on a form prescribed by the board, completion in the preceding two years of not less than 36 hours of approved continuing education in, or relevant to, educational psychology.
- (b) (1) The continuing education shall be obtained from either an accredited university or a continuing education provider as specified by the board by regulation.
- (2) The board shall establish, by regulation, a procedure identifying acceptable providers of continuing education courses, and all providers of continuing education shall comply with procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.
- (c) Training, education, and coursework by approved providers shall incorporate one or more of the following:
  - (1) Aspects of the discipline that are fundamental to the understanding or the practice of educational psychology.
  - (2) Aspects of the discipline of educational psychology in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of educational psychology.

(d) The board may audit the records of a licensee to verify completion of the continuing education requirement. A licensee shall maintain records of the completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon its request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as determined by the board.

~~(f) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The amount of the fees shall be sufficient to meet, but shall not exceed, the costs of administering this section.~~

~~(g)~~

(f) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

#### **AMEND BPC §4989.36. RENEWAL OF EXPIRED LICENSE**

A licensee may renew a license that has expired at any time within three years after its expiration date by taking all of the actions described in Section 4989.32 and by paying ~~all unpaid prior renewal fees and delinquency fees.~~ the delinquency fee.

#### **AMEND BPC §4989.38. RENEWAL OF SUSPENDED LICENSE**

~~A suspended license is subject to expiration as provided in this article and may be renewed, following the period of suspension, if the licensee takes all of the actions described in Section 4989.32. A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the licensee, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.~~

#### **AMEND BPC §4989.40. EXPIRATION AND REINSTATEMENT OF REVOKED LICENSE**

~~A revoked license is subject to expiration as provided in this article and shall not be renewed. The applicant may apply to the board for reinstatement of his or her license and shall pay a reinstatement fee in an amount equal to the renewal fee in effect at that time and any delinquency fees that may have accrued and comply with other requirements of the board for reinstatement. A revoked license is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its~~



expiration, the licensee shall, as a condition precedent to its reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

### **ADD BPC §4989.47. FICTITIOUS BUSINESS NAMES**

Any licensed educational psychologist who conducts a private practice under a fictitious business name shall not use any name that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.

### **AMEND BPC §4989.54. UNPROFESSIONAL CONDUCT (Includes AB 1651 Chaptered Amendments)**

The board may deny a license or may suspend or revoke the license of a licensee if the person has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

~~(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.~~ A conviction has the same meaning as defined in section 7.5 of the Business and Professions Code.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, ~~irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.~~ All actions pursuant to this subdivision must be taken in accordance with Division 1.5 of this chapter.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to themselves a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to themselves or to any other person or to the public or to the extent that the use impairs their ability to safely perform the functions authorized by the license. The board shall deny an application for a license or revoke the license of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing educational psychology.

(d) Failure to comply with the consent provisions in Section 2290.5.

(e) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as an educational psychologist, a clinical social worker, professional clinical counselor, or marriage and family therapist.

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(l) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of the licensee's education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Before the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding oneself out as being able to perform, offering to perform, or permitting any unlicensed person under supervision to perform, any professional services beyond the scope of the license authorized by this chapter or beyond the person's field or fields of competence as established by the person's education, training, or experience. For purposes of this subdivision, "unlicensed person" includes, but is not limited to, an applicant for licensure, an associate, an intern, or a trainee under the Licensed Marriage and Family Therapist Act (Chapter 13 (commencing with Section 4980)), the Clinical Social Worker Practice Act (Chapter 14 (commencing with Section 4991)), or the Licensed Professional Clinical Counselor Act (Chapter 16 (commencing with Section 4999.10)).

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize the person's private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(y) (1) Engaging in an act described in Section 261, 286, 287, or 289 of, or former Section 288a of, the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional

conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(z) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.

(aa) Impersonation of another by any licensee or applicant for a license, or, in the case of a licensee, allowing any other person to use the person's license.

(ab) Permitting an unlicensed person under the licensee's supervision or control to perform, or permitting that person to hold themselves out as competent to perform, mental health services beyond the unlicensed person's level of education, training, or experience. For purposes of this subdivision, "unlicensed person" is defined in subdivision (r).

(ac) The violation of any statute or regulation governing the gaining and supervision of experience of an unlicensed person, including an unlicensed person identified in subdivision (ab), by a licensee that violates this chapter, the Licensed Marriage and Family Therapist Act (Chapter 13 (commencing with Section 4980)), the Clinical Social Worker Practice Act (Chapter 14 (commencing with Section 4991)), the Licensed Professional Clinical Counselor Act (Chapter 16 (commencing with Section 4999.10)), or any rules or regulations adopted by the board pursuant to those provisions. For purposes of this subdivision, "unlicensed person" is defined in subdivision (r).

(ad) The violation of any statute or regulation governing the gaining and supervision of experience of an unlicensed person required by the Licensed Marriage and Family Therapist Act (Chapter 13 (commencing with Section 4980)), the Clinical Social Worker Practice Act (Chapter 14 (commencing with Section 4991)), or the Licensed Professional Clinical Counselor Act (Chapter 16 (commencing with Section 4999.10)).

#### **AMEND BPC §4989.66. VIOLATION OF CHAPTER; MISDEMEANOR**

A person who violates any of the provisions of this chapter is guilty of a misdemeanor [punishable by imprisonment in the county jail not exceeding six months, or by a fine as determined by the court, or by both.](#)

#### **AMEND BPC §4989.68. FEE SCHEDULE**

(a) The board shall assess the following fees relating to the licensure of educational psychologists:

- (1) The application fee for licensure shall be two hundred fifty dollars (\$250). The board may adopt regulations to set the fee at a higher amount, up to a maximum of five hundred dollars (\$500).
- (2) The fee for issuance of the initial license shall be two hundred dollars (\$200). The board may adopt regulations to set the fee at a higher amount, up to a maximum of four hundred dollars (\$400).
- (3) The fee for [the two-year](#) license renewal shall be two hundred dollars (\$200). The board may adopt regulations to set the fee at a higher amount, up to a maximum of four hundred dollars (\$400).
- (4) The delinquency fee shall be one-half of the fee for license renewal. A person who permits their license to expire shall be subject to the delinquency fee.
- (5) The written examination fee shall be two hundred fifty dollars (\$250). The board may adopt regulations to set the fee at a higher amount, up to a maximum of five hundred dollars (\$500). An applicant who fails to appear for an examination, once having been scheduled, shall forfeit any examination fees they paid.
- (6) The fee for rescoring a written examination shall be twenty dollars (\$20).
- (7) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars (\$20).
- (8) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25).
- (9) The fee for issuance of a retired license shall be forty dollars (\$40).
- (b) This section shall become operative on January 1, 2021.

#### **ADD BPC §4990.07 EMAIL ADDRESSES**

(a) Every applicant, registrant, and licensee who has an electronic mail address shall provide the board with that electronic mail address no later than July 1, 2022. The electronic mail address shall be considered confidential and not subject to public disclosure.

(b) Each applicant, registrant, and licensee shall provide to the Board any and all changes to their electronic mail address no later than thirty (30) calendar days after the changes have occurred.

(c) The board shall, with each renewal application, remind licensees and registrants of their obligation to report and keep current their electronic mail address with the board.

## **ADD BPC §4990.27 STATE OF EMERGENCY**

(a) During a declared federal, state, or local emergency, the board may waive application of any provisions of this chapter, Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10), Chapter 14 (commencing with Section 4991), and Chapter 16 (commencing with Section 4999.10), or any of the regulations adopted pursuant to them if, in the board's opinion, the waiver will aid in the protection of public health or the provision of patient care.

(b) Notwithstanding any other law, the board may elect to continue to waive application of any provision of this chapter, Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10), Chapter 14 (commencing with Section 4991), and Chapter 16 (commencing with Section 4999.10), or any of the regulations adopted pursuant to them, for up to 90 days following the termination of the declared emergency if, in the board's opinion, the continued waiver will aid in the protection of the public health or in the provision of patient care.

## **AMEND BPC §4990.30. PETITION FOR REINSTATEMENT OR MODIFICATION OF PENALTY (Includes Chaptered Language From SB 786)**

- (a) A licensed marriage and family therapist, associate marriage and family therapist, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, associate professional clinical counselor, or licensed educational psychologist whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The petition shall be on a form provided by the board and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order. The petition shall be verified by the petitioner who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.
- (b) The licensee or registrant may file the petition on or after the expiration of the following timeframes, ~~each of which~~ Each timeframe excludes any periods during which the probation was tolled, and commences on the effective date of the decision ordering the disciplinary action or, if the order of the board, or any portion of it, is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:
- (1) Three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years. A registrant who is ineligible for reinstatement pursuant to Section 4984.01, 4996.28, or 4999.100 may apply for a subsequent registration number.

- (2) Two years for early termination of any probation period of three years or more.
- (3) One year for modification of a condition, reinstatement of a license or registration revoked for mental or physical illness, or termination of probation of less than three years. A registrant who is ineligible for reinstatement pursuant to Section 4984.01, 4996.28, or 4999.100 may apply for a subsequent registration number.
- (c) The petition may be heard by the board itself or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code.
- (d) If the petition is to be heard by the board, the~~The~~ petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.
- (e) The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition and an opportunity to present both oral and documentary evidence and argument to the board or the administrative law judge.
- (f) The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that they are entitled to the relief sought in the petition.
- (g) The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time their license or registration was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.
- (h) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate but in no case may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.
- (i) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge, may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4990.40. If a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board. The board may take action with respect to the proposed decision and petition as it deems appropriate.
- (j) The petitioner shall pay a fingerprinting fee and provide a current set of their fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before

the board, to determine the petitioner's fitness to practice as required by Section 822.

- (k) The board may delegate to its executive officer authority to order investigation of the contents of the petition.
- (l) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.
- (m) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

### **AMEND BPC §4992.3. UNPROFESSIONAL CONDUCT; EFFECT ON LICENSEE OR REGISTRANT (Includes AB 991 Chaptered Amendments)**

The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if the licensee or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

- (a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. ~~A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. A conviction has the same meaning as defined in section 7.5 of the Business and Professions Code.~~ The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, ~~irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.~~ All actions pursuant to this subdivision must be taken in accordance with Division 1.5 of this chapter.

- (b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by



an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to themselves any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under the person's care.

(d) Incompetence in the performance of clinical social work.

(e) An act or omission that falls sufficiently below the standard of conduct of the profession as to constitute an act of gross negligence.

(f) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(g) Misrepresentation as to the type or status of a license or registration held by the licensee or registrant or otherwise misrepresenting or permitting misrepresentation of the licensee's or registrant's education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(h) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use the licensee's or registrant's license or registration.

(i) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(j) Intentionally or recklessly causing physical or emotional harm to any client.

(k) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(l) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an

act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(m) Performing, or holding oneself out as being able to perform, or offering to perform or permitting, any registered associate, trainee, or applicant for licensure under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

(n) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. This subdivision does not prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (o).

(q) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(r) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device. A licensee shall limit access to that test or device to persons with professional interest who are expected to safeguard its use.

(s) Any conduct in the supervision of any registered associate, trainee, or applicant for licensure by any licensee that violates this chapter or any rules or regulations adopted by the board.

(t) Performing or holding oneself out as being able to perform mental health services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(u) Permitting an applicant for licensure, trainee, or registrant under one's supervision or control to perform, or permitting the supervisee to hold themselves out as competent to perform, mental health services beyond the supervisee's level of education, training, or experience.

(v) The violation of any law governing the gaining or supervision of experience required by this chapter.

(w) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(x) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(y) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(z) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(aa) Failure to comply with Section 2290.5.

(ab) (1) Engaging in an act described in Section 261, 286, 287, or 289 of, or former Section 288a of, the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(ac) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.

## **AMEND BPC §4996.2. QUALIFICATIONS OF LICENSEES**

Each applicant for a license shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post-master's degree experience, as specified in Section 4996.23.

(d) ~~Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480. Not be subject to denial of licensure pursuant to Section 480.~~  
The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to

Section 290 of the Penal Code or the equivalent in another state or territory, [in accordance with section 480](#).

- (e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after January 1, 1986.
- (f) Has completed instruction and training in spousal or partner abuse assessment, detection, and intervention. This requirement applies to an applicant who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003. An applicant who began graduate training on or after January 1, 2004, shall complete a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.
- (g) Has completed a minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 1807 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.
- (h) Has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 1807.2 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

### **AMEND BPC §4996.3. LICENSING AND EXAM FEES**

- (a) The board shall assess the following fees relating to the licensure of clinical social workers:
  - (1) The application fee for registration as an associate clinical social worker shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).
  - (2) The fee for [the annual](#) renewal of an associate clinical social worker registration shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).
  - (3) The fee for application for licensure shall be two hundred fifty dollars (\$250). The board may adopt regulations to set the fee at a higher amount, up to a maximum of ~~four hundred dollars (\$400)~~ [five hundred dollars \(\\$500\)](#).
  - (4) (A) (i) The fee for the board-administered clinical examination, if the board chooses to

adopt this examination in regulations, shall be two hundred fifty dollars (\$250). The board may adopt regulations to set the fee at a higher amount, up to a maximum of five hundred dollars (\$500).

(ii) The fee for the California law and ethics examination shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).

(B) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(C) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars (\$20).

(6) The fee for issuance of an initial license shall be two hundred dollars (\$200). The board may adopt regulations to set the fee at a higher amount, up to a maximum of four hundred dollars (\$400).

(7) The fee for [the two-year](#) license renewal shall be two hundred dollars (\$200). The board may adopt regulations to set the fee at a higher amount, up to a maximum of four hundred dollars (\$400).

(8) The renewal delinquency fee shall be one-half of the fee for license renewal. A person who permits their license to expire shall be subject to the delinquency fee.

(9) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars (\$20).

(10) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25).

(11) The fee for issuance of a retired license shall be forty dollars (\$40).

(b) This section shall become operative on January 1, 2021.

#### **ADD BPC §4996.61. RENEWAL OF SUSPENDED LICENSE; EFFECT OF RENEWAL**

A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the licensee, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

## **ADD BPC §4996.62. REVOKED LICENSE; REINSTATEMENT AFTER EXPIRATION**

A revoked license is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee shall, as a condition precedent to its reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

## **AMEND BPC §4996.12. VIOLATIONS; PENALTIES**

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding a period of six months, or by a fine ~~not exceeding one thousand dollars (\$1,000), or by both as~~ determined by the court, or by both.

## **AMEND BPC §4996.14. (Includes Chaptered Language From AB 630)**

(a) This chapter shall not be construed to constrict, limit, or withdraw the Medical Practice Act, the Licensed Marriage and Family Therapist Act, the Nursing Practice Act, the Licensed Professional Clinical Counselor Act, or the Psychology Licensing Law.

(b) This chapter shall not apply to an unlicensed or unregistered employee or volunteer working in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable if both of the following apply:

(1) The work of the employee or volunteer is performed solely under the supervision of the entity.

(2) On and after July 1, 2020, the employee or volunteer provides a client, prior to initiating psychotherapy services, or as soon as practicably possible thereafter, a notice written in at least 12-point type that is in substantially the following form:

### **NOTICE TO CLIENTS**

The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered ~~counselor~~ practitioner providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).

The Board of Behavioral Sciences receives and responds to complaints regarding services provided by individuals licensed and registered by the Board. If you have a complaint and are unsure if your practitioner is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance or utilize the Board's online license verification feature by visiting [www.bbs.ca.gov](http://www.bbs.ca.gov).

(3) The delivery of the notice to the client shall be documented.

(c) This chapter shall not apply to a person using hypnotic techniques if their client was referred by a physician and surgeon, dentist, or psychologist.

(d) This chapter shall not apply to a person using hypnotic techniques that offer vocational self-improvement, and the person is not performing therapy for emotional or mental disorders.

**AMEND BPC §4996.17.2. (Includes Chaptered Language From AB 630)**

(a) This section applies to persons with education gained from an out-of-state school or experience gained outside of California who apply for licensure or registration and who do not qualify for a license under Section 4996.17.1.

(b) The board shall accept experience gained outside of California for the purpose of satisfying the licensure requirements if the experience is substantially the equivalent to the requirements of this chapter. If the applicant has fewer than 3,000 hours of qualifying supervised experience, the board shall accept as qualifying experience the amount of time the applicant held an active license in good standing in another state or country as a clinical social worker at the highest level for independent practice at a rate of 100 hours per month, up to a maximum of 1,200 hours.

(c) The board shall accept education gained from an out-of-state school for purposes of satisfying licensure or registration requirements if the applicant has received a master's degree from an accredited school of social work, or complies with subdivision ~~(g)~~(e) of Section 4996.18.

(d) In addition to the experience and education described in subdivisions (b) and (c), the applicant shall pass, or have passed, the licensing examinations as specified in Section 4996.1 and pay the required fees. Issuance of the license is conditioned upon all of the following:

(1) The applicant has supervised experience as described in subdivision (b).

(2) Completion of the coursework or training specified in this paragraph taken from an accredited school or department of social work, a school, college, or university accredited by a regional or national institutional accrediting agency that is recognized by the United States Department of Education, a school, college, or university that is approved by the Bureau for Private Postsecondary Education, or from a continuing education provider that is identified as acceptable to the board pursuant to Section 4996.22. Undergraduate coursework shall not satisfy this requirement. This coursework may be completed while registered as an associate, unless otherwise specified.

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting, as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality, as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(E) A minimum of 10 contact hours of coursework in aging and long-term care, as specified in Section 4996.25.

(F) Completion of a 12-hour course in California law and professional ethics. The content of the course shall include, but not be limited to, the following: advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, state and federal laws related to confidentiality of patient health information, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to patients, the application of legal and ethical standards in different types of work settings, and licensing law and process. This coursework shall be completed before registration as an associate.

(G) At least one semester unit, or 15 hours, of instruction that includes an understanding of various California cultures and the social and psychological implications of socioeconomic position.

(3) On and after January 1, 2021, an applicant for licensure shall show proof of completion of at least six hours of coursework or applied experience under supervision in suicide risk assessment and intervention using one of the methods specified in Section 4996.27.

(4) The applicant's license is in good standing and is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(5) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(6) The applicant shall provide a certification from each state where the applicant holds a license pertaining to licensure, disciplinary action, and complaints pending.



(7) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(e) An applicant who obtained a license or registration under another state or country may qualify for licensure with the board without taking the clinical examination specified in Section 4996.1 if both of the following conditions are met:

(1) The applicant obtained a passing score on the clinical licensing examination set forth in regulation as accepted by the board.

(2) The applicant's license or registration in that state or country is active and in good standing at the time of the application and is not revoked, suspended, surrendered, denied, or otherwise restricted or encumbered.

**AMEND BPC §4996.18. ASSOCIATE CLINICAL SOCIAL WORKER; REGISTRATION; SUPERVISION (Includes SB 679 Chaptered Amendments)**

(a) Except as provided in subdivision (b) of Section 4996.23, an applicant shall have an active registration with the board as an associate clinical social worker in order to gain hours of supervised experience. The application shall be made on a form prescribed by the board.

(b) An applicant for registration shall satisfy the following requirements:

(1) Possess a master's degree from an accredited school or department of social work.

(2) ~~Have committed no crimes or acts constituting grounds for denial of licensure under Section 480.~~ Not be subject to denial of licensure pursuant to Section 480.

(3) Have completed training or coursework, which may be embedded within more than one course, in California law and professional ethics for clinical social workers. The coursework shall be taken from an accredited school or department of social work, a school, college, or university accredited by a regional or national institutional accrediting agency that is recognized by the United States Department of Education, a school, college, or university that is approved by the Bureau for Private Postsecondary Education, or from a continuing education provider that is acceptable to the board, as defined in Section 4996.22. Undergraduate coursework shall not satisfy this requirement. The coursework shall include instruction in all of the following areas of study:

(A) Contemporary professional ethics and statutes, regulations, and court decisions that delineate the scope of practice of clinical social work.

(B) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of clinical social work, including, but not limited to, family law.

(C) The current legal patterns and trends in the mental health professions.

(D) The psychotherapist-patient privilege, confidentiality, dangerous patients, and the treatment of minors with and without parental consent.

(E) A recognition and exploration of the relationship between a practitioner's sense of self and human values, and the practitioner's professional behavior and ethics.

(F) The application of legal and ethical standards in different types of work settings.

(G) Licensing law and process.

(c) An applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and, except as provided in subdivision (b) of Section 4996.23, shall be required to register as an associate clinical social worker in order to gain experience toward licensure if the applicant ~~has not committed any crimes or acts that constitute grounds for~~ is not subject to denial of licensure ~~under~~ pursuant to Section 480. That applicant shall not, however, be eligible to take the clinical examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(d) An applicant who possesses a master's degree from an accredited school or department of social work shall be able to apply experience the applicant obtained during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.23. This subdivision shall apply retroactively to persons who possess a master's degree from an accredited school or department of social work and who obtained experience during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

(e) An applicant for registration or licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that the applicant possesses a master's of social work degree that is equivalent to a master's degree issued from a school or department of social work that is accredited by the Commission on Accreditation of the Council on Social Work Education. These applicants shall provide the board with a comprehensive evaluation of the degree and shall provide any other documentation the board deems necessary. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements regardless of evaluation or accreditation.

(f) All applicants for licensure and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised and who shall be responsible to the board for compliance with all laws governing the practice of clinical social work.

(g) All applicants and registrants shall inform each client or patient before performing any professional services that the applicant or registrant is unlicensed and is under the supervision of a licensed professional.

### **AMEND BPC §4996.22. CONTINUING EDUCATION**

- (a)(1) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that ~~he or she~~ the applicant has completed not less than 36 hours of approved continuing education in or relevant to the field of social work in the preceding two years, as determined by the board.
- (2) The board shall not renew any license of an applicant who began graduate study prior to January 1, 2004, pursuant to this chapter unless the applicant certifies to the board that during the applicant's first renewal period after the operative date of this section, ~~he or she~~ the applicant completed a continuing education course in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).
- (b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.
- (c) The board may establish exceptions from the continuing education requirement of this section for good cause as defined by the board.
- (d) The continuing education shall be obtained from one of the following sources:
- (1) An accredited school of social work, as defined in Section 4991.2, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) A school, college or university accredited by a regional or national institutional accrediting agency that is recognized by the United States Department of Education, or a school, college or university that is approved by the Bureau for Private Postsecondary Education.

~~(2)~~(3) Other continuing education providers, as specified by the board by regulation.

(e) The board shall establish, by regulation, a procedure for identifying acceptable providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to the procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding, or the practice, of social work.

(2) Aspects of the social work discipline in which significant recent developments have occurred.

(3) Aspects of other related disciplines that enhance the understanding, or the practice, of social work.

(g) A system of continuing education for licensed clinical social workers shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(h) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

(i) The board may adopt regulations as necessary to implement this section.

~~(j) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.~~

## **AMEND BPC §4996.75.**

On and after July 1, 2020, a licensee or registrant shall provide a client with a notice written in at least 12-point type prior to initiating psychotherapy services, or as soon as practicably possible thereafter, that reads as follows:

### **NOTICE TO CLIENTS**

The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of clinical social workers. You may contact the board online at [www.bbs.ca.gov](http://www.bbs.ca.gov), or by calling (916) 574-7830.

The delivery of the notice to the client shall be documented.

## **AMEND BPC §4998. DEFINITION; RIGHT TO PRACTICE CLINICAL SOCIAL WORK; BOARD AS GOVERNMENTAL AGENCY**

A licensed clinical social worker corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services ~~who are licensed clinical social workers, physicians and surgeons, psychologists, licensed professional clinical counselors, licensed marriage and family therapists, registered nurses, chiropractors, or acupuncturists~~ are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs. With respect to a licensed clinical social worker corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Behavioral Sciences.

## **AMEND BPC §4998.2. NAME**

Notwithstanding Section 4996, the name of a licensed clinical social worker corporation and any name or names under which it may be rendering professional services shall contain the words "licensed clinical social worker" and wording or abbreviations denoting corporate existence. A licensed clinical social worker corporation that conducts business under a fictitious business name shall not use any name ~~which~~that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, that the business is conducted by a licensed clinical social worker corporation.

**AMEND BPC §4999.22. CONSTRUCTION WITH OTHER LAWS; NONAPPLICATION TO CERTAIN PROFESSIONALS AND EMPLOYEES (Includes Chaptered Language From AB 630)**

(a) Nothing in this chapter shall prevent qualified persons from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, these qualified persons shall not hold themselves out to the public by any title or description of services incorporating the words “licensed professional clinical counselor” and shall not state that they are licensed to practice professional clinical counseling, unless they are otherwise licensed to provide professional clinical counseling services.

(b) Nothing in this chapter shall be construed to constrict, limit, or withdraw provisions of the Medical Practice Act, the Clinical Social Worker Practice Act, the Nursing Practice Act, the Psychology Licensing Law, or the Licensed Marriage and Family Therapist Act.

(c) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination who performs counseling services as part of their pastoral or professional duties, or to any person who is admitted to practice law in this state, or who is licensed to practice medicine, who provides counseling services as part of their professional practice.

(d) This chapter shall not apply to an unlicensed or unregistered employee or volunteer working in a governmental entity or a school, a college, a university, or an institution that is both nonprofit and charitable, if both of the following apply:

(1) The work of the employee or volunteer is performed solely under the supervision of the entity.

(2) On and after July 1, 2020, the employee or volunteer provides a client, prior to initiating psychotherapy services, or as soon as practicably possible thereafter, a notice written in at least 12-point type that is in substantially the following form:

**NOTICE TO CLIENTS**

The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered ~~counselor~~ practitioner providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).

The Board of Behavioral Sciences receives and responds to complaints regarding services provided by individuals licensed and registered by the Board. If you have a complaint and are unsure if your practitioner is licensed or registered, please contact the Board of Behavioral Sciences at 916-574-7830 for assistance or utilize the Board's online license verification feature by visiting [www.bbs.ca.gov](http://www.bbs.ca.gov).

(3) The delivery of the notice to the client shall be documented.

(e) All persons registered as associates or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

### **AMEND BPC §4999.42. ASSOCIATE REGISTRATION; QUALIFICATION**

(a) An applicant shall meet all of the following qualifications to qualify for registration as an associate:

(1) Earned a master's or doctoral degree as specified in Section 4999.32 or 4999.33, as applicable. An applicant whose education qualifies him or her under Section 4999.32 shall also have completed the coursework or training specified in subdivision (e) of Section 4999.32.

(2) Be at least 18 years of age.

(3) ~~Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.~~ Not be subject to denial of licensure pursuant to Section 480.

(b) The board shall not issue a registration to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory. A denial issued pursuant to this subdivision shall comply with the conditions for denial specified in section 480.

### **AMEND BPC §4999.46.1. RESPONSIBILITIES OF SUPERVISORS AND ASSOCIATES**

(a) An associate or applicant for licensure shall be under the supervision of a supervisor at all times.

~~(b) As used in this chapter, the term "supervision" means responsibility for, and control of, the quality of mental health and related services provided by the supervisee. Consultation or peer discussion shall not be considered supervision and shall not qualify as supervised experience. Supervision includes, but is not limited to, all of the following:~~

~~(1) Ensuring the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the supervisee.~~

~~(2) Monitoring and evaluating the supervisee's assessment, diagnosis, and treatment decisions and providing regular feedback.~~

~~(3) Monitoring and evaluating the supervisee's ability to provide services at the site or sites where he or she is practicing and to the particular clientele being served.~~

~~(4) Monitoring and addressing clinical dynamics, including, but not limited to, countertransference, intrapsychic, interpersonal, or trauma-related issues that may affect the supervisory or practitioner-patient relationship.~~



~~(5) Ensuring the supervisee's compliance with laws and regulations governing the practice of licensed professional clinical counseling.~~

~~(6) Reviewing the supervisee's progress notes, process notes, and other patient treatment records, as deemed appropriate by the supervisor.~~

~~(7) With the client's written consent, providing direct observation or review of audio or video recordings of the supervisee's counseling or therapy, as deemed appropriate by the supervisor.~~

~~(e)~~(b) An associate shall do both of the following:

(1) Inform each client, prior to performing any professional services, that he or she is unlicensed and under supervision.

(2) Renew the registration a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked.

~~(d)~~(c) When no further renewals are possible, an applicant may apply for and obtain a subsequent associate registration number if the applicant meets the educational requirements for a subsequent associate registration number and has passed the California law and ethics examination. An applicant issued a subsequent associate registration number shall not be employed or volunteer in a private practice.

## **AMEND BPC §4999.51. CRIMINAL OFFENDER RECORD INFORMATION; REQUIREMENTS FOR LICENSURE AND REGISTRATION**

An applicant for licensure as a professional clinical counselor or registration as an associate shall satisfy the following qualifications:

(a) ~~Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.~~ Not be subject to denial of licensure pursuant to Section 480.

(b) Not have been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory. A denial issued pursuant to this subdivision shall comply with the conditions for denial specified in section 480.

(c) Have successfully passed a state and federal level criminal offender record information search conducted through the Department of Justice by submitting fingerprint images and other information to the Department of Justice for the purpose of obtaining records of state and federal convictions and arrests. The board shall request the subsequent arrest notification service on all applicants, pursuant to Section 11105.2 of the Penal Code.



## **AMEND BPC §4999.71.**

Effective July 1, 2020, a licensee or registrant shall provide a client with a notice written in at least 12-point type prior to initiating psychotherapy services, or as soon as practicably possible thereafter, that reads as follows:

### **NOTICE TO CLIENTS**

The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of professional clinical counselors. You may contact the board online at [www.bbs.ca.gov](http://www.bbs.ca.gov), or by calling (916) 574-7830.

The delivery of the notice to the client shall be documented.

## **AMEND BPC §4999.76. LICENSE RENEWAL; CONTINUING EDUCATION REQUIREMENT**

(a) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that ~~he or she~~ the applicant has completed not less than 36 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding two years, as determined by the board.

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completed continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause, as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) A school, college, or university that is accredited or approved, as defined in Section 4999.12. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers as specified by the board by regulation.

(e) The board shall establish, by regulation, a procedure for identifying acceptable providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of professional clinical counseling.

(2) Significant recent developments in the discipline of professional clinical counseling.

(3) Aspects of other disciplines that enhance the understanding or the practice of professional clinical counseling.

(g) A system of continuing education for licensed professional clinical counselors shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

~~(h) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For the purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.~~

~~(i)~~

(h) The continuing education requirements of this section shall fully comply with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

#### **AMEND BPC §4999.80. ENFORCEMENT OF LAWS; BOARD DUTIES**

In order to carry out the provisions of this chapter, the board shall do all of the following:

(a) Enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.

(b) Investigate complaints concerning the conduct of any licensed professional clinical counselor.

(c) Revoke, suspend, or fail to renew a license that it has authority to issue for just cause, as enumerated in rules and regulations of the board. The board may deny, suspend, or revoke any license granted under this chapter pursuant to Section 480, 481, 484, 490, 496, 498, or 499.

#### **AMEND BPC §4999.86. VIOLATIONS OF CHAPTER PROVISIONS; MISDEMEANOR**

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine ~~not exceeding two thousand five hundred dollars (\$2,500)~~ as determined by the court, or by

both ~~that fine and imprisonment.~~

## **AMEND BPC §4999.90. UNPROFESSIONAL CONDUCT**

The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any associate or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional conduct.

Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. ~~A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. A conviction has the same meaning as defined in section 7.5 of the Business and Professions Code.~~ The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, ~~irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.~~ All actions pursuant to this subdivision must be taken in accordance with Division 1.5 of this chapter.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to themselves any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

(d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of the licensee's or registrant's education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use the licensee's or registrant's license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed professional clinical counselor.

(l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee, applicant, or registrant under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional clinical counseling services actually provided by the licensee. This subdivision does not prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of a registered associate, trainee, or applicant by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform mental health services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee, associate, or applicant under one's supervision or control to perform, or permitting the trainee, associate, or applicant to hold themselves out as competent to perform, mental health services beyond the trainee's, associate's, or applicant's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z) (1) Engaging in an act described in Section 261, 286, 287, or 289 of, or former Section 288a of, the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(aa) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

(ab) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a professional clinical counselor, clinical social worker, educational psychologist, or marriage and family therapist.

(ac) Failing to comply with the procedures set forth in Section 2290.5 when delivering health care via telehealth.

(ad) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

### **AMEND BPC §4999.104. RENEWAL OF EXPIRED LICENSE; TIME LIMIT; REQUIREMENTS**

Licenses issued under this chapter that have expired may be renewed at any time within three years of expiration. To renew an expired license described in this section, the licensee shall do all of the following:

(a) File an application for renewal on a form prescribed by the board.

(b) Pay ~~all fees that would have been paid if the license had not become delinquent.~~ a two-year renewal fee prescribed by the board.

(c) Pay ~~all~~ a delinquency ~~fees.~~ fee.

(d) Certify compliance with the continuing education requirements set forth in Section 4999.76.

(e) Notify the board whether ~~he or she~~ the licensee has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

### **AMEND BPC §4999.120. FEES**

(a) The board shall assess the following fees relating to the licensure of professional clinical counselors:

(1) The fee for the application for licensure shall be two hundred fifty dollars (\$250). The board may adopt regulations to set the fee at a higher amount, up to a maximum of five hundred dollars (\$500).

(2) The fee for the application for associate registration shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).

(3) (A) (i) The fee for the board-administered clinical examination, if the board chooses to adopt this examination in regulations, shall be two hundred fifty dollars (\$250). The board may adopt regulations to set the fee at a higher amount, up to a maximum of five hundred dollars (\$500).

(ii) The fee for the California law and ethics examination shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).

(B) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(C) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(4) The fee for the issuance of a license shall be two hundred dollars (\$200). The board may adopt regulations to set the fee at a higher amount, up to a maximum of four hundred dollars (\$400).

(5) The fee for the annual renewal of an associate registration shall be one hundred fifty dollars (\$150). The board may adopt regulations to set the fee at a higher amount, up to a maximum of three hundred dollars (\$300).

(6) The fee for the two-year license renewal shall be two hundred dollars (\$200). The board may adopt regulations to set the fee at a higher amount, up to a maximum of four hundred dollars (\$400).

(7) The renewal delinquency fee shall be one-half of the fee for license renewal. A person who permits their license to expire shall be subject to the delinquency fee.

(8) The fee for issuance of a retired license shall be forty dollars (\$40).

(9) The fee for rescoring an examination shall be twenty dollars (\$20).

(10) The fee for issuance of a replacement license or registration shall be twenty dollars (\$20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25).

(b) This section shall become operative on January 1, 2021.

**REPEAL BPC §4999.122. PROFESSIONAL CLINICAL COUNSELING PROGRAM;  
STARTUP FUNDS**

~~The professional clinical counselor licensing program shall be supported from fees assessed to applicants, interns, and licensees. Startup funds to implement this program shall be derived, as a loan, from the reserve fund of the Board of Behavioral Sciences,~~

~~subject to an appropriation by the Legislature in the annual Budget Act. The board shall not implement this chapter until funds have been appropriated.~~

### **AMEND BPC §4999.123. DEFINITIONS**

A professional clinical counselor corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees who are rendering professional services ~~and who are licensed professional clinical counselors, licensed marriage and family therapists, physicians and surgeons, psychologists, licensed clinical social workers, registered nurses, chiropractors, or acupuncturists,~~ are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and any other statute or regulation pertaining to that corporation and the conduct of its affairs. With respect to a professional clinical counselor corporation, the term “governmental agency” in the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) shall be construed to mean the Board of Behavioral Sciences.

### **AMEND HEALTH AND SAFETY CODE §1374.72.**

(a) (1) Every health care service plan contract issued, amended, or renewed on or after January 1, 2021, that provides hospital, medical, or surgical coverage shall provide coverage for medically necessary treatment of mental health and substance use disorders, under the same terms and conditions applied to other medical conditions as specified in subdivision (c).

(2) For purposes of this section, “mental health and substance use disorders” means a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental and behavioral disorders chapter of the most recent edition of the International Classification of Diseases or that is listed in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders. Changes in terminology, organization, or classification of mental health and substance use disorders in future versions of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders or the World Health Organization’s International Statistical Classification of Diseases and Related Health Problems shall not affect the conditions covered by this section as long as a condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties.

(3) (A) For purposes of this section, “medically necessary treatment of a mental health or substance use disorder” means a service or product addressing the specific needs of that patient, for the purpose of preventing, diagnosing, or treating an illness, injury,



condition, or its symptoms, including minimizing the progression of that illness, injury, condition, or its symptoms, in a manner that is all of the following:

(i) In accordance with the generally accepted standards of mental health and substance use disorder care.

(ii) Clinically appropriate in terms of type, frequency, extent, site, and duration.

(iii) Not primarily for the economic benefit of the health care service plan and subscribers or for the convenience of the patient, treating physician, or other health care provider.

(B) This paragraph does not limit in any way the independent medical review rights of an enrollee or subscriber under this chapter.

(4) For purposes of this section, “health care provider” means any of the following:

(A) A person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) An associate marriage and family therapist ~~or marriage and family therapist trainee~~ functioning pursuant to Section 4980.43.3 of the Business and Professions Code.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 10144.51 of the Insurance Code and Section 1374.73.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2 of the Business and Professions Code.

(E) An associate professional clinical counselor ~~or professional clinical counselor trainee~~ functioning pursuant to Section 4999.46.3 of the Business and Professions Code.

(F) A registered psychologist, as described in Section 2909.5 of the Business and Professions Code.

(G) A registered psychological assistant, as described in Section 2913 of the Business and Professions Code.

(H) A psychology trainee or person supervised as set forth in Section 2910 or 2911 of, or subdivision (d) of Section 2914 of, the Business and Professions Code.

[\(I\) A marriage and family therapist trainee performing activities and services as part of their supervised course of study as set out in Section 4980.42 of the Business and Professions Code.](#)

(5) For purposes of this section, “generally accepted standards of mental health and substance use disorder care” has the same meaning as defined in paragraph (1) of subdivision (f) of Section 1374.721.

(6) A health care service plan shall not limit benefits or coverage for mental health and substance use disorders to short-term or acute treatment.

(7) All medical necessity determinations by the health care service plan concerning service intensity, level of care placement, continued stay, and transfer or discharge of enrollees diagnosed with mental health and substance use disorders shall be conducted in accordance with the requirements of Section 1374.721. This paragraph does not deprive an enrollee of the other protections of this chapter, including, but not limited to, grievances, appeals, independent medical review, discharge, transfer, and continuity of care.

(8) A health care service plan that authorizes a specific type of treatment by a provider pursuant to this section shall not rescind or modify the authorization after the provider renders the health care service in good faith and pursuant to this authorization for any reason, including, but not limited to, the plan's subsequent rescission, cancellation, or modification of the enrollee's or subscriber's contract, or the plan's subsequent determination that it did not make an accurate determination of the enrollee's or subscriber's eligibility. This section shall not be construed to expand or alter the benefits available to the enrollee or subscriber under a plan.

(b) The benefits that shall be covered pursuant to this section shall include, but not be limited to, the following:

(1) Basic health care services, as defined in subdivision (b) of Section 1345.

(2) Intermediate services, including the full range of levels of care, including, but not limited to, residential treatment, partial hospitalization, and intensive outpatient treatment.

(3) Prescription drugs, if the plan contract includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section, that shall be applied equally to all benefits under the plan contract, shall include, but not be limited to, all of the following patient financial responsibilities:

(1) Maximum annual and lifetime benefits, if not prohibited by applicable law.

(2) Copayments and coinsurance.

(3) Individual and family deductibles.

(4) Out-of-pocket maximums.

(d) If services for the medically necessary treatment of a mental health or substance use disorder are not available in network within the geographic and timely access standards set by law or regulation, the health care service plan shall arrange coverage to ensure the delivery of medically necessary out-of-network services and any medically necessary followup services that, to the maximum extent possible, meet those geographic and timely access standards. As used in this subdivision, to "arrange coverage to ensure the delivery of medically necessary out-of-network services"

includes, but is not limited to, providing services to secure medically necessary out-of-network options that are available to the enrollee within geographic and timely access standards. The enrollee shall pay no more than the same cost sharing that the enrollee would pay for the same covered services received from an in-network provider.

(e) This section shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, between the State Department of Health Care Services and a health care service plan for enrolled Medi-Cal beneficiaries.

(f) (1) For the purpose of compliance with this section, a health care service plan may provide coverage for all or part of the mental health and substance use disorder services required by this section through a separate specialized health care service plan or mental health plan, and shall not be required to obtain an additional or specialized license for this purpose.

(2) A health care service plan shall provide the mental health and substance use disorder coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, health care service plan contracts that provide benefits to enrollees through preferred provider contracting arrangements are not precluded from requiring enrollees who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans, provided that all appropriate mental health or substance use disorder services are actually available within those geographic service areas within timeliness standards.

(3) Notwithstanding any other law, in the provision of benefits required by this section, a health care service plan may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing, provided that these practices are consistent with Section 1374.76 of this code, and Section 2052 of the Business and Professions Code.

(g) This section shall not be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter.

(h) A health care service plan shall not limit benefits or coverage for medically necessary services on the basis that those services should be or could be covered by a public entitlement program, including, but not limited to, special education or an individualized education program, Medicaid, Medicare, Supplemental Security Income, or Social Security Disability Insurance, and shall not include or enforce a contract term that excludes otherwise covered benefits on the basis that those services should be or could be covered by a public entitlement program.

(i) A health care service plan shall not adopt, impose, or enforce terms in its plan contracts or provider agreements, in writing or in operation, that undermine, alter, or conflict with the requirements of this section.

## **AMEND INSURANCE CODE §10144.5.**

(a) (1) Every disability insurance policy issued, amended, or renewed on or after January 1, 2021, that provides hospital, medical, or surgical coverage shall provide coverage for medically necessary treatment of mental health and substance use disorders, under the same terms and conditions applied to other medical conditions as specified in subdivision (c).

(2) For purposes of this section, “mental health and substance use disorders” means a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental and behavioral disorders chapter of the most recent edition of the World Health Organization’s International Statistical Classification of Diseases and Related Health Problems, or that is listed in the most recent version of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders. Changes in terminology, organization, or classification of mental health and substance use disorders in future versions of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders or the World Health Organization’s International Statistical Classification of Diseases and Related Health Problems shall not affect the conditions covered by this section as long as a condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties.

(3) (A) For purposes of this section, “medically necessary treatment of a mental health or substance use disorder” means a service or product addressing the specific needs of that patient, for the purpose of preventing, diagnosing, or treating an illness, injury, condition, or its symptoms, including minimizing the progression of an illness, injury, condition, or its symptoms, in a manner that is all of the following:

(i) In accordance with the generally accepted standards of mental health and substance use disorder care.

(ii) Clinically appropriate in terms of type, frequency, extent, site, and duration.

(iii) Not primarily for the economic benefit of the disability insurer and insureds or for the convenience of the patient, treating physician, or other health care provider.

(B) This paragraph does not limit in any way the independent medical review rights of an insured or policyholder under this chapter.

(4) “Health care provider” means any of the following:

(A) A person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) An associate marriage and family therapist ~~or marriage and family therapist trainee~~ functioning pursuant to Section 4980.43.3 of the Business and Professions Code.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2 of the Business and Professions Code.

(E) An associate professional clinical counselor ~~or professional clinical counselor trainee~~ functioning pursuant to Section 4999.46.3 of the Business and Professions Code.

(F) A registered psychologist, as described in Section 2909.5 of the Business and Professions Code.

(G) A registered psychological assistant, as described in Section 2913 of the Business and Professions Code.

(H) A psychology trainee or person supervised as set forth in Section 2910 or 2911 of, or subdivision (d) of Section 2914 of, the Business and Professions Code.

(I) A marriage and family therapist trainee performing activities and services as part of their supervised course of study as set out in Section 4980.42 of the Business and Professions Code.

(5) For purposes of this section, “generally accepted standards of mental health and substance use disorder care” has the same meaning as defined in paragraph (1) of subdivision (f) of Section 10144.52.

(6) A disability insurer shall not limit benefits or coverage for mental health and substance use disorders to short-term or acute treatment.

(7) All medical necessity determinations made by the disability insurer concerning service intensity, level of care placement, continued stay, and transfer or discharge of insureds diagnosed with mental health and substance use disorders shall be conducted in accordance with the requirements of Section 10144.52.

(8) A disability insurer that authorizes a specific type of treatment by a provider pursuant to this section shall not rescind or modify the authorization after the provider renders the health care service in good faith and pursuant to this authorization for any reason, including, but not limited to, the insurer’s subsequent rescission, cancellation, or modification of the insured’s or policyholder’s contract, or the insurer’s subsequent determination that it did not make an accurate determination of the insured’s or policyholder’s eligibility. This section shall not be construed to expand or alter the benefits available to the insured or policyholder under an insurance policy.

(b) The benefits that shall be covered pursuant to this section shall include, but not be limited to, the following:

(1) Basic health care services, as defined in subdivision (b) of Section 1345 of the Health and Safety Code.

(2) Intermediate services, including the full range of levels of care, including, but not limited to, residential treatment, partial hospitalization, and intensive outpatient treatment.

(3) Prescription drugs, if the policy includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section, that shall be applied equally to all benefits under the disability insurance policy shall include, but not be limited to, all of the following patient financial responsibilities:

(1) Maximum and annual lifetime benefits, if not prohibited by applicable law.

(2) Copayments and coinsurance.

(3) Individual and family deductibles.

(4) Out-of-pocket maximums.

(d) If services for the medically necessary treatment of a mental health or substance use disorder are not available in network within the geographic and timely access standards set by law or regulation, the disability insurer shall arrange coverage to ensure the delivery of medically necessary out-of-network services and any medically necessary followup services that, to the maximum extent possible, meet those geographic and timely access standards. As used in this subdivision, to “arrange coverage to ensure the delivery of medically necessary out-of-network services” includes, but is not limited to, providing services to secure medically necessary out-of-network options that are available to the insured within geographic and timely access standards. The insured shall pay no more than the same cost sharing that the insured would pay for the same covered services received from an in-network provider.

(e) This section shall not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, dental-only, or vision-only insurance policies.

(f) (1) For the purpose of compliance with this section, a disability insurer may provide coverage for all or part of the mental health and substance use disorder services required by this section through a separate specialized health insurance policy or mental health policy. This paragraph shall not apply to policies that are subject to Section 10112.27.

(2) A disability insurer shall provide the mental health and substance use disorder coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, disability insurance policies that provide benefits to insureds through preferred provider contracting arrangements are not precluded from requiring insureds who reside or work in geographic areas served by specialized health insurance policies or mental health insurance policies to secure all or part of their mental health services within those geographic areas served by specialized health insurance policies or mental health insurance policies, provided that all appropriate mental health or substance use disorder services are actually available within those geographic service areas within timeliness standards.

(3) Notwithstanding any other law, in the provision of benefits required by this section, a disability insurer may utilize case management, network providers, utilization review

techniques, prior authorization, copayments, or other cost sharing, provided that these practices are consistent with Section 10144.4 of this code, and Section 2052 of the Business and Professions Code.

(g) This section shall not be construed to deny or restrict in any way the department's authority to ensure a disability insurer's compliance with this code.

(h) A disability insurer shall not limit benefits or coverage for medically necessary services on the basis that those services should be or could be covered by a public entitlement program, including, but not limited to, special education or an individualized education program, Medicaid, Medicare, Supplemental Security Income, or Social Security Disability Insurance, and shall not include or enforce a contract term that excludes otherwise covered benefits on the basis that those services should be or could be covered by a public entitlement program.

(i) A disability insurer shall not adopt, impose, or enforce terms in its policies or provider agreements, in writing or in operation, that undermine, alter, or conflict with the requirements of this section.

(j) If the commissioner determines that a disability insurer has violated this section, the commissioner may, after appropriate notice and opportunity for hearing in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), by order, assess a civil penalty not to exceed five thousand dollars (\$5,000) for each violation, or, if a violation was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation.

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