



Board of Behavioral Sciences



1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830
www.bbs.ca.gov

Gavin Newsom, Governor
State of California

Business, Consumer Services and Housing Agency
Department of Consumer Affairs

POLICY AND ADVOCACY COMMITTEE Meeting Notice and Agenda

**February 8, 2019
9:00 a.m.**

**Department of Consumer Affairs
Hearing Room
1625 North Market Blvd., #S-102
Sacramento, CA 95834**

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

-
- I. Call to Order, Establishment of Quorum, and Introductions*
 - II. Approval of Committee Meeting Minutes
 - a. August 24, 2018
 - b. October 19, 2018
 - III. Discussion and Possible Recommendation for Proposed Revisions to *Professional Therapy Never Includes Sex Informational Brochure*
 - IV. Discussion and Possible Recommendation to Amend Business and Professions Code Sections 4980.36 and 4980.37 Adding Clinical Mental Health Counseling Degree Title
 - V. Discussion and Possible Recommendations Regarding Practice Setting Definitions and Subsequent Registration Numbers (Licensed Marriage and Family Therapist)
 - VI. Discussion and Possible Recommendation for Proposed Rulemaking to Implement Assembly Bill 2138 Substantial Relationship and Rehabilitation Criteria
 - VII. Update on Board Sponsored Legislation
 - VIII. Update on Board Rulemaking Proposals
 - IX. Public Comment for Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Gov. Code §§ 11125, 1125.7(a)]

X. Suggestions for Future Agenda Items

XI. Adjournment

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

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

This agenda as well as Board meeting minutes can be found on the Board of Behavioral Sciences website at www.bbs.ca.gov.

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

1 Vote

2 Christina Wong – yes

3 Betty Connolly – yes

4 Dr. Christine Wietlisbach – yes

5
6 **IV. Presentation, Discussion and Possible Recommendation Regarding Licensed**
7 **Educational Psychologists Supervising Interns Gaining Hours in Schools –**
8 **California Association of School Psychologists**
9

10 Chris Jones, California Association of School Psychologists (CASP), presented to the
11 Committee. Mr. Jones requested the support of the Board to make changes to the
12 regulations allowing “LEPs to supervise BBS associates who are providing
13 educationally related mental health services in educational and clinical settings.”
14

15 Mr. Jones cited the following reasons for changes to the supervision regulations:

- 16 1. Many associates want to work in school settings; however, not all schools
17 employ BBS licensees who can provide supervision. This limits the opportunities
18 for internships and denies schools access to needed support.
19
- 20 2. Placing associates in school settings has created disparity in the current
21 Education Code and BBS regulations regarding who is properly credentialed to
22 supervise the registrants.
23
- 24 3. Some licensees who have never worked in school settings are supervising
25 registrants who must write and service special education goals and objectives
26 and participate in IEP meetings.
27
- 28 4. Associates working in school settings are performing tasks that all LEPs perform;
29 therefore, they should be supervised by LEPs.
30

31 Mr. Jones provided some background for this request. An LEP working as a clinical
32 supervisor for a juvenile detention facility was responsible for providing “educationally
33 related counseling services” to students in special education. BBS associates were
34 interning at this facility and providing “educationally related counseling services”
35 (ERMHS) under the LEPs direction. One of the interns contacted BBS and stated that
36 BBS confirmed that the LEP can provide supervision and that the hours will count. A
37 year later, the intern submitted the supervision hours. Those hours were denied
38 because LEPs cannot supervise interns.
39

40 CASP conducted a survey of LEPs. LEPs were asked if this issue was important and
41 if they would be interested in supervising. Of the 218 responses received, 70% felt
42 this was an important issue and were interested in supervising.
43

44 Mr. Jones provided background and history of the following:

- 45 • Education Code requirements for delivery of ERMHS programs
 - 46 • Supervision requirements of ERMHS programs
 - 47 • Mental health delivery under AB 114
 - 48 • Delivery of mental health services in schools
- 49

1 Mr. Jones also outlined the differences between a school psychologist and a LEP, as
2 well as the tasks they both perform.

3
4 Ms. Connolly agreed that there is an increasing number of Board associates working in
5 schools providing ERMHS services, and that there is a need for this. Working in
6 schools requires training and experience for this specialized skillset.

7
8 Dr. Wietlisbach expressed her support, stating that it does not make sense that the
9 associates, who plan to practice in this area, do not get training.

10
11 Mr. Jones clarified that CASP is only requesting for supervision within the LEPs scope
12 of practice and in an ERMHS settings.

13
14 Ms. Madsen suggested language stating that LEPs can supervise an associate across
15 the disciplines if that associate is providing ERMHS. Ms. Connolly agreed.

16
17 The Committee directed staff to conduct research and develop a proposal for the next
18 Committee to discuss at its next meeting.

19
20 Dr. Ben Caldwell, American Association for Marriage and Family Therapy (AAMFT),
21 requested that the research include whether there would be any impact on license
22 portability for those whose supervision hours were from an LEP versus other license
23 types.

24
25 Janlee Wong, National Association of Social Workers California Division (NASW-CA),
26 and Dean Porter, California Association for Licensed Professional Clinical Counselors
27 (CALPCC) commented that the associates should not be supervised in only one
28 setting or program – they should be able to practice within their scope and for
29 independent practice. Their comments suggested that staff limit the number of hours
30 in a particular setting.

31
32 Dr. Caldwell responded that placing a cap on the hours for a particular type of license
33 may not be an ideal solution.

34
35 Ms. Helms asked Mr. Jones if the CASP is running legislation and requesting Board
36 support, or if CASP is requested that the Board sponsor legislation. Mr. Jones
37 deferred the question. Ms. Helms will work with CASP to determine the best course of
38 action.

39
40 **V. Discussion and Possible Recommendation Regarding Proposed Revisions to**
41 **Out-of-State Licensee Requirements for Licensed Professional Clinical**
42 **Counselors**

43
44 The License Portability Committee considered proposed language for the LPCC
45 statute at its meeting on June 8, 2018.

46
47 Under the proposal, the Board may issue a license to a person who holds a license in
48 another jurisdiction of the U.S. as a professional clinical mental health counselor at the
49 highest level for independent practice, if they meet all the following:

- 1 • The license has been current, active, and unrestricted for at least 2 years
2 immediately prior to the date the application was received by the Board.
- 3 • The qualifying degree is a master's or doctoral degree from an accredited or
4 approved school.
- 5 • The applicant submits fingerprints.
- 6 • The applicant completes a 12-hour California law and ethics course.
- 7 • The applicant completes 15 hours of coursework in California Cultures.
- 8 • The applicant passes the Board's California law and ethics exam. (Passage of the
9 clinical exam for applicants qualifying for a license under this method is not
10 required, and language was recently added to state this specifically.)
11

12 In addition, once issued a California license, the licensee must complete a 6-hour
13 course in mental health recovery-oriented care.

14
15 LPCCs who were licensed in another state that permits LPCC treatment of couples
16 and families may continue to do so upon licensure in California, if they complete at
17 least 6 hours of continuing education (CE) coursework specific to marriage and family
18 therapy in each renewal cycle.
19

20 If the other state of licensure does not permit LPCC treatment of couples and families,
21 then the licensee would need to meet the full requirements for LPCCs to treat couples
22 and families.
23

24 Additional technical amendments are:

- 25 • Reduce the coursework requirement for the California law and ethics from 18
26 hours to 12 hours, for applicants who do not qualify to apply as an out-of-state
27 licensee.
- 28 • Additions to sections 4999.61 and 4999.62 to apply to those who hold a license but
29 have held it for less than two years, or to those who hold a license but do not
30 qualify under section 4999.60 for other reasons.
31

32 Board staff reviewed the draft language and provided the following concerns:

33 1. Reducing the 18-hour California Law and Ethics Course to 12 hours

34 Will reducing the duration of this course cause confusion? Does 12 hours provide
35 sufficient coverage of all the required topics listed?
36

37 2. Completion of 6-hour principles of mental health recovery-oriented care
38 coursework requirement in first license renewal period

39 Although the intent of requiring this coursework during the first renewal period was
40 to decrease the required coursework burden prior to licensure, it may be difficult for
41 staff to verify whether this coursework is completed. Out-of-state applicants who
42 are in their first renewal period would need to be tracked and audited specifically
43 for completion of the requirement upon renewal.
44

1 3. Child Abuse Course Content – California Specific Content

2 Does California-specific coursework need to be required, or is it assumed that it
3 will be covered in the 12-hour California law and ethics course requirement?
4

5 4. Requirement for Licensure as a “Professional Clinical Mental Health Counselor” at
6 the Highest Level for Independent Practice

7 Is there any concern that this title needs to be tightened? Would it allow an LMFT
8 licensed in another state to qualify for LPCC licensure?
9

10 5. Suicide Risk Assessment and Intervention

11 If AB 1436 is signed into law this fall, it will require all new applicants, beginning
12 January 2021, to show proof of completion of six hours of coursework or
13 experience in suicide risk assessment and intervention. Therefore, it is likely this
14 requirement should be referenced in the proposed language.
15

16 The Committee, staff and stakeholders discussed the law and ethics course and the
17 child abuse course content. After discussing several options, the Committee agreed to
18 reduce the California law and ethics course to 12 hours and add an additional 7-hour
19 course that is California-specific content in child abuse pursuant to BPC section 28.
20

21 The Committee, staff and stakeholders discussed the mental health recovery-oriented
22 care coursework requirement. After discussing options, the Committee agreed to
23 delete the six hours of mental health recovery-oriented care requirement.
24

25 The Committee, staff and stakeholders discussed requirement for Licensure as a
26 “Professional Clinical Mental Health Counselor” at the Highest Level for Independent
27 Practice. After some discussion, the Committee agreed to change the language to
28 “professional clinical counselor at the highest level for independent clinical practice.”
29

30 The Committee agreed to add the suicide risk assessment and intervention
31 coursework if AB 1436 passes.
32

33 ***Dr. Christine Wietlisbach moved to direct staff to make discussed changes to***
34 ***the proposed language and recommend to the Board for consideration: Betty***
35 ***Connolly seconded. The Committee voted to pass the motion.***
36

37 Vote

38 Christina Wong – yes

39 Betty Connolly – yes

40 Dr. Christine Wietlisbach – yes
41

42 **VI. Discussion and Possible Recommendation Regarding Proposed Revisions to**
43 **Out-of-State Licensee Requirements for Licensed Marriage and Family**
44 **Therapists**
45

46 Ms. Helms presented the proposal stating that the revisions are the same as proposed
47 revisions to the out-of-state licensee requirements for LPCCs discussed in the
48 previous item, with exception to the following technical amendment:

- 1 • Definitions of “accredited” and “approved” schools were added to the general
2 definitions for the LMFT licensing law, located in BPC §4980.03. Similar definitions
3 already exist in LPCC licensing law and allow for easy reference to the definitions.
4 It should be noted that the LMFT definition of “accredited” includes COAMFTE
5 accredited institutions.
6

7 Concerns expressed by Board staff were also the same as those presented in the
8 LPCC discussion, with the exception of following question for discussion:

- 9 • Requirement for Licensure as a “Marriage and Family Therapist at the Highest
10 Level for Independent Clinical Practice”

11 Currently, LMFT statute allows an out-of-state applicant to apply as an out-of-state
12 licensee if he or she holds “a valid license in good standing issued by a board of
13 marriage counselor examiners, board of marriage and family therapists, or
14 corresponding authority, of any state or county...” and meets certain requirements.
15 (BPC §4980.72(b))
16

17 For out-of-state individuals licensed two years or more, the new proposal requires
18 the individual to be licensed as a marriage and family therapist at the highest level
19 for independent clinical practice. This is a stricter standard. Previously, the
20 individual did not necessarily have to be licensed specifically as a marriage and
21 family therapist in the other state. Under the new language, the individual would
22 have to be licensed specifically as a marriage and family therapist.
23

24 Dr. Caldwell expressed approval for the language regarding the title, stating that every
25 state uses “marriage and family therapists” in their titles.
26

27 Dr. Caldwell commented on the amendment referring to COAMFT, stating that a
28 university may be regionally accredited, or state approved, but COAMFT does not
29 approve universities; it approves programs.
30

31 Dr. Caldwell added that AAMFT is seeing movement around the country towards
32 consistency. Other states are requiring about 3,000 hours.
33

34 The Committee agreed to recommend the following action, consistent with the
35 recommendations for the out-of-state license requirements for LPCCs:
36

- 37 1. Requirement for Licensure as a “Marriage and Family Therapist at the Highest
38 Level for Independent Clinical Practice”

39 No changes
40

- 41 2. Reducing the 18-hour California Law and Ethics Course to 12 hours

42 No changes
43

- 44 3. Completion of 6-hour principles of mental health recovery-oriented care
45 coursework requirement in first license renewal period.

46 Delete the 6 hours of the mental health recovery requirement
47

- 48 4. Child Abuse Course Content – California Specific Content

1 Add child abuse content.
2

3 5. Suicide Risk Assessment and Intervention

4 Add suicide assessment coursework, if AB 1436 passes.
5

6 ***Christina Wong moved to direct staff to make discussed changes to the***
7 ***proposed language and recommend to the Board for consideration: Betty***
8 ***Connolly seconded. The Committee voted to pass the motion.***
9

10 Vote

11 Christina Wong – yes

12 Betty Connolly – yes

13 Dr. Christine Wietlisbach – yes
14

15 **VII. Discussion and Possible Recommendation Regarding Proposed Revisions to**
16 **Out-of-State Licensee Requirements for Licensed Clinical Social Workers**
17

18 Ms. Helms presented the proposal stating that the revisions are the same as proposed
19 revisions to the out-of-state licensee requirements for LPCCs and MFTs discussed in
20 the previous items, with exception to the following technical amendment:

- 21 • Additions to §4996.17.2: This section has been amended to apply to those who do
22 not hold a license and to those who hold a license, but have held it for less than
23 two years, or to those who hold a license but do not qualify under §4996.17.1 for
24 other reasons. The following provisions were included:
- 25 ○ A provision allowing an out-of-state licensee to count time actively licensed in
26 good standing toward the 3,000-hour requirement at a rate of 100 hours per
27 month, up to 1,200 hours maximum;
 - 28 ○ A provision requiring an out-of-state applicant qualifying under this section to
29 complete 45 hours of coursework regarding the principles of mental health
30 recovery-oriented care, and 15 hours of coursework in California cultures.
31

32 Concerns expressed by Board staff were also the same as those presented in the
33 LPCC discussion, except for following question for discussion:

- 34 • Aging and Long-Term Care and Elder and Dependent Adult Abuse and Neglect
35 Coursework

36 Staff recommended this be added for out-of-state applicants who do not qualify
37 under section 4996.17.1. It is specified in 4996.25, however, the law does not
38 specify whether or not the requirement applies to out-of-state applicants.
39

40 Mr. Wong, NASW-CA, expressed his concern regarding 45 hours of coursework in
41 principles of mental health recovery-oriented care. He explained that social workers
42 are trained in the recovery model, or “social rehabilitation model” and are trained in
43 their degree programs to consider a multitude of services. Social work accreditation is
44 standardized through the Council on Social Work Education. Requiring an additional
45 45 hours, or three semesters, would require social workers to enroll in extended
46 studies in a university. The coursework cannot be taken through NASW or CAMFT.
47

1 Mr. Jenson pointed out the provision allowing out-of-state licensees to count time
2 actively licensed in good standing toward the 3,000-hour requirement at a rate of 100
3 hours, up to 1,200 hours maximum. He asked if that was automatically given, and if
4 there is a verification mechanism.

5
6 Ms. Madsen responded that the current process requires the licensee to show
7 verification of licensure, and staff counts the months of licensure.

8
9 Further discussion revealed that the recovery-oriented care model is integrated in
10 MSW programs and that the principles have been adopted at the national level.

11
12 ***Christina Wong moved to recommend that the Board consider removing the 45***
13 ***hours of mental health recovery-oriented requirement for out-of-state individuals***
14 ***pursing licensure and have been licensed less than two years, and removing the***
15 ***6-hour requirement for those on the portability option licensed more than two***
16 ***years; specifying aging and long-term care as proposed; specifying that law and***
17 ***ethics requirement remains at 12 hours as proposed; adding child abuse and***
18 ***suicide risk assessment intervention as discussed. Dr. Christine Wietlisbach***
19 ***seconded. The Committee voted unanimously to pass motion.***

20
21 Vote

22 Christina Wong – yes

23 Betty Connolly – yes

24 Dr. Christine Wietlisbach – yes

25
26 **VIII. Discussion and Possible Recommendation Regarding Adding a New Accepted**
27 **Degree Title for Marriage and Family Therapist Licensure**

28
29 The Board has been asked to consider adding a new degree title to those accepted for
30 licensure as an LMFT. The goal of the new title, “Clinical Mental Health Counseling
31 with a concentration in Marriage, Family, and Child Counseling,” is to increase
32 portability of licensure to other states.

33
34 Argosy University is requesting the addition due to a problem they are having with their
35 “Counseling Psychology” degree program. This degree prepares its students for both
36 LMFT and LPCC licensure in California. However, it is not accepted toward licensure
37 in many other states.

38
39 Argosy University notes that many states are requiring accreditation from the Council
40 for Accreditation of Counseling & Related Educational Programs (CACREP).
41 According to the “2016 CACREP Standards,” degree specialty areas consist of the
42 following:

- 43 • Addiction Counseling;
 - 44 • Clinical Mental Health Counseling;
 - 45 • Clinical Rehabilitation Counseling;
 - 46 • Marriage, Couple, and Family Counseling;
 - 47 • Career Counseling;
 - 48 • College Counseling and Student Affairs; and
 - 49 • School Counseling
- 50

1 The newly proposed license title will add a dual license track that is consistent with
2 CACREP standards.

3
4 An alternative to naming specific degree titles in LMFT statute, would be to allow a
5 more general degree that contains a specific emphasis in marriage and family therapy.
6 For example, to qualify for LPCC licensure, the degree must be “counseling or
7 psychotherapy” in content and must meet the coursework requirements specified in
8 law for LPCCs. LMFT out-of-state applicants currently do not have to apply with the
9 specific degree title requirements.

10
11 This could, however, raise an issue where some individuals apply with degrees that
12 are not intended to lead to licensure in that field.

13
14 Staff reviewed the LMFT degree requirements in Florida and Texas. Ms. Helms
15 presented those findings.

16
17 Dr. Caldwell did not have any objections.

18
19 Ms. Madsen stated that staff did not have any concerns.

20
21 ***Dr. Christine Wietlisbach moved to recommend that the Board consider adding***
22 ***the title “Clinical Mental Health Counseling with a concentration in Marriage,***
23 ***Family, and Child Counseling,” to the list of degree titles acceptable for LMFT***
24 ***licensure for in-state applicants. Christina Wong seconded. The Committee***
25 ***voted unanimously to pass the motion.***

26
27 Vote

28 Christina Wong – yes

29 Betty Connolly – yes

30 Dr. Christine Wietlisbach – yes

31
32 **IX. Discussion and Possible Recommendation Regarding Licensed Professional**
33 **Clinical Counselor Supervision Requirements: Title 16, California Code of**
34 **Regulations: Amend Sections 1820, 1820.5 and 1821; Add Sections 1821.1,**
35 **1821.2 and 1821.3; Repeal Section 1822**

36
37 The Supervision Committee work resulted in AB 93 as well as proposed regulations.
38 The Board approved the proposed regulations in November 2016. However, AB 93
39 has had some significant changes since the time the regulations were initially
40 approved. The proposed regulations have been revised in light of those changes and
41 in consideration of feedback on other regulation proposals from the Office of
42 Administrative Law (OAL) and the Department of Consumer Affairs (DCA).

43
44 Originally Proposed Regulations

- 45 1. Specifies the required documentation pertaining supervised experience, including
46 the following:
- 47 a. Requires a Supervision Agreement to be drawn up between the supervisor
48 and supervisee, which includes the supervisor and supervisee’s
49 responsibilities, as well as a supervisory plan.

- 1 b. Requires supervisors to notify the Board that they are supervising and to
- 2 perform a self-assessment of qualifications to supervise. Supervisors would
- 3 submit the self-assessment to the Board and provide a copy to each
- 4 supervisee along with the Board’s brochure pertaining to supervision.
- 5 c. Modifies and strengthens the written agreement required between the
- 6 supervisor and the supervisee’s employer when the supervisor is not
- 7 employed by the supervisee’s employer.
- 8 d. Specifies how completed hours of experience must be documented.
- 9
- 10 2. Strengthens provisions related to monitoring and evaluating the supervisee.
- 11
- 12 3. Requires supervisors to be reachable while supervisee is providing services.
- 13
- 14 4. Requires an initial supervisor training of 15 hours for all professions.
- 15
- 16 5. Allows the 6 hours of CE required of supervisors every two years to also include
- 17 professional development activities such as teaching a supervision course,
- 18 authoring research focused on supervision, mentoring or consultation with other
- 19 active supervisors, and attending supervisor peer discussion groups.
- 20
- 21 6. Adds a section pertaining to supervised experience gained outside of California.

22 Most of the amendments are the same across all three license types. However, a few
 23 are specific to each program.
 24

25
 26 New Proposed Changes to Original Regulations

- 27 1. Wording and numbering changes for consistency with AB 93.
- 28
- 29 2. All implementation dates moved forward one year because AB 93 became a two-
- 30 year bill.
- 31
- 32 3. Minor technical, grammatical and clarifying changes.
- 33
- 34 4. Clarifies what is meant by “standards of practice of the profession” (legal
- 35 requirements and ethics codes) in the written agreement between the employer
- 36 and supervisor.

37 Discussion:
 38
 39 Ms. Helms referred to the new proposed term in section 1820(a) stating that the
 40 written oversight agreement shall be executed when the supervisor is not
 41 employed by the supervisee’s employer. One of the terms (section 1820(3)(c))
 42 states that the supervisor will be providing clinical guidance to the supervisee in
 43 order to ensure compliance with the standards of practice of the profession.
 44

45 Ms. Helms expressed concern, stating that it may need further specification.
 46 Staff decided to focus on including legal requirements and professional codes of
 47 ethics to provide clarification. She recommended the following: “The employer is
 48 aware that the supervisor will be providing clinical guidance to the supervisee in
 49 order to ensure compliance with the standards of practice of the profession,

1 which include legal requirements and professional codes of ethics; and agrees
2 not to interfere with this process.”

3
4 Mr. Wong, NASW-CA, explained that supervisors’ input should be more than
5 “clinical guidance”; it should be “clinical direction,” which is more authoritative.
6 This is especially important in agency settings.

7
8 Staff indicated that the term “direction” sparked a conversation in previous
9 Supervision Committee meetings, and that there was some opposition to the
10 term because it was interpreted as the supervisor “running the show.”

11
12 Ms. Wong stated that the terms “legal requirements and professional codes of
13 ethics” and “ensuring compliance” may perhaps solidify the term “guidance.”

14
15 Suggestions:

- 16
- 17 • Use the terms “direction and guidance” because a supervisee needs direction
18 early in their supervision period. However, the supervisee who has close to
19 3,000 would need more guidance than direction.
 - 20 • Amend the language to state that the supervisee will be “*subject* to the
21 clinical guidance and direction”, as opposed to “*providing* clinical guidance
22 and direction.”

23 The Committee and staff agreed with the suggestions.

- 24
- 25 5. Removes a reference to the 6-year limit on experience hours and makes it
26 generic in the event the statute specifying this requirement were to change.
 - 27
 - 28 6. Requires the supervisor to provide associates with procedures regarding
29 handling crises and emergencies, prior to the commencement of supervision.
 - 30
 - 31 7. Requires additional information on the supervisor self-assessment report to help
32 staff determine compliance with training requirements.
 - 33
 - 34 8. Clarifies what is meant by “current best practices and current standards” as it
35 pertains to supervision training content.
 - 36
 - 37 9. Clarifies that a 6-hour supervision training (refresher) course is required for a
38 licensee who has previously served as a supervisor, but who has not supervised
39 in the past 2 years (as opposed to “2 of the past 5 years”).
 - 40
 - 41 10. Requires continuing professional development activities involving collaboration,
42 mentoring, and peer discussion groups to take place with other licensees who
43 are currently serving as a Board-qualified supervisor.
 - 44

45 ***Christina Wong moved to direct staff to make any discussed changes, and any***
46 ***non-substantive changes, and recommend for consideration by the Board as a***
47 ***regulatory proposal. Betty Connolly seconded. The Committee voted***
48 ***unanimously to pass the motion.***
49

1 Vote

2 Christina Wong – yes

3 Betty Connolly – yes

4 Dr. Christine Wietlisbach – yes

5
6 **X. Discussion and Possible Recommendation Regarding Licensed Marriage and**
7 **Family Therapist Supervision Requirements: Title 16, California Code of**
8 **Regulations: Amend Sections 1833, 1833.1 and 1833.2; Add Sections 1833.1.5**
9 **and 1834**

10
11 Originally Proposed Regulations

- 12 1. Strikes out language pertaining to experience qualifications in section 1833, as
13 these are now in statute.
14
15 2. The Supervisory Plan, which is part of the newly required Supervision
16 Agreement, would be new for LMFT.

17
18 New Proposed Changes to Original Regulations

19 There are no significant differences from the LPCC language.

20
21 Ms. Wong added that the change to “direction and guidance” would be applicable.

22
23 ***Christina Wong moved to direct staff to make any discussed changes, and any***
24 ***non-substantive changes, and recommend for consideration by the Board as a***
25 ***regulatory proposal. Dr. Christine Wietlisbach seconded. The Committee voted***
26 ***unanimously to pass the motion.***

27
28 Vote

29 Christina Wong – yes

30 Betty Connolly – yes

31 Dr. Christine Wietlisbach – yes

32
33 **XI. Discussion and Possible Recommendation Regarding Licensed Clinical Social**
34 **Worker Supervision Requirements: Title 16, California Code of Regulations:**
35 **Amend Sections 1870 and 1870.1; Add Sections 1869, 1870.5 and 1871; Repeal**
36 **Section 1874**

37
38 Originally Proposed Regulations

39 The significant differences for LCSW are as follows:

- 40 1. Modifies and expands upon the terms of the terms of the written agreement
41 required between the employer and supervisor when the supervisor is not
42 employed by the associate’s employer.
43
44 2. Requires a weekly log of hours earned to be signed by the supervisor.
45
46 3. Requires 6 hours of continuing professional development for supervisors every
47 two years.
48

1 New Proposed Changes to Original Regulations

2 There are no significant differences from the LPCC language.

3
4 Ms. Wong added that the change to “direction and guidance” would be applicable.

5
6 ***Christina Wong moved to direct staff to make any discussed changes, and any***
7 ***non-substantive changes, and recommend for consideration by the Board as a***
8 ***regulatory proposal. Betty Connolly seconded. The Committee voted***
9 ***unanimously to pass the motion.***

10
11 Vote

12 Christina Wong – yes

13 Betty Connolly – yes

14 Dr. Christine Wietlisbach – yes

15
16 **XII. Status on Board-Sponsored Legislation**

17 **XIII. Status of Board Supported and Board Monitored Legislation**

18
19 *Items XII and XIII were presented together as one combined item.*

20
21 Board-Sponsored Legislation

22 AB 93, the supervision bill, passed through the Legislature on August 23rd. The
23 Governor has 12 days to decide on the bill.

24
25 AB 2117, the licensing clean-up bill, is awaiting the Governor’s decision.

26
27 SB 1491, the omnibus bill, is still making its way through the process.

28
29 Board-Supported Legislation

30 AB 456, 90-day rule for Associate Clinical Social Workers (ASW), was signed by the
31 Governor and will take effect on January 1, 2019.

32
33 Board-Monitored Legislation

34 AB 2138, denial of applications for criminal convictions, is in negotiation and staff is
35 expecting amendments. The Board is in opposition to this bill.

36
37 **XIV. Status of Board Rulemaking Proposals**

38
39 The following regulation packages are in the initial review process with DCA:

- 40 1. Enforcement Process
- 41 2. Contact Information: Application Requirements; Incapacitated Supervisors
- 42 3. Examination Rescoring; Application Abandonment; APCC Subsequent
- 43 Registration Fee
- 44

45 Ms. Berger noted that one regulation package has been in the initial review process for
46 a year.

1 Ms. Wong expressed concerns regarding regulation packages that are stalled at DCA
2 in its initial review.

3
4 Ms. Madsen stated that the regulation packages are stalled at DCA's Legal Division.
5 DCA implemented a new review process, which requires sign-off from several levels:
6 Legislative Affairs, Legal Affairs, Budget Office, Executive Office, and State and
7 Consumer Services Agency. The new process is adding another year to a process
8 that was already taking a year.

9
10 Ms. Madsen requested that a representative from the DCA Executive Office or Legal
11 Division meet with the Board to explain the review process.

12
13 **XV. Public Comment for Items not on the Agenda**

14
15 David Jenson, CAMFT, commented on an issue involving legal opinions of the
16 Attorney General (AG). He explained that these opinions are not laws, but they're
17 used in legal proceedings. Some of these opinions were written 20-30 years ago; so,
18 they refer to antiquated statutes and provisions. CAMFT plans to work through old AG
19 opinions and try to bring them up-to-date in terms of current law. CAMFT is requesting
20 the Board's assistance in providing leverage to get it through the AG's office.

21
22 **XVI. Suggestions for Future Agenda Items**

23
24 There were no suggestions for future agenda items.

25
26 **XVII. Adjournment**

27
28 The Committee adjourned at 2:38 p.m.



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

To: Committee Members

Date: January 30, 2019

From: Christina Kitamura
Administrative Analyst

Telephone: (916) 574-7830

Subject: Committee Meeting Minutes: October 19, 2018

The October 2018 Committee minutes will be provided under a separate cover.

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ATTACHMENT A

- 1• CONSUMERS
- 2• MEDIA
- 3• PUBLICATIONS
- 4• ONLINE SERVICES

5 Professional Therapy Never Includes Sexual Behavior

6 Printer Friendly Version

7 **State of California**
8 **Department of Consumer Affairs**

9 Copyright © ~~2011~~2018, Department of Consumer Affairs

10 California's lawmakers, licensing boards, and ethical therapists want the public to know that
11 professional therapy never includes sexual contact between a therapist and a client. It also never
12 includes inappropriate sexual suggestions, or any other kind of sexual behavior between a therapist
13 and a client. Sexual contact of any kind between a therapist and a client is unethical and illegal in the
14 state of California. Additionally, with regard to former clients, sexual contact within two years after
15 termination of therapy is also illegal and unethical. It is always the responsibility of the therapist to
16 ensure that sexual contact with a client, whether consensual or not, does not occur.

17 Dear Reader:

18 As a reader of "Professional Therapy Never Includes Sexual Contact," you may be a California
19 consumer concerned about the conduct of your therapist. You may be a licensed therapist, or training
20 to become a therapist. In any case, it's good to know more about the high standards of professional
21 conduct expected—and required—in the therapy relationship.

22 Consumers are looking for professionals they can trust. Therapists value the trust of their patients.
23 When this mutual trust is violated by sexual exploitation, everyone loses. The patient loses an
24 opportunity for improved health and becomes a victim. The therapist stops being a healer and
25 becomes a victimizer. And the profession itself loses when the good reputation of the many is
26 diminished by the illegal conduct of a few.

27 The California Department of Consumer Affairs is dedicated to working with its professional licensing
28 board partners to protect and educate consumers. If you are a victim of sexual abuse by a therapist,
29 it's important for you to report your experience to the board that licenses your therapist.

30 This booklet offers guidance and resources for consumers. For more consumer guidelines and
31 information, you may contact the appropriate licensing board or professional association, or contact
32 the Department of Consumer Affairs at 1-800-952-5210 or www.dca.ca.gov.

33 California Department of Consumer Affairs

34 Publishing Information

35 The 2011 edition of "Professional Therapy Never Includes Sexual Contact" is published by the
36 California Department of Consumer Affairs. This publication is a joint project of the California Board of
37 Psychology, the California Board of Behavioral Sciences and the Department of Consumer Affairs'
38 Office of Publications, Design & Editing.

39 This booklet is available in the "Publications" section of the Department of Consumer Affairs' Web
40 sitewebsite at www.dca.ca.gov.

41 Single copies of the publication are available at no charge from the boards listed above and from
42 Publications Office, California Department of Consumer Affairs, P.O. Box 989004, West Sacramento,
43 CA 95798-0004.

44 This booklet may be copied, if (1) the meaning of copied text is not changed or misrepresented, (2)
45 credit is given to the California Department of Consumer Affairs, and (3) all copies are distributed free
46 of charge.

47 Acknowledgments

48 The Department of Consumer Affairs, the Board of Psychology and the Board of Behavioral Sciences
49 wish to thank former Senator Diane Watson, whose Senate Task Force on Psychotherapist and
50 Patient Sexual Relations prompted the development of "Professional Therapy Never Includes Sex" in
51 1990.

52 Copyright © 2017, Department of Consumer Affairs

53 California law requires that the Department of Consumer Affairs provide an informational brochure for
54 victims of psychotherapist-patient sexual contact and their advocates.

55 California's lawmakers, licensing boards, professional associations and ethical therapists want such
56 inappropriate sexual behavior stopped. This booklet was developed to help patients who have been
57 sexually exploited by their therapist. It outlines their rights and options for reporting what happened. It
58 also defines therapist sexual exploitation, gives warning signs of unprofessional behavior, presents a
59 "Patient Bill of Rights," and answers some frequently asked questions.

60

61 • Introduction

62 • Definition of Terms

63 • Client Rights

64 • Warning Signs

65 • What If It's Me?

66 • Common Reactions to Sexual Misconduct by a Therapist

67 • Where To Start

68 • What You Can Do

69 ——— Your Reporting Options

70 ——— More About Administrative Action

71 ——— More About Professional Association Action

72 ——— More About Civil Actions

73 ——— More About Criminal Action

74 • Where to Get Help

75 ——— Finding a Therapist

76 ——— Self-Help Support Groups

77 • Frequently Asked Questions

78 • Patient Bill of Rights

79

80 INTRODUCTION

81 Professional psychotherapy never includes sex. It also never includes verbal sexual advances or any
82 other kind of sexual contact or behavior. Sexual contact of any kind between a therapist and a patient
83 is unethical and illegal in the state of California. Additionally, with regard to former patients, sexual
84 contact within two years after termination of therapy is also illegal and unethical.

85 Sexual behavior between a therapist and a patient/client can also be harmful to the patient/client. Harm
86 may arise from the therapist's exploitation of the patient/client to fulfill his or her own needs or desires,
87 and from the therapist's loss of the objectivity necessary for effective therapy. All therapists are trained
88 and educated to know that this kind of behavior is illegal and unethical inappropriate and can result in
89 the revocation of their professional license.

90 Therapists are trusted and respected, and it is common for patients to admire and feel attracted to
91 them. ~~by their clients, and it is not uncommon for clients to admire and feel attracted to them.~~ However,
92 a therapist who accepts or encourages the expression of these feelings through sexual behavior with
93 the therapist/client these normal feelings in a sexual way - or tells a patient/client that sexual
94 involvement is part of therapy - ~~is illegal, unethical, and it violates the therapeutic relationship, and~~
95 ~~engages in conduct that may be illegal and unethical.~~ using the trusting therapeutic relationship to take
96 advantage of the patient. Once sexual involvement begins, therapy for the patient ends. The original
97 issues that brought the patient to therapy are postponed, neglected, and sometimes lost. This kind of
98 abusive behavior can cause harmful, long-lasting, emotional and psychological effects to the client.

99 Many people who endure this kind of abusive behavior from therapists suffer harmful, long-lasting
100 emotional and psychological effects. Family life and friendships are often disrupted, or sometimes
101 ruined.

102 California's lawmakers, licensing boards, professional associations and ethical therapists want such
103 inappropriate sexual behavior stopped. This booklet was developed to help patients who have been
104 sexually exploited by their therapists. It outlines their rights and options for reporting what happened. It
105 also defines therapist sexual exploitation, gives warning signs of unprofessional behavior, presents a
106 "Patient Bill of Rights," and answers some frequently asked questions.

107

108 DEFINITION OF TERMS

109 Throughout this booklet, the terms "therapist," "therapy" and "patient/client" will be used. "Therapist"
110 refers to anyone who is licensed to practice psychotherapy, or is training to become licensed, and
111 includes:

- 112 • Psychiatrists (physicians practicing psychotherapy) Physicians and Surgeons (Ppsychiatrists)
- 113 • Psychologists
- 114 • Registered pPsychologists
- 115 • Psychological interns
- 116 • Psychological assistants
- 117 • Licensed eClinical social workers
- 118 • Registered associate eClinical social workers
- 119 • Licensed marriage and family therapists
- 120 • Registered Associate Marriage Marriage and F-family therapists, registered interns and
121 trainees
- 122 • Licensed professional eClinical ecounselors
- 123 • Registered Associate Pprofessional eClinical ecounselors Interns
- 124 • Licensed Educational Psychologists
- 125 • Registered Research Psychoanalysts

126 The terms "therapy," "therapist" and "patient" in this booklet also refer to educational psychology,
127 educational psychologists and their clients. Though educational psychologists do not practice
128 psychotherapy, these licensed professionals work with clients, performing educational evaluations,
129 diagnosis, and test interpretation.

130 "Therapy" includes any type of mental health counseling from any of the licensed or registered
131 professionals, therapists listed above. "Client" "Patient" refers to anyone receiving therapy, or
132 counseling, or other services.

133 According to California laws:

134 Any act of sexual contact, sexual abuse, sexual exploitation, sexual misconduct or sexual relations by
135 a therapist with a patient client is unprofessional, illegal, as well as unethical, as set forth in Business
136 and Professions Code sections 726, 729, 2960(o), 4982(k), 4992.3(l), 4989.54(n), and 4999.90(k).

137 "Sexual contact" means the touching of an intimate part of another person, including sexual
138 intercourse.

139 "Sexual behavior" means inappropriate contact or communication of a sexual nature. This definition
140 does not include the provision of appropriate therapeutic interventions relating to sexual issues.

141 "Touching" means physical contact with another person either through the person's clothes or directly
142 with the person's skin.

143 "Intimate part" means the sexual organ, anus, groin or buttocks of any person, and the breast of a
144 female.

145 "License" includes certificate, registration or other means to engage in a business or profession
146 regulated by Chapter 1, General Provisions, section 475 of the Business and Professions Code.

147 ~~"Sexual behavior" means inappropriate contact or communication of a sexual nature.~~

Commented [KK1]: Already listed above this is duplicative.

148 Sexual exploitation can include sexual intercourse, sodomy, oral copulation, or any other sexual
149 contact between a therapist and a patient or a former patient under certain circumstances. Sexual
150 misconduct includes a much broader range of activity, which may include fondling, kissing, spanking,
151 nudity, verbal suggestions, innuendoes or advances. This kind of sexual behavior by a therapist with a
152 patient is unethical, unprofessional and illegal.

153 **CLIENT RIGHTS**

154 You, as a Client, have the right to:

- 155 • Request and receive information about the therapist's professional capabilities, including
156 licensure, education, training, experience, professional association membership,
157 specialization and limitations.
- 158 • Be treated with dignity and respect.
- 159 • A safe environment, free from sexual, physical, and emotional abuse.
- 160 • Ask questions about your therapy or other services from your provider.
- 161 • Decline to answer any question or disclose any information you choose not to reveal.
- 162 • Request and receive information from the therapist about your progress toward your treatment
163 goals.
- 164 • Know the limits of confidentiality and the circumstances in which a therapist is legally required
165 to disclose information to others.

- 166 • Know if there are supervisors, consultants, students, or others with whom your therapist will discuss your case.
- 167
- 168 • Decline a particular type of treatment, or end treatment without obligation or harassment.
- 169 • Refuse electronic recording.
- 170 • Request and (in most cases) receive a summary of your file, including the diagnosis, your progress, and the type of treatment.
- 171
- 172 • Report unethical and illegal behavior by a therapist (see "What You Can Do").
- 173 • Receive a second opinion at any time about your therapy or your therapist's methods.
- 174 • Receive a copy of your file or have a copy of your file transferred to any therapist or agency you choose.
- 175

176 WARNING SIGNS

177 In most sexual ~~misconduct~~ ~~abuse or exploitation~~ cases, other inappropriate behavior comes first. While
 178 it may be subtle or confusing, it usually feels uncomfortable to the ~~patient~~ client. Some clues or warning
 179 signs are:

- 180 • Telling sexual jokes or stories.
- 181 • ~~"Making eyes at" or giving seductive looks to the patient.~~
- 182 • ~~Discussing the therapist's sex life or relationships excessively.~~
- 183 • Sending obscene images or messages to the client
- 184 • ~~Sitting too close, initiating hugging, holding the patient or lying next to the patient. Unwanted~~
- 185 physical contact.
- 186 • Excessive out-of-session communication (e.g., text, phone, email, social media, etc.) not
- 187 related to therapy

188 Another warning sign is "special" treatment by a therapist, such as:

- 189 • Inviting a patient/client to lunch, dinner, or other social and professional activities.
- 190 • Dating.
- 191 • Changing any of the office's business practices (for example e.g., scheduling late
- 192 appointments whense no one is around, having sessions away from the office, etc.).
- 193 • Confiding in a patient/client (e.g., about the therapist's love life, work problems, loneliness,
- 194 marital problems, etc.).
- 195 • Telling a patient/client that he or she is special, or that the therapist loves him or her.
- 196 • Relying on a patient/client for personal and emotional support.
- 197 • Giving or receiving significant gifts.

198 Signs of inappropriate behavior and misuse of power include:

- 199 • Hiring a patient/client to do work for the therapist, or bartering goods or services to pay for
- 200 therapy.
- 201 • Suggesting or supporting the patient's/client's isolation from social support systems, increasing
- 202 dependency on the therapist.
- 203 • Providing or using alcohol (or drugs) during sessions.
- 204 • Any violation of the patient's rights as a consumer (see "Patient Bill of Rights," page 24).

205 Therapy is meant to be a guided learning experience, during which therapists help patients to find their
 206 own answers and feel better about themselves and their lives. A patient should never feel intimidated
 207 or threatened by a therapist's behavior.

208 If you are experiencing any of these warning signs, you have the right to file a complaint with the
 209 appropriate licensing board and consult with another therapist, trust your own feelings. Check on
 210 discuss the therapist's behavior with a different therapist, or with any of the agencies in "Where To

Commented [BC2]: Per Dr. Casuga - The language here about bartering seems stronger than in the APA Ethical Guideline 6.05:

6.05 Barter With Clients/Patients
 Barter is the acceptance of goods, services, or other nonmonetary remuneration from clients/patients in return for psychological services. Psychologists may barter only if (1) it is not clinically contraindicated, and (2) the resulting arrangement is not exploitative. (See also Standards 3.05, Multiple Relationships, and 6.04, Fees and Financial Arrangements.)

211 Start" (see page 10). Depending on what you find out, you may want to find another therapist and
212 report the inappropriate behavior to the proper licensing board.

213 **WHAT IF IT'S ME? COMMON REACTIONS TO SEXUAL MISCONDUCT BY A** 214 **THERAPIST**

215 If a therapist has engaged in any sexual behavior or contact with you, you may experience some or all
216 of the following feelings or reactions:

217 If you have been sexually abused or exploited by your therapist, you may be feeling confused. You
218 may feel:

- 219 • Intimidation or threatened
- 220 • Guilty and responsible responsibility - even though it is the therapist's responsibility to keep
221 sexual behavior out of therapy.
- 222 • Mixed feelings about the therapist – e.g., protectiveness, anger, love, betrayal.
- 223 • Isolated/solation and empty/emptiness.
- 224 • Distrustful of others' feelings or intentions, or your own feelings.
- 225 • Fearful that no one will believe you, or understand what happened, or that someone will find
226 out.
- 227 • Confused about dependency, control and power. Feeling victimized or violated
- 228 • Experiencing traumatic symptoms, e.g., anxiety, nightmares, obsessive thoughts, depression,
229 or suicidal or homicidal thoughts

230 You may even have nightmares, obsessive thoughts, depression, or suicidal or homicidal thoughts.
231 You may feel overwhelmed as you try to decide what to do or whom to tell.

232 It's essential that you face what happened. This may be painful, but it is the first major step in healing
233 and recovering from the experience. You may have positive and negative feelings at the same time,
234 such as starting to feel personal control, being afraid of what may happen in the future, remembering
235 the experience, and feeling relieved that the sexual relationship is over.

236 The second step in the healing process is to decide what YOU want to do next. Try to be open-minded
237 about your options.

238 Remember: **It doesn't matter** if you, the patient, started or wanted the sexual involvement with the
239 therapist. Therapists are responsible for keeping sexual intimacy out of the therapy relationship and
240 are trained to know how to handle a patient's sexual attractions and desires.

241 **WHERE TO START**

242 You may need to (1) talk to someone who will understand what you're going through, (2) get
243 information on whether the therapist's behavior was illegal and/or unethical, and (3) find out what you
244 can do about it. Three places to get help are:

- 245 • **Licensing Boards** – In the Department of Consumer Affairs, three different boards license
246 therapists. They can give general information on appropriate behavior for therapists and your
247 rights for reporting what happened, as well as how to file a complaint (see page 13 for
248 licensing board contact information).
- 249 • **Sexual Assault/Crisis Centers** – These centers have staff trained in all types of sexual abuse
250 and exploitation. They can provide general information on appropriate behavior for therapists,
251 crisis services, your rights for reporting what happened, and names of therapists and support
252 groups that may be helpful. Centers are located throughout California. Look in your telephone
253 book under "sexual assault center" or "crisis intervention service."
- 254 • **Professional Associations** – Each licensed therapy profession has at least one professional
255 association. Associations can provide general information on appropriate behavior for

256 therapists, your rights for reporting what happened, and how to file a complaint. They can
257 provide names of therapists who may be helpful (see pages 16-17 for association contact
258 information).

259 WHAT YOU CAN DO

260 You can deal with your situation in several different ways. Take time to explore all of your rights and
261 options. It may help to decide what your goals are:

262 **Reporting the Therapist** - Perhaps you want to prevent the therapist from hurting other patients. You
263 may want to make it known that sexual exploitation is always wrong. If this is your decision, you have
264 several reporting options (see page 12). What happened to you may be illegal and unethical and you
265 should report it to the appropriate licensing board as soon as possible in order for the board to take
266 appropriate action within the statute of limitations.
267

268 It is important to note that reporting misconduct is time sensitive. What can be done in response to the
269 report of misconduct usually depends on who the misconduct is reported to and the length of time
270 between the misconduct and when the report was filed.

271 Such a time limit is called a "statute of limitations." As you consider your options, be aware of these
272 time limits.
273

- 274 ● **Your Recovery** - You may also want to explore and process what happened between you
275 and the therapist. If you decide to do this, you can look into therapy or support groups (see
276 pages 20-21).
- 277 ● **Moving On** - You may wish simply to move on past this experience as quickly as possible and
278 get on with your life. Remember - you have the right to decide what is best for you.

279 YOUR REPORTING OPTIONS

280 If you decide to report a therapist's behavior that you believe is unethical and illegal, there are four
281 different ways to do so. All of these reporting options are affected by time limits, so you should
282 consider reporting misconduct at the earliest appropriate opportunity. You may choose one or more of
283 the options listed below. These options and their time limits are discussed in more detail on the
284 following pages:

- 285 ● **Administrative Action** - File a complaint with the therapist's licensing board. (See "More
286 About Administrative Action," page 13.)
- 287 ● **Professional Association Action** - File a complaint with the ethics committee of the
288 therapist's professional association. (See "More About Professional Association Action," page
289 15.)
- 290 ● **Civil Action** - File a civil lawsuit. (See "More About Civil Action," page 18.)
- 291 ● **Criminal Action** - File a complaint with local law enforcement. (See "More About Criminal
292 Action," page 19.)

293 More About Administrative Action

294 In California, there are four (4) ~~three (3)~~ boards that license and regulate therapists. Three California
295 boards license and regulate therapists:

296 **Board of Behavioral Sciences**
297 1625 N. Market Blvd., Suite S-200
298 Sacramento, CA 95834
299 (916) 574-7830
300 www.bbs.ca.gov

301 This board licenses and regulates licensed educational psychologists; licensed clinical social workers;
302 registered associate clinical social workers; licensed marriage and family therapists; registered
303 associate marriage and family therapist-interns; licensed professional clinical counselors; and
304 registered professional associate professional clinical counselors interns.

305 **Board of Psychology**
306 2005 Evergreen Street, Suite 1400
307 Sacramento, CA 95815

308 1625 N. Market Blvd., Suite N-215
309 Sacramento, CA 95834
310 (916) 263-2699(916) 574-7720
311 www.psychboard.ca.govwww.psychology.ca.gov

312 This board licenses and regulates psychologists, psychological assistants, and registered
313 psychologists.

314 **Medical Board of California**
315 2005 Evergreen Street, Suite 1200
316 Sacramento, CA 95815
317 (916) 263-2389
318 www.mbc.ca.gov

319 This board licenses and regulates allopathic (MD) physicians and surgeons, including (psychiatrists)
320 and research psychoanalysts.

321 **Osteopathic Medical Board of California**
322 1300 National Drive, Suite 150
323 Sacramento, CA 95834-1991
324 (916) 928-8390
325 www.ombc.ca.gov

326 This board licenses and regulates osteopathic (DO) physicians and surgeons (psychiatrists).

327 The purpose of these licensing boards is to protect the health, safety and welfare of consumers.
328 Licensing boards have the power/authority to discipline therapists by using the administrative law
329 process. Depending on the violation, the board may revoke or suspend a license, and/or place a
330 license on probation with terms and conditions the licensed professional must follow. When a license is
331 revoked, the therapist cannot legally practice.

332 In many cases, the California Business and Professions Code requires revocation of a therapist's
333 license or registration whenever sexual misconduct is admitted or proven.

334 It is best to report any case of therapist-patient sexual exploitation as soon as possible, since delays
335 may restrict the disciplinary options available to the board. Time limits require a licensing board to
336 initiate disciplinary action by filing an "accusation" against a licensed professional accused of sexual
337 misconduct:
338 -within three years from the date the board discovered the alleged sexual misconduct, or
339 -within 10 years from the date the alleged sexual misconduct occurred.

340 That means an accusation of sexual misconduct against a therapist can't be filed more than 10 years
341 after the alleged incident. For complaints involving allegations other than sexual misconduct, the
342 licensing board must file an accusation within seven years from the date of the alleged offense.

343 **How to File a the Complaint Process Works**

344 The licensing boards can give you information about the complaint filing process and discuss your
345 situation with you. To file a complaint, you can request a complaint form, write a letter, or start the
346 complaint process online with the appropriate licensing board. With your complaint, be sure to include
347 your name, address, and telephone number; the therapist's name, address, and telephone number; a
348 description of your complaint; copies of any available documentation (for example, letters, bill receipts,
349 canceled checks, or pictures); and names, addresses and telephone numbers of any witnesses.

350 Each complaint is evaluated and investigated, and you and the therapist will be notified if the board
351 has sufficient evidence to initiate disciplinary action. You and the therapist will be interviewed
352 separately.

353 Most cases are settled by a *stipulated agreement* – the therapist typically admits to the violation(s) and
354 accepts the disciplinary action, no hearing is held, and the patient does not have to testify. In the event
355 that your case is not settled by a stipulated agreement, a hearing will be held by an administrative law
356 judge, and you will be required to testify. When the judge makes a decision about the case, the board
357 will then decide whether to accept this decision or to issue its own decision.

358 It is board policy to use only initials, rather than full names, to identify patients in public disciplinary
359 documents. However, hearings are open to the public, and there is a possibility that confidentiality may
360 be jeopardized during the investigation process or at the hearing itself. If you are concerned about this,
361 discuss it with the licensing board investigator.

362 The disciplinary process may take about two years from the time a complaint is received to the time a
363 final decision is made. Sometimes the process takes longer. Keep in mind that you cannot receive
364 monetary compensation from the therapist by using this option, but you may affect the therapist's
365 ability to practice and thereby protect other patients from similar misconduct.

366 You can submit your complaint online or in writing using the forms on the board's website to start the
367 process. You should provide as much information as possible, but it is especially helpful to provide
368 additional-the following information, if available, such as:

- 369 • Detailed description of the conduct you are reporting.
- 370 • Copies of materials that support your complaint, e.g., e-mails, text messages, correspondence
371 between you and the therapist, photographs or other images you shared with or received from
372 the therapist, etc.

373 The board will require a signed release form, authorizing the board to obtain your records from the
374 therapist. These records are required for official use, including investigation and possible
375 administrative proceedings regarding any violations of the law. Your complaint will be evaluated,
376 investigated, and you will be notified of the outcome.

377 The following are possible outcomes of your complaint:

- 378 • Revocation or/ surrender of the therapist's license: This results in the loss of license and right
379 to practice.
- 380 • Probation: The therapist's license may be placed on probation for a defined period of time,
381 with terms and conditions that must be complied with, in order to continue to practice.
- 382 • Case closed and no action taken against the therapist's license: the board could not
383 substantiate a violation of the laws and regulations.

384 It is board policy to use only initials, rather than full names, to identify clients in public disciplinary
385 documents. However, hearings are open to the public, and you may be asked to testify. All disciplinary
386 actions are public information.

387 In addition to filing a complaint with the appropriate regulatory board, you may also have civil remedies
388 and criminal recourse/legal remedies available to you in regard to this incident.

389 **More About Professional Association Action**

390 Many therapists join professional associations – organizations that provide education and guidance to
391 members of a profession. Each association has ethics guidelines, and all such guidelines state that
392 sexual involvement with patients is unacceptable and unethical.

393 If your therapist is a member of a professional association, you may file a formal complaint with the
394 association. After investigating the complaint, the association may recommend disciplinary actions that
395 may include removal of the therapist from its membership. Removing a therapist from the association
396 will let other members know about the person's unethical behavior, **but it will not keep the therapist**

Commented [BC3]: This language is added to meet the amendments to BPC 337 in AB 2968

397 **from practicing.** Only a licensing board or court action can do that. In addition, the action will not
398 result in monetary recovery for you (only a civil action can do that), and will not result in criminal action
399 against the therapist.

400 Each association has different ways of filing complaints. Call or write the appropriate association for
401 this information. To find out which association, if any, the therapist belongs to, call the therapist's office
402 and request this information; have a friend call the office or therapist for you; or check with the different
403 associations.

404 **Professional Associations**

405 Most professional association ethics committees will typically review only those complaints that include
406 allegations made within one year of the date of the alleged misconduct.

407 Contact the appropriate association for specifics on reporting professional misconduct, or to get more
408 general information.

409 **Psychiatrist, Physician**

410 American Psychiatric Association
411 1000 Wilson Blvd. Suite 1825
412 Arlington, VA 22209
413 (888) 357-7924
414 www.psychiatry.org

415 California Medical Association
416 1201 J Street, Suite 200
417 Sacramento, CA 95814
418 (916) 444-5532
419 www.cmanet.org

420 California Psychiatric Association
421 1029 K Street, Suite 28
422 Sacramento, CA 95814
423 (916) 442-5196
424 www.calpsych.org

425 **Licensed Psychologist**

426 American Psychological Association
427 750 First Street, NE
428 Washington, DC 20002
429 (800) 374-2721
430 www.apa.org

431 California Psychological Association
432 1231 I Street, Suite 204
433 Sacramento, CA 95814
434 (916) 286-7979
435 www.epapsych.org

436 **Licensed Clinical Social Worker**

437 National Association of Social Workers, California Chapter
438 1016 23rd Street
439 Sacramento CA 95816
440 (916) 442-4565
441 www.naswdc.org

442 National Association of Social Workers
443 750 First Street, NE, Suite 700

444 Washington, DC 20002
445 (202) 408-8600
446 www.naswdc.org

447 California Society for Clinical Social Work
448 6060 Sunrise Vista Drive, Suite 1300
449 Citrus Heights, CA 95610
450 (916) 560-9238
451 clinicalsocialworksociety.org

452 **Licensed Educational Psychologist**

453 California Association of Licensed Educational Psychologists
454 P.O. Box 387
455 Aptos, CA 95001
456 www.calep.com

457 California Association of School Psychologists
458 1020 12th Street, Suite 200
459 Sacramento, CA 95814
460 (916) 444-1595
461 www.casponline.org

462 **Licensed Marriage and Family Therapist**

463 American Association for Marriage and Family Therapy
464 112 South Alfred Street
465 Alexandria, VA 22314-3061
466 (703) 838-9808
467 www.aamft.org

468 American Association for Marriage and Family Therapy, California Division
469 Post Office Box 6907
470 Santa Barbara, CA 93160
471 (800) 662-2638
472 (805) 681-1413
473 aamftca.org

474 California Association of Marriage and Family Therapists
475 7904 Raytheon Road
476 San Diego, CA 92111
477 (858) 292-2638
478 www.camft.org

479 **Licensed Professional Clinical Counselors**

480 California Association for Licensed Professional Clinical Counselors
481 P.O. Box 280640
482 Northridge, CA 91328
483 <http://calpcc.org/>

484 **More About Civil Action**

485 **Suing the Therapist or Their Employer**

486 Generally, civil lawsuits are filed to seek money for damages or injuries to a patient. For a sexual
487 misconduct case, a patient may want to sue the therapist for injuries suffered and for the cost of future
488 therapy sessions.

489 Under California law, you may file a lawsuit against the therapist or the therapist's employer if you
490 believe the employer knew or should have known about the therapist's behavior. If the employer is a

491 local or state public mental health agency for which the therapist works, you must first file a complaint
492 with the agency within six months of the sexual misconduct. Consult with an attorney for specific
493 advice.

494 If you think you want to file a lawsuit, it is important to consult an attorney as soon as possible, since
495 there are different time limits for filing civil lawsuits. Most civil lawsuits must be filed within one year
496 after the sexual misconduct occurred.

497 **Media Attention**

498 Once a lawsuit is filed, there is the possibility of media coverage, especially if the patient or therapist is
499 well-known. While many cases are settled out of court, some do go to trial, and it can take years
500 before your case is tried.

501 **Patients Don't Always Win**

502 You should be aware that some cases end up being decided in favor of the therapist, rather than the
503 patient.

504 **Finding an Attorney**

505 Take time to choose an attorney to represent you. You may need to interview several. Here are some
506 points to consider:

- 507 ● Get a list of attorneys from your County Bar Association's referral service. You can also check
508 with your local legal aid society for legal assistance.
- 509 ● Contact a lawyer referral service certified by the State Bar of California. To find a certified
510 lawyer referral service, look in the telephone book yellow pages at the beginning of the
511 "Attorneys" listings, or visit the State Bar Web site at www.calbar.ca.gov.
- 512 ● Check with the State Bar of California (www.calbar.ca.gov) to make sure the attorney has a
513 clear license.
- 514 ● While some attorneys are willing to wait to be paid based on the outcome of the suit
515 (contingency basis), some will not.
- 516 ● Be sure that the attorney has civil litigation experience in the area of medical and/or
517 psychological malpractice.
- 518 ● Make sure that you feel comfortable with your attorney and can trust and confide in him or
519 her.

520 **More About Criminal Action**

521 Sexual exploitation of patients by therapists is wrong. The law makes it a crime for a therapist to have
522 sexual contact with a patient. For a first offense with only one victim, an offender would probably be
523 charged with a misdemeanor. For this charge, the penalty may be a sentence of up to one year in
524 county jail, or up to \$1,000 in fines, or both. Second and following offenses, or offenses with more than
525 one victim, may be misdemeanors or felonies. The penalty in such felony cases can be up to three
526 years in prison, or up to \$10,000 in fines, or both.

527 This law applies to two situations:

- 528 ● The therapist has sexual contact with a patient during therapy, or
- 529 ● The therapist ends therapy primarily to start having sexual contact with the patient (unless the
530 therapist has referred the patient to an independent and objective therapist who has been
531 recommended by a third-party therapist).

532 To file a criminal complaint against a therapist:

- 533 ● Contact your local law enforcement agency. Many agencies in larger cities have sexual
534 assault units that handle these complaints.

535 ●—Contact your local victim/witness assistance program for help through the legal process. Look
536 in your local telephone book under "District Attorney" or call 1-800-VICTIMS (842-8467).

537 Once a complaint is filed, it will be investigated by the law enforcement agency, which will give the
538 results of the investigation to the district attorney's office. The district attorney's office will decide
539 whether there is enough evidence to file criminal charges.

540 Time limits, or statutes of limitations, affect this reporting option. If you are considering this option,
541 contact your local law enforcement agency. The agency's authority to take action may expire as soon
542 as one year from the date the alleged misconduct occurred.

543 WHERE TO GET HELP

544 Many patients who have been sexually exploited by therapists find it difficult to see another therapist
545 for help and support. However, for most people, the issues that brought them to therapy were never
546 worked on or resolved, and the sexual exploitation created even more issues to handle. If this is your
547 situation, therapy may be an important tool in your healing process.

548 Therapy may be an important tool in your recovery. Before selecting a new therapist, here are a few
549 considerations/suggestions to support that process: interview several until you find one you are
550 comfortable with. Use the "Patient Bill of Rights" as a guide (see page 24). If you are unsure after one
551 session, either consider a different therapist or set up a follow-up session to clarify your concerns. Do
552 not feel pressured to stay with one therapist.

553 Finding a Therapist

554 Some ways of finding a therapist are:

- 555 ● Asking someone you know and trust for a referral, who has been in therapy, who feels good
556 about the experience and who has changed in ways you consider positive.
- 557 ● Calling your local sexual assault center or crisis intervention service (in the telephone book
558 yellow pages). These centers can refer you to therapists experienced in dealing with those
559 who have suffered sexual exploitation or abuse.
- 560 ● Calling professional associations (see pages 16-17) and asking for referrals to therapists who
561 specialize in helping those who have been sexually abused or exploited by therapists.
- 562 ● Searching online for a local sexual assault center or crisis intervention service. These centers
563 can refer you to therapists experienced in dealing with those who have suffered sexual
564 misconduct by a therapist.
- 565 ● Contacting professional associations and asking for referrals to therapists who specialize in
566 helping those who have suffered sexual misconduct by a therapist.
- 567 ● Seeking a referral from your primary care physician or insurance provider.

568 After getting several names, call the appropriate licensing board (see page 13) or visit their Web site
569 for on-line license verification and disciplinary actions. You can also call the professional association
570 (see pages 16-17) and ask if the therapists are licensed and if any disciplinary actions have been filed
571 against them. Check with your county Superior Court to see if there is a record of any malpractice
572 lawsuits filed against the therapists. Visit the board's website to verify the status of the therapist's
573 license.

574 Self-Help Support Groups

575 There is an informal network of self-help support groups throughout California. While there might not
576 be a group in your area specifically focused on sexual exploitation by therapists, there may be groups
577 dealing with more general kinds of sexual abuse. To find out if there are any groups in your area, call
578 your local sexual assault center or crisis intervention service (listed in the telephone book yellow
579 pages).

580 **FREQUENTLY ASKED QUESTIONS**

581 • **Is it normal to feel attracted to my therapist?**

582 Yes. It is normal to feel attracted to someone who is attentive, kind, and caring. This is a
583 common reaction toward someone who is helping you. However, all therapists are trained to
584 be aware of this and to maintain a professional therapy relationship that is beneficial to the
585 patient/client.
586

587 • **What if I was the one who brought up having sex the client initiated sexual behavior?**

588 That doesn't matter. The therapist is the one who is responsible for keeping ensuring that
589 sexual intimacy/behavior or contact is not part of therapy.
590

591 • **Does this happen a lot?**

592 A national study revealed that probably fewer than 10 percent of all therapists have had
593 sexual contact with their patients and that 80 percent of the sexual-exploiting therapists have
594 exploited more than one patient. If a therapist is sexually exploiting a patient, they have
595 probably done so before and are likely to do so again. In recent years, aggressive prosecution
596 of offending therapists and passage of laws that facilitate the enforcement work of licensing
597 boards have helped to significantly reduce the number of such cases reported to the licensing
598 boards.

599 • **Why do some therapists sexually exploit their patients?**

600 There are probably as many excuses as there are therapists who engage in such
601 unprofessional conduct. But no excuse is acceptable for a therapist to abuse the therapeutic
602 relationship and the trust of a patient for the therapist's own sexual gain. All therapists should
603 know that this conduct is unethical and illegal.

604 • **Why do I feel scared or confused about reporting my therapist?**

605 In most cases, the therapist is an important person in the client's life. Therefore, feelings of
606 such as fear, confusion, protectiveness, shame or guilt are common. Get as much information
607 as possible about your options. Keep in mind that you are in control and can choose what to
608 do.
609

610 • **What if the therapist retaliates against me, harasses me or files a lawsuit against me for reporting him or her?**

611
612 Retaliation against a patient or harassment of a patient is illegal. Contact your local district
613 attorney. If the therapist files a lawsuit against you, you will be required to defend yourself in
614 the lawsuit. However, the law does provide immunity from monetary liability for reporting
615 misconduct to a licensing board.

616 • **How can I prevent this from happening again?**

- 617 1. Acknowledge your right to be free from sexual exploitation.
618 2. When choosing a therapist, check with the licensing board (see page 13) to see if the
619 therapist is licensed and if the license is under suspension or probation. Check on any
620 complaints filed with a professional association. Review county Superior Court records to
621 see if any malpractice lawsuit judgments are on file against the therapist.
622 3. Question any action that may seem sexual.
623 4. Remember that feelings of attraction are natural, therapy is supposed to be a means to
624 explore and resolve feelings, without having to act them out.
625 5. Feel free to end a relationship that no longer seems safe.

- 626 • **Can I file a complaint if there is or has been a civil case between myself and the**
627 **therapist?**
- 628 Yes, you may file a complaint at any time, whether the case is ongoing or concluded. A civil
629 settlement cannot preclude you from filing a complaint against a licensee.
- 630 • **Is there a cost associated with filing a complaint?**
- 631 No, filing a complaint is free and can be filed via telephone, email, mail, or online.
- 632 • **Can I file a complaint if I had a personal relationship with my therapist?**
- 633 Yes.
- 634 • **Can I contact the therapist after I file a complaint?**
- 635 In order to preserve the integrity of the investigation, it is strongly recommended that you do
636 not initiate contact with the therapist once you have filed a complaint.
- 637 • **What if the therapist contacts me after I file a complaint?**
- 638 Once you have filed a complaint, notify the board right away if the therapist contacts you.
- 639 **Can I file an anonymous complaint with a licensing board?**
- 640 Anonymous complaints are accepted, but they are almost impossible to investigate without the
641 cooperation of the accuser.

642

643 **PATIENT BILL OF RIGHTS**

644 **Patients have the right to:**

- 645 • Request and receive information about the therapist's professional capabilities, including
646 licensure, education, training, experience, professional association membership,
647 specialization and limitations.
- 648 • Have written information about fees, payment methods, insurance reimbursement, number of
649 sessions, substitutions (in cases of vacation and emergencies), and cancellation policies
650 before beginning therapy.
- 651 • Receive respectful treatment that will be helpful to you.
- 652 • A safe environment, free from sexual, physical and emotional abuse.
- 653 • Ask questions about your therapy.
- 654 • Refuse to answer any question or disclose any information you choose not to reveal.
- 655 • Request and receive information from the therapist about your progress.
- 656 • Know the limits of confidentiality and the circumstances in which a therapist is legally required
657 to disclose information to others.
- 658 • Know if there are supervisors, consultants, students, or others with whom your therapist will
659 discuss your case.
- 660 • Refuse a particular type of treatment, or end treatment without obligation or harassment.
- 661 • Refuse electronic recording (but you may request it if you wish).
- 662 • Request and (in most cases) receive a summary of your file, including the diagnosis, your
663 progress, and the type of treatment.

- 664 ●—Report unethical and illegal behavior by a therapist (see "Your Reporting Options," page 12).
665 ●—Receive a second opinion at any time about your therapy or therapist's methods.
666 ●—Have a copy of your file transferred to any therapist or agency you choose.

667

668

669 Publishing Information

670 The 2018 edition of "Therapy Never Includes Sexual Behavior" is published by the California
671 Department of Consumer Affairs. This publication is a joint project of the California Board of
672 Psychology, the California Board of Behavioral Sciences, the Medical Board of California, the
673 Osteopathic Medical Board of California, and the Department of Consumer Affairs' Office of
674 Publications, Design & Editing.

675 This publication, and its previous versions, are the result of the dedicated work of former Senator
676 Diane Watson, whose Senate Task Force on Psychotherapist and Patient Sexual Relations prompted
677 the development of the original "Professional Therapy Never Includes Sex" brochure in 1990.

678 This booklet is available in the "Publications" section of the Department of Consumer Affairs' website
679 at www.dca.ca.gov.

680 Single copies of the publication are available at no charge from the boards listed above and from
681 Publications Office, California Department of Consumer Affairs, P.O. Box 989004, West Sacramento,
682 CA 95798-0004.

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686

Assembly Bill No. 2968

CHAPTER 778

An act to amend Sections 337 and 728 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 26, 2018. Filed with
Secretary of State September 26, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2968, Levine. Psychotherapist-client relationship: victims of sexual behavior and sexual contact: informational brochure.

Existing law requires the Department of Consumer Affairs to prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual contact and their advocates, and requires the brochure to be developed by the department in consultation with the office of Criminal Justice Planning and the office of the Attorney General, as specified. Existing law requires the brochure to include specified subjects and requires the brochure to be provided to individuals who contact the Medical Board of California and affiliated health boards or the Board of Behavioral Sciences regarding a complaint involving psychotherapist-patient sexual relations.

This bill would instead require the brochure to be prepared, developed, and disseminated by the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California. The bill would require that the brochure also be for victims of psychotherapist-client sexual behavior. The bill would revise the required content of the brochure, would require the brochure to be made available on the Internet Web sites of the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California, and would require the brochure to be provided to each individual contacting those boards regarding a complaint involving psychotherapist-client sexual behavior and sexual contact. The bill would also make conforming changes.

Existing law requires a psychotherapist or an employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact, as defined, with a previous psychotherapist to provide a brochure developed by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapists. Existing law defines "psychotherapist" for purposes of those provisions to include various mental health practitioners and makes a failure to comply unprofessional conduct.

This bill would make this requirement also apply in the case of alleged sexual behavior, as defined, with a previous psychotherapist and would specify that the required brochure is the above-described brochure. The bill

would also expand the list of mental health practitioners included in the definition of “psychotherapist” for those purposes.

This bill would incorporate additional changes to Section 728 of the Business and Professions Code proposed by AB 93 to be operative only if this bill and AB 93 are enacted and this bill is enacted last.

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

SECTION 1. Section 337 of the Business and Professions Code is amended to read:

337. (a) The Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California shall prepare and disseminate an informational brochure for victims of psychotherapist-client sexual behavior and sexual contact and their advocates. This brochure shall be developed by the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California.

(b) The brochure shall include, but is not limited to, the following:

(1) A legal and an informal definition of psychotherapist-client sexual behavior and sexual contact.

(2) A brief description of common personal reactions.

(3) A client’s bill of rights.

(4) Instructions for reporting psychotherapist-client sexual behavior and sexual contact.

(5) A full description of administrative complaint procedures.

(6) Information that other civil and criminal remedies may also be available to them in regards to the incident.

(7) A description of services available for support of victims.

(c) The brochure shall be provided to each individual contacting the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, or the Osteopathic Medical Board of California regarding a complaint involving psychotherapist-client sexual behavior and sexual contact.

(d) The brochure shall be made available on the Internet Web sites of the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California.

SEC. 2. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a client that the client had alleged sexual intercourse or alleged sexual behavior or sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the client a brochure developed pursuant to Section 337 that delineates the rights of, and remedies for, clients who have been involved sexually with their psychotherapists. Further, the psychotherapist or employer shall discuss the brochure with the client.

- (b) Failure to comply with this section constitutes unprofessional conduct.
- (c) For the purpose of this section, the following definitions apply:
 - (1) “Psychotherapist” means any of the following:
 - (A) A physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy.
 - (B) A psychologist.
 - (C) A psychological assistant.
 - (D) A registered psychologist.
 - (E) A trainee under the supervision of a licensed psychologist.
 - (F) A marriage and family therapist.
 - (G) An associate marriage and family therapist.
 - (H) A marriage and family therapist trainee.
 - (I) A licensed educational psychologist.
 - (J) A clinical social worker.
 - (K) An associate clinical social worker.
 - (L) A licensed professional clinical counselor.
 - (M) An associate professional clinical counselor.
 - (N) A clinical counselor trainee.
 - (2) “Sexual behavior” means inappropriate contact or communication of a sexual nature. “Sexual behavior” does not include the provision of appropriate therapeutic interventions relating to sexual issues.
 - (3) “Sexual contact” means the touching of an intimate part of another person.
 - (4) “Intimate part” and “touching” have the same meaning as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code.
 - (5) “The course of a prior treatment” means the period of time during which a client first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the client as being within his or her scope of practice, until the psychotherapist-client relationship is terminated.

SEC. 2.5. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a client that the client had alleged sexual intercourse or alleged sexual behavior or sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the client a brochure developed pursuant to Section 337 that delineates the rights of, and remedies for, clients who have been involved sexually with their psychotherapists. Further, the psychotherapist or employer shall discuss the brochure with the client.

- (b) Failure to comply with this section constitutes unprofessional conduct.
- (c) For the purpose of this section, the following definitions apply:
 - (1) “Psychotherapist” means any of the following:
 - (A) A physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy.
 - (B) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900).

- (C) A psychological assistant.
- (D) A registered psychologist.
- (E) A trainee under the supervision of a licensed psychologist.
- (F) A marriage and family therapist.
- (G) An associate marriage and family therapist.
- (H) A marriage and family therapist trainee.
- (I) A licensed educational psychologist.
- (J) A clinical social worker.
- (K) An associate clinical social worker.
- (L) A licensed professional clinical counselor.
- (M) An associate professional clinical counselor, as specified in Chapter 16 (commencing with Section 4999.10).
- (N) A clinical counselor trainee, as specified in Chapter 16 (commencing with Section 4999.10).

(2) “Sexual behavior” means inappropriate contact or communication of a sexual nature. “Sexual behavior” does not include the provision of appropriate therapeutic interventions relating to sexual issues.

(3) “Sexual contact” means the touching of an intimate part of another person.

(4) “Intimate part” and “touching” have the same meanings as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code.

(5) “The course of a prior treatment” means the period of time during which a client first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the client as being within his or her scope of practice, until the psychotherapist-client relationship is terminated.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 728 of the Business and Professions Code proposed by both this bill and Assembly Bill 93. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 728 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 93, in which case Section 2 of this bill shall not become operative.

O



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

To: Board Members **Date:** January 29, 2019
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst
Subject: Proposed Language: New LMFT Degree Title

Summary

The Board has been asked to consider adding a new degree title to those accepted for licensure as a marriage and family therapist (LMFT). At its August 2018 meeting, the Board approved the addition of a new title, "Clinical Mental Health Counseling with a concentration in Marriage, Family, and Child Counseling," to increase portability of licensure to other states. However, upon further review, staff has determined that additional fine-tuning of the proposed title is needed.

Background

The Board currently accepts doctoral or master's degrees with the following titles toward an LMFT license for in-state applicants:

- Marriage, Family, and Child Counseling;
- Marriage and Family Therapy;
- Couple and Family Therapy;
- Psychology;
- Clinical Psychology;
- Counseling Psychology;
- Counseling with an emphasis in Marriage, Family, and Child Counseling; or
- Counseling with an emphasis in Marriage and Family Therapy

Argosy University has requested that the Board add an additional title because of a problem they are having with their "Counseling Psychology" degree program. This degree, which is offered in California, prepares its students for both LMFT and LPCC licensure in California. However, it is not accepted toward licensure in many other states.

Argosy University notes that many states are requiring accreditation from the Council for Accreditation of Counseling & Related Educational Programs (CACREP). According to the "2016 CACREP Standards," degree specialty areas consist of the following (2016 CACREP Standards, Section 1, Part J) (**Attachment C**):

- Addiction Counseling;

- Clinical Mental Health Counseling;
- Clinical Rehabilitation Counseling;
- Marriage, Couple, and Family Counseling;
- Career Counseling;
- College Counseling and Student Affairs; and
- School Counseling

Therefore, the difficulty is while an individual who wants to be dually licensed as an LMFT and an LPCC in California can obtain a degree in “Counseling Psychology” and become dually licensed in this state, if they decide to move to another state that requires CACREP accreditation for licensure, the degree title may not be acceptable for one or both licenses. The newly proposed license title will add a dual license track that is consistent with CACREP standards.

History

The last time a new degree title was added to the list of those acceptable for LMFT licensure was in 2012, when the “Couple and Family Therapy” title was added via an omnibus bill (SB 943, Chapter 350, Statutes of 2011). At that time, a growing number of graduate programs nationwide had begun offering degrees in “Couple and Family Therapy.” The Board determined that adding the title would acknowledge the greater diversity of relationships with which LMFTs work.

Recommendation

Conduct an open discussion of the proposed language shown in **Attachment A**, which permits a degree in either counseling or clinical mental health counseling, with an emphasis in either marriage, family, and child counseling or marriage and family therapy. If the Board approves of the language as written, direct staff to pursue legislation to make the change.

Attachments

Attachment A: Proposed Language – New LMFT Degree Title

Attachment B: Letter from Joffrey S. Suprina, PhD., LMHC, NCC; National Dean, College of Counseling, Psychology and Social Sciences, Argosy University. (March 14, 2018)

Attachment C: 2016 CACREP Standards; Section 1: The Learning Environment; Part J

**ATTACHMENT A
NEW LMFT DEGREE TITLE**

NOTE: SECTIONS SHOWN ARE PARTIAL.

AMEND §4980.36. QUALIFYING DEGREE PROGRAM FOR LICENSURE OR REGISTRATION; BEGINNING GRADUATE STUDY AFTER AUGUST 1, 2012 OR COMPLETING GRADUATE STUDY AFTER DECEMBER 31, 2018

(a) This section shall apply to the following:

- (1) Applicants for licensure or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.
- (2) Applicants for licensure or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.
- (3) Applicants for licensure or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for a license or registration, applicants shall possess a doctoral or master's degree meeting the requirements of this section in marriage, family, and child counseling, marriage and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or either counseling or clinical mental health counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy. The degree shall be obtained from a school, college, or university approved by the Bureau for Private Postsecondary Education, or accredited by either the Commission on Accreditation for Marriage and Family Therapy Education, or a regional or national institutional accrediting agency that is recognized by the United States Department of Education. 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 accreditation or approval.

AMEND §4980.37. QUALIFYING DEGREE PROGRAM FOR LICENSURE OR REGISTRATION; BEGINNING GRADUATE STUDY BEFORE AUGUST 1, 2012 AND COMPLETING GRADUATE STUDY BEFORE DECEMBER 31, 2018

(a) This section shall apply to applicants for licensure or registration who began graduate study before August 1, 2012, and completed that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4980.36.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree in marriage, family, and child counseling, marriage and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or either counseling or clinical mental health counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy. The degree shall be obtained from 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 approved by the Bureau for Private Postsecondary Education. 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 accreditation or approval. In order to qualify for licensure pursuant to this section, a doctor's or

master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester units or 72 quarter units of instruction. This instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment. The coursework shall include all of the following areas:

- (1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.
- (2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.
- (3) Developmental issues and life events from infancy to old age and their effect on individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, abuse and neglect of older and dependent adults, and geropsychology.
- (4) A variety of approaches to the treatment of children.

The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

ATTACHMENT B



March 14, 2018

Kim Madsen
Executive Officer
Board of Behavioral Sciences
1625 North Market Blvd. Suite 200
Sacramento, CA 95834

Dear Kim Madsen,

As we have discussed, I am requesting that the board consider revising the language for acceptable degrees eligible for the Marriage and Family Therapy license (LMFT) to include a Clinical Mental Health Counseling degree with a concentration in Marriage, Family and Child Counseling. At Argosy University, we have been looking for ways to increase the portability of degrees across states. Our Master of Arts in Counseling Psychology program currently offered in California is eligible for both the LPCC and LMFT licensure in California but is not eligible for those licensures in many other states. Additionally, as you are aware, more states are requiring CACREP accreditation for eligibility for licensure in their states. This places us in a catch 22 where what is accepted in California is not accepted in other states and what is accepted by many other states is limited in California. I'm sure you and the board do not want to disadvantage your residents who are required to relocate to other states. By revising the language of the law to accept a Master of Arts in Clinical Mental Health Counseling degree with a concentration in Marriage, Family and Child Counseling, you will fulfill the goals of the law (training in systems theory and MFT work) while opening the students to greater portability across states.

Let me know if I can be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Joffrey S. Suprina".

Joffrey S. Suprina, PhD. LMHC, NCC
National Dean
College of Counseling, Psychology and Social Sciences
Argosy University
941-554-1567

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ATTACHMENT C

CACREP

SECTION 1: THE LEARNING ENVIRONMENT

The following Standards apply to all entry-level and doctoral-level programs for which accreditation is being sought unless otherwise specified.

THE INSTITUTION

- A. The academic unit is clearly identified as part of the institution's graduate degree offerings and has primary responsibility for the preparation of students in the program. If more than one academic unit has responsibility for the preparation of students in the program, the respective areas of responsibility and the relationships among and between them must be clearly documented.
- B. The institutional media accurately describe the academic unit, the core counselor education program faculty, and each program and specialty area offered, including admissions criteria, accreditation status, methods of instruction, minimum degree requirements, matriculation requirements, and financial aid information.
- C. The institution is committed to providing the program with sufficient financial support to ensure continuity, quality, and effectiveness in all of the program's learning environments.
- D. The institution provides opportunities for graduate assistantships for program students that are commensurate with graduate assistantship opportunities in other clinical programs in the institution.
- E. The institution provides support for counselor education program faculty to participate in professional activities, scholarly activities, and service to the profession.
- F. The institution provides learning resources appropriate for scholarly inquiry, study, and research relevant to counseling and accessible by all counselor education program faculty and students.
- G. The institution provides technical support to all counselor education program faculty and students to ensure access to information systems for learning, teaching, and research.
- H. The institution provides information to students in the program about personal counseling services provided by professionals other than counselor education program faculty and students.
- I. The institution provides adequate and appropriate access to counseling instruction environments (on or off campus) that are conducive to training and supervision of individual and group counseling. The counseling instruction environments include technologies and other observational capabilities as well as procedures for maintaining privacy and confidentiality.

THE ACADEMIC UNIT

- J. Entry-level degree specialty areas in Addiction Counseling; Clinical Mental Health Counseling; Clinical Rehabilitation Counseling; and Marriage, Couple, and Family Counseling consist of approved, graduate-level study with a minimum of 60 semester credit hours or 90 quarter credit hours required of all students. Until June 30, 2020, Career Counseling, College Counseling and Student Affairs, and School Counseling specialty areas require a minimum of 48 semester hours or 72 quarter hours. Beginning July 1, 2020, all entry-level degree programs require a minimum of 60 semester credit hours or 90 quarter credit hours for all students.
- K. The academic unit makes continuous and systematic efforts to attract, enroll, and retain a diverse group of students and to create and support an inclusive learning community.
- L. Entry-level admission decision recommendations are made by the academic unit's selection committee and include consideration of each applicant's (1) relevance of career goals, (2) aptitude for graduate-level study, (3) potential success in forming effective counseling relationships, and (4) respect for cultural differences.
- M. Before or at the beginning of the first term of enrollment in the academic unit, the program provides a new student orientation during which a student handbook is disseminated and discussed, students' ethical and professional obligations and personal growth expectations as counselors-in-training are explained, and eligibility for licensure/certification is reviewed.
- N. The student handbook includes (1) the mission statement of the academic unit and program objectives, (2) information about professional counseling organizations, opportunities for professional involvement, and activities appropriate for students, (3) matriculation requirements, (4) expectations of students, (5) academic appeal policy, (6) written endorsement policy explaining the procedures for recommending students for credentialing and employment, and (7) policy for student retention, remediation, and dismissal from the program.
- O. Counselor education programs have and follow a policy for student retention, remediation, and dismissal from the program consistent with institutional due process policies and with the counseling profession's ethical codes and standards of practice.
- P. Students in entry-level programs have an assigned advisor at all times during the program who helps them develop a planned program of study.
- Q. The academic unit makes continuous and systematic efforts to recruit, employ, and retain a diverse faculty to create and support an inclusive learning community.
- R. The academic unit has faculty resources of appropriate quality and sufficiency to meet the demands of the program. For entry-level programs, the academic unit must employ a minimum of three full-time core counselor education program faculty members who teach in the entry-level program. Core counselor education program faculty may only be designated as core faculty at one

institution.

- S. To ensure that students are taught primarily by core counselor education program faculty, for any calendar year, the combined number of course credit hours taught by non-core faculty must not exceed the number of credit hours taught by core faculty.
- T. For any calendar year, the ratio of full-time equivalent (FTE) students to FTE faculty should not exceed 12:1.
- U. The teaching and advising loads, scholarship, and service expectations of counselor education program faculty members are consistent with the institutional mission and the recognition that counselor preparation programs require extensive clinical instruction.
- V. Clerical assistance is available to support faculty/program activities and is commensurate with that provided for similar graduate programs.

FACULTY AND STAFF

- W. Core counselor education program faculty have earned doctoral degrees in counselor education, preferably from a CACREP-accredited program, or have related doctoral degrees and have been employed as full-time faculty members in a counselor education program for a minimum of one full academic year before July 1, 2013.
- X. Core counselor education program faculty identify with the counseling profession (1) through sustained memberships in professional counseling organizations, (2) through the maintenance of certifications and/or licenses related to their counseling specialty area(s), and (3) by showing evidence of sustained (a) professional development and renewal activities related to counseling, (b) professional service and advocacy in counseling, and (c) research and scholarly activity in counseling commensurate with their faculty role.
- Y. Within the structure of the institution's policies, the core counselor education program faculty have the authority to determine program curricula and to establish operational policies and procedures for the program.
- Z. Non-core faculty may be employed who support the mission, goals, and curriculum of the counselor education program. They must have graduate or professional degrees in a field that supports the mission of the program.
- AA. The core counselor education program faculty orient non-core faculty to program and accreditation requirements relevant to the courses they teach.
- BB. All core and non-core counselor education program faculty have relevant preparation and experience in relation to the courses they teach.
- CC. A core counselor education program faculty member is clearly designated as the academic unit leader for counselor education; this individual must have a written job description that includes (1) having responsibility for the coordination of the counseling program(s), (2) responding to inquiries regarding the overall academic unit, (3) providing input and making recommendations regarding the development of and expenditures from the budget, (4) providing or delegating year-round leadership to the operation of the program(s), and (5) receiving release time from faculty member responsibilities to administer the academic unit.
- DD. A program faculty member or administrator is identified as the practicum and internship coordinator for the academic unit and/or program; this individual must have a written job description that includes (1) having responsibility for the coordination of practicum and internship experiences in designated counselor education program(s), and (2) responding to inquiries regarding practicum and internship.



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

To: Policy and Advocacy Committee Members **Date:** January 29, 2019
From: Rosanne Helms and Christy Berger **Telephone:** (916) 574-7897
Legislative Analyst/Regulatory Analyst
Subject: **Discussion and Possible Recommendations Regarding Practice Setting
Definitions and Subsequent Registration Numbers (LMFT Only)**

The Exempt Setting Committee was formed by the Board in order to examine mental health services provided in exempt settings to determine if consumers are receiving services consistent with the standard of care for the mental health professions. It also examined different types of practice settings that offer mental health services, in order to determine if setting definitions need to be refined.

The Exempt Setting Committee met from January 2017 until September 2018. It developed language that would require **all** settings in which psychotherapy is performed, including exempt settings, to provide written information to consumers about where to file a complaint about their therapist. The Board approved this language at the November 2018 meeting, and staff is now pursuing an author to run legislation.

The Committee also explored different types of settings offering mental health services. It concluded that these settings need better definitions in law for the following reasons:

- To clarify acceptable practice settings for those in various stages of the licensing process; and
- To provide clarity in applying laws that reference or place limits on setting types that are not defined.

Defining types of practice settings is the focus of today's discussion.

The language being proposed today in **Attachment A** is a prototype and only pertains to LMFT statute. Once this committee considers the language, suggests any desired changes, and determines it wishes to move forward, similar language will be drafted for the Board's other license types.

Exempt Setting Committee Findings: Types of Settings

Exempt Settings

Currently, the only fully-defined type of setting is one specified in law as exempt from Board of Behavioral Sciences' licensure requirements (if the employee's work is performed solely under

the supervision of the employer). In exempt settings, unlicensed/unregistered individuals who are not pursuing a license are permitted to provide psychotherapy services. Those settings are:

- Nonprofit and charitable entities (a 501(c)(3) or a church/religious organization that meets certain federal requirements)
- Schools (whether public, private, for-profit or non-profit)
- Governmental agencies
- Religious institutions (When the priest, rabbi, or minister is performing services as part of her pastoral or professional duties.)

For-Profit Business Entities

There are a variety of for-profit business entity types that may provide mental health services. Despite there being a number of laws that reference “private practice” for each of the professions, LCSW statute is the only one that defines private practice, and that definition is lacking in specificity. Current law does not contain definitions for any other types of for-profit entities with the exception of professional corporations. (See **Attachment B** for the definition of a professional corporation and the LCSW private practice definition.)

Many for-profit settings do not meet the criteria for what is normally considered a private practice or professional corporation. Other types of for-profit business entities include:

- Companies owned, in full or in part, by an individual who is not a licensee
- Partnerships (multiple owners, can be licensees or non-licensees)
- General stock corporations such as:
 - Telecare (employee-owned)
 - Health Net of California which owns MHN, an employee assistance program
- Public benefit corporations
- Flexible purpose corporations

Types of for-profit companies may include, but are not limited to:

- Mental health clinics
- Substance abuse recovery programs
- Medical settings such as hospitals, medical groups, nursing homes, hospices, dialysis clinics

Certain types of for-profit companies are regulated by the State of California. The type of oversight varies, from lightly to heavily regulated. All of the for-profit company types listed in the above bullet points are settings regulated either by the state Department of Public Health or Department of Health Care Services, although nonresidential substance abuse treatment programs can operate without a state license.

Previously Proposed Definitions: Private Practice and “Other For-Profit” Settings

At its last meeting, this Committee considered language that would separately define “Private Practice” (including professional corporations, which is already assumed under the law as a private practice) and “Other For-Profit” settings. It also examined a summary of all existing laws that would be impacted by creating separate definitions, and the possible implications.

However, proceeding with this strategy raises a number of questions and complications about business structures and how to ensure various types of business entities are identified properly and that the laws are applied consistently and equitably.

There are numerous possible variations in business structures. For example, a private practice could be owned by a group of board licensed professionals, a group of board licensed professionals and non-licensed individuals, a group of other types of healing arts professionals not licensed by the Board, or some combination of these options.

In addition, if an entity is incorporated, there are also various structures. Most Board licensees will be employed by a professional corporation, but there are often instances in which it is unclear to both the licensee/registrant and Board staff the exact type of business entity that is providing employment. In these instances, without detailed knowledge and legal training in corporate law and business law, it is difficult to accurately determine if the setting should be treated as a private practice/professional corporation, or if it should be treated as another type of business entity.

Given the numerous types of business structures, it can be difficult to justify placing certain more restrictive limits on private practices, while not having those restrictions on other types of businesses. All of the private practice restrictions were created in law well over 20 years ago, during a time when the vast majority of companies providing psychotherapy were simply either a private practice, professional corporation or exempt setting. Over time, and with the growing need for access to mental health services, the types of business entities providing psychotherapy has grown and expanded to all of the types listed on the prior page.

In an effort to address the numerous setting variations, staff proposes a different approach.

Outline of New Proposal

The new proposal (**Attachment A**) would do the following:

- Classify all possible settings into just two types: exempt settings and non-exempt settings. The definition of exempt settings remains the same. Non-exempt settings are settings that do not qualify as exempt settings.
- Reiterate that an individual working in an exempt setting who holds a Board-issued license or registration is under the jurisdiction of the Board.
- Clarify that an agency that is licensed or certified by a government agency to provide psychotherapeutic services is not an exempt setting unless it otherwise meets the definition.
- Reiterate that an active license or registration number is required to provide psychotherapeutic services in any non-exempt setting, with two exceptions:
 - Would permit trainees to provide services in any mental health setting (exempt or non-exempt) if there is proper oversight.
 - Would permit applicants following the 90-day rule to provide services in any mental health setting (exempt or non-exempt) as long as they comply with the timeframe to submit the application and comply with fingerprinting requirements.

(Previously, applicants following the 90-day rule could work in any setting except private practice.)

- Allow 3rd party supervision in any setting if there is a written oversight agreement between the supervisor and the employer. (Previously, such supervision was only allowed in non-private practice settings.)
- Allow reimbursement for expenses on a 1099 in any setting. (Previously it was prohibited for a private practice.)
- Prohibit a licensee who conducts business under a fictitious name from using a false, misleading, or deceptive business name. (Previously, this was only specifically prohibited for a private practice.)
- Limit supervisors in any non-exempt setting to four individual or triadic supervisees at a time. This can be registrants, trainees, applicants for licensure or registration, or a combination. (Previously, the limit was three supervisees (registrants) per supervisor in a private practice. With the introduction of triadic supervision this year, staff recommends increasing the allowable supervisees to four.)

Eliminating references to “private practice” and “professional corporation” settings in the current proposal requires a re-examination of the Board’s six-year rule for associate registrations. Currently, an associate registration can be held for a total of six years. After six years, the registrant must obtain a subsequent registration number. Registrants holding a subsequent registration number are not permitted to work in private practice.

The Policy and Advocacy Committee last discussed the six-year rule at its meeting in February 2018, when it opted to wait for further data about average time to gain experience hours once the bills to eliminate the “bucket” categories of experience, allow triadic supervision, and decrease required LCSW experience hours had time to phase in. At the time, staff reported that approximately 12.6% of AMFTs and 10.5% of ASWs were on a subsequent registration number, and that it was taking the average LMFT applicant and LCSW applicant 3.3 years and 3.7 years, respectively, to gain the required experience hours.

In the current proposal, staff proposes a solution that would extend the length of a registration number and eliminate the private practice prohibition on a subsequent number. In return, it would require that those needing a subsequent registration take additional graduate level coursework to ensure continued proficiency. Highlights are as follows:

- The length of a registration number would increase from 6 years to 8 years. It still must be renewed every year.
- If an applicant needs a subsequent registration number, he or she must do both of the following:
 - Have a passing score on the California law and ethics examination, obtained within the past 2 years; and
 - Demonstrate successful completion of 15 semester units of graduate level coursework within the past two years. Some of this graduate level coursework must cover specified topic areas.

- The private practice prohibition on a subsequent registration number is removed.

Effect on Subsequent Registration Numbers

In the past, stakeholders have expressed concern that it can be difficult to gain all experience hours in six years (due to life events like illnesses, family needs, or being unable to find a job), and that being prohibited from working in a private practice with a subsequent number makes gaining hours even more difficult.

This proposal attempts to balance this issue with the public protection concern about someone perpetually remaining an associate, not progressing through the licensing process, and not keeping up with the current practices of the profession (licensees are required to take continuing education, but associates have no such requirement). An eight-year registration would allow additional time to gain hours. However, the additional graduate level coursework required at the end of the eight years to obtain a second number provides an incentive to complete the hours, and if the hours are not completed, ensures the registrant's professional knowledge remains current.

A separate issue of the allowable age of experience hours remains. For now, this proposal leaves the age of experience hours at six years. The Committee may wish to discuss if the allowable age of hours should be extended as well.

AB 93 and the Strengthening of Supervision Requirements

This proposal proposes loosening restrictions on the settings where associates and trainees may perform services. It also permits third party supervision in private practices and corporations, which is currently not allowed.

In light of this, it should be noted that AB 93, which became effective January 1, 2019, expanded the responsibilities of supervisors and strengthened the Board's oversight of them. The supervision regulations that are proposed to follow AB 93, which gained Board approval in September 2018, would place additional oversight on supervisors. Board staff is in the process of submitting this regulatory proposal. Below is a summary of each:

AB 93 (Effective 1/1/2019)

- Gave Board the authority to audit supervisors to ensure they meet the qualifications to supervise.
- Outlined specific responsibilities of a supervisor in more detail, including monitoring and evaluating the supervisee's assessment, diagnosis, and treatment decisions, and reviewing the supervisees patient treatment notes if deemed appropriate.
- Specified a minimum amount of supervision that an applicant who has completed supervised experience hours must have.

Proposed Supervision Regulations (Currently in the Approval Process)

- Would require all supervisors to complete and submit a self-assessment to the Board within 60 days of beginning supervision. The self-assessment would describe the supervisor's qualifications and would require them to sign that they understand specific laws related to supervision, including supervision documentation requirements.

- Would require the supervisor and supervisee to collaborate to complete a plan outlining the goals and objectives of the supervision.
- Would require the supervisor to complete an annual assessment of the strengths and limitations of the supervisee at least once a year.
- Would require supervisors to complete an initial 15-hour supervision course. Then each renewal cycle, the supervisor must complete 6 hours of continuing professional development pertaining to supervision.
- Would strengthen the written oversight agreement required when the supervisor is not employed by the supervisee's employer.
- Requires supervisors to establish written procedures to contact the supervisor or an alternate supervisor in the event of a crisis or emergency.

Suggested Discussion Topics

The Committee may wish to consider the following questions raised by the proposed language:

- Is it appropriate for trainees to provide services in any setting, given that they will be under the oversight of their school as well as subject to a written agreement between the school and the site? What about applicants following the 90-day rule?
- Are there any potential adverse effects of allowing 3rd party supervision in all settings?
- Are there any thoughts about limiting supervisors in a non-exempt setting to four individual/triadic supervisees?
- Should registration length be expanded to 8 years? Should subsequent registrants be allowed to work in any setting?
- Should the 6-year age of experience hours requirement remain, or should it be extended?
- Is 15 semester units of graduate coursework an acceptable amount if a new registration number is needed after 8 years? What specific course topic areas should be covered in order to ensure the registrant remains current in a way that provides for public protection? (**Attachment D** shows how topics are weighted in some of the Board's clinical exams.)

Recommendation

Conduct an open discussion about the proposed language. Direct staff to make any discussed changes and any non-substantive changes, and draft corresponding language for the Board's LCSW, LPCC, and LEP license types.

Attachments

Attachment A: Proposed Language: Setting Definitions - LMFT

Attachment B: Professional Corporation Definitions; LCSW Private Practice Definition

Attachment C: Requirements of Other States

Attachment D: Exam Plans - Topic Areas Covered

ATTACHMENT A
SETTING DEFINITIONS - LMFT

ADD §4980.05 EXEMPT SETTINGS

- (a) The settings described in section 4980.01 are exempt settings and do not fall under the jurisdiction of this chapter or the Board except as specified in section 4980.01, and with the following exceptions:
- a. Any individual working or volunteering in an exempt setting who is licensed or registered under this chapter shall fall under the jurisdiction of the Board and is not exempt from this chapter.
 - b. An entity that is licensed or certified by a government agency to provide psychotherapeutic services shall not be considered an exempt setting unless it directly meets the criteria described in section 4980.01.
- (b) In order for a trainee, an associate, or an applicant for registration as an associate pursuant to subdivision (b) of section 4980.43 to count experience hours toward licensure gained in an exempt setting, a written oversight agreement, as specified by regulation, shall be executed between the supervisor and exempt setting when the supervisor is not employed by the exempt setting employer or is a volunteer. The supervisor shall evaluate the site or sites where the trainee, associate, or applicant for registration as an associate will be gaining experience to determine that the site or sites comply with the requirements set forth in this chapter.

ADD §4980.06 NON-EXEMPT SETTINGS

For the purposes of this chapter, a “non-exempt setting” is any setting that is not described in section 4980.01.

- (a) An active license or registration number shall be required to provide psychotherapeutic services in non-exempt settings at all times, except for the following:
- a. Trainees may provide clinical services in non-exempt settings while gaining supervised experience that meets the requirements of this chapter under the jurisdiction and supervision of their school.
 - b. An applicant for registration as an associate may provide clinical services in a non-exempt setting before the registration number is issued if they are in compliance with subdivision (b) of section 4980.43 and are gaining supervised experience that meets the requirements of this chapter.
- (b) A written oversight agreement, as specified by regulation, shall be executed between the supervisor and employer when the supervisor is not employed by the supervisee’s employer or is a volunteer. The supervisor shall evaluate the site or sites where the trainee, associate, or applicant for registration as an associate, will be gaining

experience to determine that the site or sites comply with the requirements set forth in this chapter.

- (c) Supervisors of supervisees in a non-exempt setting shall not serve as an individual or triadic supervisor for more than a total of four supervisees at any time. Group supervisees for which the supervisor does not also provide individual or triadic supervision do not count toward this total. Supervisees may be any combination of the following:
- a. Registered as an associate marriage and family therapist, an associate professional clinical counselor, an associate clinical social worker
 - b. A marriage and family therapist trainee, professional clinical counselor trainee, or social work intern;
 - c. An applicant for registration who is gaining hours pursuant to subsection (b) of section 4980.43.
 - d. An applicant for licensure as a marriage and family therapist, professional clinical counselor, or clinical social worker.

AMEND §4980.399. CALIFORNIA LAW AND ETHICS EXAMINATION

- (a) Except as provided in subdivision (a) of Section 4980.398, each applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.
- (b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.
- (c) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application except as provided in subdivision (d).
- (d) Notwithstanding section 135, if # a registrant fails to obtain a passing score on the California law and ethics examination within his or her renewal period on or after the operative date of this section, he or she shall complete, at a minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a continuing education provider as specified by the board by regulation, a county, state or governmental entity, or a college or university.
- (e) The board shall not issue a subsequent registration number unless the applicant has passed the California law and ethics examination. met the requirements specified in section 4984.01.

AMEND §4980.42. TRAINEES' SERVICES

- (a) Trainees performing services in any work setting specified in Section 4980.43.3 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee."
- (b) Trainees subject to Section 4980.37 may gain hours of experience and counsel clients outside of the required practicum. This subdivision shall apply to hours of experience gained and client counseling provided on and after January 1, 2012.
- (c) Trainees subject to Section 4980.36 may gain hours of experience outside of the required practicum but must be enrolled in a practicum course to counsel clients. Trainees subject to Section 4980.36 may counsel clients while not enrolled in a practicum course if the period of lapsed enrollment is less than 90 calendar days, and if that period is immediately preceded by enrollment in a practicum course and immediately followed by enrollment in a practicum course or completion of the degree program.
- (d) All hours of experience gained pursuant to subdivisions (b) and (c) shall be subject to the other requirements of this chapter.
- (e) All hours of experience gained as a trainee shall be coordinated between the school and the site where the hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site. If an applicant has gained hours of experience while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those hours of trainee experience were gained in compliance with this section.

AMEND §4980.43. SUPERVISED EXPERIENCE: ASSOCIATES OR TRAINEES

- (a) Except as provided in subdivision (b), all applicants shall have an active associate registration with the board in order to gain postdegree hours of supervised experience.
- (b) (1) Preregistered postdegree hours of experience shall be credited toward licensure if all of the following apply:
 - (A) The registration applicant applies for the associate registration and the board receives the application within 90 days of the granting of the qualifying master's degree or doctoral degree.
 - (B) For applicants completing graduate study on or after January 1, 2020, the experience is obtained at a workplace that, prior to the registration applicant gaining supervised

experience hours, requires completed Live Scan fingerprinting. The applicant shall provide the board with a copy of that completed State of California "Request for Live Scan Service" form with his or her application for licensure.

(C) The board subsequently grants the associate registration.

(2) The applicant shall not be employed or volunteer in a ~~private practice until he or she has been issued an associate registration by the board.~~non-exempt setting unless the requirements of subsections (A) and (B) of subdivision (1) are met.

(c) Supervised experience that is obtained for purposes of qualifying for licensure shall be related to the practice of marriage and family therapy and comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) A maximum of 40 hours in any seven consecutive days.

(3) A minimum of 1,700 hours obtained after the qualifying master's or doctoral degree was awarded.

(4) A maximum of 1,300 hours obtained prior to the award date of the qualifying master's or doctoral degree.

(5) A maximum of 750 hours of counseling and direct supervisor contact prior to the award date of the qualifying master's or doctoral degree.

(6) Hours of experience shall not be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction.

(7) Hours of experience shall not have been gained more than six years prior to the date the application for licensure was received by the board, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.

(8) A minimum of 1,750 hours of direct clinical counseling with individuals, groups, couples, or families, that includes not less than 500 total hours of experience in diagnosing and treating couples, families, and children.

(9) A maximum of 1,250 hours of nonclinical practice, consisting of direct supervisor contact, administering and evaluating psychological tests, writing clinical reports, writing progress or process notes, client centered advocacy, and workshops, seminars, training sessions, or conferences directly related to marriage and family therapy that have been approved by the applicant's supervisor.

(10) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.

This subdivision shall only apply to hours gained on and after January 1, 2010.

- (d) An individual who submits an application for licensure between January 1, 2016, and December 31, 2020, may alternatively qualify under the experience requirements of this section that were in place on January 1, 2015.

AMEND §4980.43.2. DIRECT SUPERVISOR CONTACT

- (a) Except for experience gained by attending workshops, seminars, training sessions, or conferences, as described in paragraph (9) of subdivision (a) of Section 4980.43, direct supervisor contact shall occur as follows:
- (1) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.
 - (2) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of direct clinical counseling performed each week in each setting. For experience gained on or after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.
 - (3) An associate gaining experience who performs more than 10 hours of direct clinical counseling in a week in any setting shall receive at least one additional hour of direct supervisor contact for that setting. For experience gained on or after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.
 - (4) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, triadic supervision, or a combination of both.
- (b) For purposes of this chapter, “one hour of direct supervisor contact” means any of the following:
- (1) Individual supervision, which means one hour of face-to-face contact between one supervisor and one supervisee.
 - (2) Triadic supervision, which means one hour of face-to-face contact between one supervisor and two supervisees.
 - (3) Group supervision, which means two hours of face-to-face contact between one supervisor and no more than eight supervisees. Segments of group supervision may be split into no less than one continuous hour. A supervisor shall ensure that the amount and degree of supervision is appropriate for each supervisee.
- (c) Direct supervisor contact shall occur within the same week as the hours claimed.
- [\(d\) Alternative supervision may be arranged during a supervisor’s vacation or sick leave if the alternative supervision meets the requirements in this chapter and regulation.](#)

(~~de~~) Notwithstanding subdivision (b), an associate or an applicant for licensure working in a governmental entity, school, college, university, or an institution that is nonprofit and charitable- an exempt setting described in section 4980.01 may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring compliance with federal and state laws relating to confidentiality of patient health information.

(~~ef~~) Notwithstanding any other law, once the required number of experience hours are gained, associates and applicants for licensure shall receive a minimum of one hour of direct supervisor contact per week for each practice setting in which direct clinical counseling is performed. Once the required number of experience hours are gained, further supervision for nonclinical practice, as defined in paragraph (9) of subdivision (a) of Section 4980.43, shall be at the supervisor's discretion.

AMEND §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 at the places where his or her employer permits business to be conducted.

(~~ab~~) 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.

(~~bc~~) (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~~both of the following:

~~(A) Is not a private practice.~~

(~~BA~~) Lawfully and regularly provides mental health counseling or psychotherapy.

(~~CB~~) 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.

(ed) An associate may be credited with supervised experience completed in any setting that meets both of the following:

- (1) Lawfully and regularly provides mental health counseling or psychotherapy.
- (2) 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) Only experience gained in the position for which the associate volunteers or is employed shall qualify as supervised experience.
- (4) 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. Except as provided in subsection (b) of section 4980.43, an applicant for registration as an associate shall not be employed or volunteer in a non-exempt setting until he or she has been issued an associate registration by the board.

(de) 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.

(ef) 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.

(fg) 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.

(gh) 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.

(hi) 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.

- (h) An associate or a trainee may provide services via telehealth that are in the scope of practice outlined in this chapter.
- (i) 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.

~~§4980.43.4. SUPERVISEES: LOCATION OF SERVICES; MAXIMUM NUMBER OF SUPERVISEES; OVERSIGHT AGREEMENT~~

- ~~(a) A trainee, associate, or applicant for licensure shall only perform mental health and related services at the places where his or her employer regularly conducts business and services.~~
- ~~(b) An associate who is employed or volunteering in a private practice shall be supervised by an individual who is employed by, and shall practice at the same site as, the associate's employer. Alternatively, the supervisor may be an owner of the private practice. However, if the site is incorporated, the supervisor must be employed full-time at the site and be actively engaged in performing professional services at the site.~~
- ~~(c) A supervisor at a private practice or a corporation shall not supervise more than a total of three supervisees at any one time. Supervisees may be registered as an associate marriage and family therapist, an associate professional clinical counselor, or an associate clinical social worker.~~
- ~~(d) In a setting that is not a private practice:
 - ~~(1) A written oversight agreement, as specified by regulation, shall be executed between the supervisor and employer when the supervisor is not employed by the supervisee's employer or is a volunteer.~~
 - ~~(2) A supervisor shall evaluate the site or sites where a trainee or associate will be gaining experience to determine that the site or sites comply with the requirements set forth in this chapter.~~~~
- ~~(e) Alternative supervision may be arranged during a supervisor's vacation or sick leave if the alternative supervision meets the requirements in this chapter and regulation.~~

AMEND §4980.46. FICTITIOUS BUSINESS NAMES

Any licensed marriage and family therapist who conducts ~~a private practice~~ business under a fictitious business name shall not use any name which 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 [practicebusiness](#).

AMEND §4984.01. ASSOCIATE REGISTRATION; DURATION; RENEWAL

- (a) The associate marriage and family therapist registration shall expire one year from the last day of the month in which it was issued.
- (b) To renew the registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:
 - (1) Apply for renewal on a form prescribed by the board.
 - (2) Pay a renewal fee prescribed by the board.
 - (3) Participate in the California law and ethics examination pursuant to Section 4980.399 each year until successful completion of this examination.
 - (4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken against him or her by a regulatory or licensing board in this or any other state subsequent to the last renewal of the registration.
- (c) An expired registration may be renewed by completing all of the actions described in paragraphs (1) to (4), inclusive, of subdivision (b).
- (d) ~~The registration may be renewed 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. 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 who is issued a subsequent associate registration number pursuant to this subdivision shall not be employed or volunteer in a private practice. The registration number is valid for a period of eight years, and shall be renewed each year if the registrant will be practicing in a non-exempt setting, or accruing experience hours in an exempt setting. No registration shall be renewed or reinstated beyond eight years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for an obtain a subsequent associate registration number upon meeting both of the following requirements:~~
 - 1. Obtaining a passing score on the California law and ethics examination. The passing score shall have been obtained within the last two years immediately preceding the application for the subsequent registration number.
 - 2. Successful completion of at least 15 semester units of graduate level coursework from an accredited or approved institution, as defined in subdivision (b) of section 4980.36. The required units shall have been completed within the two years immediately preceding the application for the subsequent registration number. The 15 semester units of coursework must be relevant to the practice of marriage and family therapy, and must include all of the following:
 - a. At least 3 units of coursework in cultural competency and cultural sensitivity;

- b. At least 3 units of coursework in multicultural development and cross-cultural interaction;
- c. At least 3 units of coursework in assessment, diagnosis, and treatment planning;
and
- d. At least 3 units of coursework in California law and ethics for marriage and family therapists.

ATTACHMENT B CURRENT LAW

PROFESSIONAL CORPORATION DEFINITIONS

The California Corporations Code (section 13401(b)) defines “professional corporation” as:

“(b) “Professional corporation” means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute...”

BBS Statute (Business and Professions Code sections 4987.5, 4998 and 4999.123) define a professional corporation as:

“...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...”

LCSW “PRIVATE PRACTICE” DEFINITION

Business and Professions Code (section 4996.23.2(b)) defines “private practice” as:

“(b) “Private practice,” for purposes of this chapter, is defined as a setting owned by a licensed clinical social worker, a licensed marriage and family therapist, a psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900), a licensed professional clinical counselor, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.”

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**ATTACHMENT C
REQUIREMENTS OF OTHER STATES**

TEXAS - LPCs

Title 22 Texas Administrative Code, Chapter 681, §681.91 (g) and (h):

(g) An LPC Intern license will expire 60 months from the date of issuance.

(h) An LPC Intern who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license, including examination requirements.

New York – Marriage and Family Therapist

New York State Regulations of the Commissioner, Subpart 79-10, Marriage and Family Therapy

79-10.4 Limited permits.

As authorized by section 8409 of the Education Law, the department may issue a limited permit to practice marriage and family therapy in accordance with the requirements of this section, to allow an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure.

- a. An applicant for a limited permit to practice marriage and family therapy shall:
 1. file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;
 2. meet all requirements for licensure as a marriage and family therapist, including but not limited to the moral character and education requirements, except the examination and/or experience requirements; and
 3. be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-10.3 of this Subpart.
- b. In accordance with the requirements of section 79-10.3 of this Subpart, the limited permit in marriage and family therapy shall be issued for specific employment setting(s), acceptable to the department and the permit shall identify a qualified supervisor, acceptable to the department.
 1. The supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision.
 2. No supervisor shall supervise more than five permit holders at one time.
- c. The limited permit in marriage and family therapy shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for no more than two additional 12 month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience

requirement, and provided further that the time authorized by such limited permit and subsequent extensions shall not exceed 48 months total.

Massachusetts – Mental Health Counselors

262 CMR 2.00: Requirements For Licensure As a Mental Health Counselor

§2.07: Post-master's Degree Clinical Field Experience Requirements

(1) Eligible applicants must complete, in no less than two and no more than eight years, a minimum of two years of full-time or equivalent part-time, post-Master's degree Supervised Clinical Field Experience and Direct Client Contact Experience.

Washington – Mental Health Counselor, Social Worker, and Marriage and Family Therapist Associates

RCW Title 18, Chapter 18.225, § 18.225.145

Associate licensing—Requirements.

(1) The secretary shall issue an associate license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following requirements for the applicant's practice area and submits a declaration that the applicant is working toward full licensure in that category:

(a) Licensed social worker associate—advanced or licensed social worker associate— independent clinical: Graduation from a master's degree or doctoral degree educational program in social work accredited by the council on social work education and approved by the secretary based upon nationally recognized standards.

(b) Licensed mental health counselor associate: Graduation from a master's degree or doctoral degree educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards.

(c) Licensed marriage and family therapist associate: Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards.

(2) Associates may not provide independent social work, mental health counseling, or marriage and family therapy for a fee, monetary or otherwise. Associates must work under the supervision of an approved supervisor.

(3) Associates shall provide each client or patient, during the first professional contact, with a disclosure form according to RCW [18.225.100](#), disclosing that he or she is an associate under the supervision of an approved supervisor.

(4) The department shall adopt by rule what constitutes adequate proof of compliance with the requirements of this section.

(5) Applicants are subject to the denial of a license or issuance of a conditional license for the reasons set forth in chapter [18.130](#) RCW.

(6) An associate license may be renewed no more than six times, provided that the applicant for renewal has successfully completed eighteen hours of continuing education in the preceding year. Beginning with the second renewal, at least six of the continuing education hours in the preceding two years must be in professional ethics.

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ATTACHMENT D

ASWB Examination program

Knowledge, Skills, and Abilities

Clinical Examination

I. HUMAN DEVELOPMENT, DIVERSITY, AND BEHAVIOR IN THE ENVIRONMENT 24%

IA. HUMAN GROWTH AND DEVELOPMENT

This section of the exam may include questions on the following topics:

- Theories of human development throughout the lifespan (e.g., physical, social, emotional, cognitive, behavioral)
- The indicators of normal and abnormal physical, cognitive, emotional, and sexual development throughout the lifespan
- Theories of sexual development throughout the lifespan
- Theories of spiritual development throughout the lifespan
- Theories of racial, ethnic, and cultural development throughout the lifespan
- The effects of physical, mental, and cognitive disabilities throughout the lifespan
- The interplay of biological, psychological, social, and spiritual factors
- Basic human needs
- The principles of attachment and bonding
- The effect of aging on biopsychosocial functioning
- Gerontology
- Personality theories
- Factors influencing self-image (e.g., culture, race, religion/spirituality, age, disability, trauma)
- Body image and its impact (e.g., identity, self-esteem, relationships, habits)
- Parenting skills and capacities
- Basic principles of human genetics
- The family life cycle
- Models of family life education in social work practice
- The impact of aging parents on adult children
- Systems and ecological perspectives and theories
- Strengths-based and resilience theories
- The dynamics and effects of loss, separation, and grief

IB. HUMAN BEHAVIOR IN THE SOCIAL ENVIRONMENT

This section of the exam may include questions on the following topics:

- Person-in-Environment (PIE) theory
- Family dynamics and functioning and the effects on individuals, families, groups, organizations, and communities
- The dynamics of interpersonal relationships
- Indicators and dynamics of abuse and neglect throughout the lifespan
- The effects of physical, sexual, and psychological abuse on individuals, families, groups, organizations, and communities

IB. HUMAN BEHAVIOR IN THE SOCIAL ENVIRONMENT (continued)

- The characteristics of perpetrators of abuse, neglect, and exploitation
- The effects of life events, stressors, and crises on individuals, families, groups, organizations, and communities
- The impact of stress, trauma, and violence
- Crisis intervention theories
- The effect of poverty on individuals, families, groups, organizations, and communities
- The impact of the environment (e.g., social, physical, cultural, political, economic) on individuals, families, groups, organizations, and communities
- Social and economic justice
- Theories of social change and community development
- The impact of social institutions on society
- The impact of globalization on clients/client systems (e.g., interrelatedness of systems, international integration, technology, environmental or financial crises, epidemics)
- Criminal justice systems
- The impact of out-of-home placement (e.g., hospitalization, foster care, residential care, criminal justice system) on clients/client systems
- Theories of couples development
- The impact of physical and mental illness on family dynamics
- Co-occurring disorders and conditions
- The impact of caregiving on families
- Psychological defense mechanisms and their effects on behavior and relationships
- Addiction theories and concepts
- The effects of addiction and substance abuse on individuals, families, groups, organizations, and communities
- The indicators of addiction and substance abuse
- Role theories
- Feminist theory
- Theories of group development and functioning
- Communication theories and styles
- Theories of conflict

IC. DIVERSITY AND DISCRIMINATION

This section of the exam may include questions on the following topics:

- The effect of disability on biopsychosocial functioning throughout the lifespan
- The effect of culture, race, and ethnicity on behaviors, attitudes, and identity
- The effects of discrimination and stereotypes on behaviors, attitudes, and identity
- The influence of sexual orientation on behaviors, attitudes, and identity
- The impact of transgender and transitioning process on behaviors, attitudes, identity, and relationships
- Systemic (institutionalized) discrimination (e.g., racism, sexism, ageism)
- The principles of culturally competent social work practice
- Sexual orientation concepts
- Gender and gender identity concepts

II. ASSESSMENT, DIAGNOSIS, AND TREATMENT PLANNING

30%

IIA. BIOPSYCHOSOCIAL HISTORY AND COLLATERAL DATA

This section of the exam may include questions on the following topics:

- The components of a biopsychosocial assessment
- Techniques and instruments used to assess clients/client systems
- The types of information available from other sources (e.g., agency, employment, medical, psychological, legal, or school records)
- Methods to obtain sensitive information (e.g., substance abuse, sexual abuse)
- The principles of active listening and observation
- The indicators of sexual dysfunction
- Symptoms of neurologic and organic disorders

IIB. ASSESSMENT AND DIAGNOSIS

This section of the exam may include questions on the following topics:

- The factors and processes used in problem formulation
- Methods of involving clients/client systems in problem identification (e.g., gathering collateral information)
- The components and function of the mental status examination
- Methods to incorporate the results of psychological and educational tests into assessment
- The indicators of psychosocial stress
- The indicators, dynamics, and impact of exploitation across the lifespan (e.g., financial, immigration status, sexual trafficking)
- The indicators of traumatic stress and violence
- Methods used to assess trauma
- Risk assessment methods
- The indicators and risk factors of the client's/client system's danger to self and others
- Methods to assess the client's/client system's strengths, resources, and challenges (e.g., individual, family, group, organization, community)
- The indicators of motivation, resistance, and readiness to change
- Methods to assess motivation, resistance, and readiness to change
- Methods to assess the client's/client system's communication skills
- Methods to assess the client's/client system's coping abilities
- The indicators of the client's/client system's strengths and challenges
- Methods to assess ego strengths
- The use of the Diagnostic and Statistical Manual of the American Psychiatric Association
- The indicators of mental and emotional illness throughout the lifespan
- Biopsychosocial factors related to mental health
- Biopsychosocial responses to illness and disability
- Common psychotropic and non-psychotropic prescriptions and over-the-counter medications and their side effects
- The indicators of somatization
- The indicators of feigning illness

IIB. ASSESSMENT AND DIAGNOSIS (continued)

- Basic medical terminology
- The indicators of behavioral dysfunction
- Placement options based on assessed level of care
- Methods to assess organizational functioning (e.g., agency assessments)
- Data collection and analysis methods

IIC. TREATMENT PLANNING

This section of the exam may include questions on the following topics:

- Methods to involve clients/client systems in intervention planning
- Cultural considerations in the creation of an intervention plan
- The criteria used in the selection of intervention/treatment modalities (e.g., client/client system abilities, culture, life stage)
- The components of intervention, treatment, and service plans
- Theories of trauma-informed care
- Methods and approaches to trauma-informed care
- The impact of immigration, refugee, or undocumented status on service delivery
- Methods to develop, review, and implement crisis plans
- Discharge, aftercare, and follow-up planning
- Techniques used to evaluate a client's/client system's progress
- Methods, techniques, and instruments used to evaluate social work practice
- The principles and features of objective and subjective data
- Basic and applied research design and methods
- Methods to assess reliability and validity in social work research

III. PSYCHOTHERAPY, CLINICAL INTERVENTIONS, AND CASE MANAGEMENT

27%

IIIA. THERAPEUTIC RELATIONSHIP

This section of the exam may include questions on the following topics:

- The components of the social worker-client/client system relationship
- The principles and techniques for building and maintaining a helping relationship
- The dynamics of power and transparency in the social worker-client/client system relationship
- The social worker's role in the problem-solving process
- Methods to clarify the roles and responsibilities of the social worker and client/client system in the intervention process
- The concept of acceptance and empathy in the social worker-client/client system relationship
- The dynamics of diversity in the social worker-client/client system relationship
- The effect of the client's developmental level on the social worker-client relationship
- The impact of domestic, intimate partner, and other violence on the helping relationship
- Verbal and nonverbal communication techniques
- The concept of congruence in communication
- Methods to obtain and provide feedback

IIIB. THE INTERVENTION PROCESS

This section of the exam may include questions on the following topics:

- The principles and techniques of interviewing (e.g., supporting, clarifying, focusing, confronting, validating, feedback, reflecting, language differences, use of interpreters, redirecting)
- The phases of intervention and treatment
- Problem-solving models and approaches (e.g., brief, solution-focused methods or techniques)
- The client's/client system's role in the problem-solving process
- Methods to engage and motivate clients/client systems
- Methods to engage and work with involuntary clients/client systems
- Limit setting techniques
- The technique of role play
- Role modeling techniques
- Techniques for harm reduction for self and others
- Methods to teach coping and other self-care skills to clients/client systems
- Client/client system self-monitoring techniques
- Methods of conflict resolution
- Crisis intervention and treatment approaches
- Anger management techniques
- Stress management techniques
- The impact of out-of-home displacement (e.g., natural disaster, homelessness, immigration) on clients/client systems
- Methods to create, implement, and evaluate policies and procedures that minimize risk for individuals, families, groups, organizations, and communities
- Psychotherapies
- Psychoanalytic and psychodynamic approaches
- Cognitive and behavioral interventions
- Strengths-based and empowerment strategies and interventions
- Client/client system contracting and goal-setting techniques
- Partializing techniques
- Assertiveness training
- Task-centered approaches
- Psychoeducation methods (e.g., acknowledging, supporting, normalizing)
- Group work techniques and approaches (e.g., developing and managing group processes and cohesion)
- Family therapy models, interventions, and approaches
- Couples interventions and treatment approaches
- Permanency planning
- Mindfulness and complementary therapeutic approaches
- Techniques used for follow-up
- Time management approaches
- Community organizing and social planning methods

IIIB. THE INTERVENTION PROCESS (continued)

- Methods to develop and evaluate measurable objectives for client/client system intervention, treatment, and/or service plans
- Primary, secondary, and tertiary prevention strategies
- The indicators of client/client system readiness for termination

IIIC. SERVICE DELIVERY AND MANAGEMENT OF CASES

This section of the exam may include questions on the following topics:

- The effects of policies, procedures, regulations, and legislation on social work practice and service delivery
- The impact of the political environment on policy-making
- Theories and methods of advocacy for policies, services, and resources to meet clients'/client systems' needs
- Methods of service delivery
- The components of case management
- The principles of case recording, documentation, and management of practice records
- Methods to establish service networks or community resources
- Employee recruitment, training, retention, performance appraisal, evaluation and discipline
- Case recording for practice evaluation or supervision
- Methods to evaluate agency programs (e.g., needs assessment, formative/summative assessment, cost effectiveness, cost-benefit analysis, outcomes assessment)
- The effects of program evaluation findings on services
- Quality assurance, including program reviews and audits by external sources

IIID. CONSULTATION AND INTERDISCIPLINARY COLLABORATION

This section of the exam may include questions on the following topics:

- Leadership and management techniques
- Models of supervision and consultation (e.g., individual, peer, group)
- Educational components, techniques, and methods of supervision
- The supervisee's role in supervision (e.g., identifying learning needs, self-assessment, prioritizing, etc.)
- Methods to identify learning needs and develop learning objectives for supervisees
- The elements of client/client system reports
- The elements of a case presentation
- The principles and processes for developing formal documents (e.g., proposals, letters, brochures, pamphlets, reports, evaluations)
- Consultation approaches (e.g. referrals to specialists)
- Methods of networking
- The process of interdisciplinary and intradisciplinary team collaboration
- The basic terminology of professions other than social work (e.g., legal, educational)
- Techniques to inform and influence organizational and social policy
- Methods to assess the availability of community resources
- Techniques for mobilizing community participation
- Methods to establish program objectives and outcomes
- Governance structures

IIID. CONSULTATION AND INTERDISCIPLINARY COLLABORATION (continued)

- The relationship between formal and informal power structures in the decision-making process
- Accreditation and/or licensing requirements

IV. PROFESSIONAL VALUES AND ETHICS

19%

IVA. PROFESSIONAL VALUES AND ETHICAL ISSUES

This section of the exam may include questions on the following topics:

- Legal and/or ethical issues related to the practice of social work, including responsibility to clients/client systems, colleagues, the profession, and society
- Techniques to identify and resolve ethical dilemmas
- The client's/client system's right to refuse services (e.g., medication, medical treatment, counseling, placement, etc.)
- Professional boundaries in the social worker-client/client system relationship (e.g., power differences, conflicts of interest, etc.)
- Ethical issues related to dual relationships
- Self-disclosure principles and applications
- The principles and processes of obtaining informed consent
- Legal and/or ethical issues regarding documentation
- Legal and/or ethical issues regarding termination
- Legal and/or ethical issues related to death and dying
- Research ethics (e.g., institutional review boards, use of human subjects, informed consent)
- Ethical issues in supervision and management
- Methods to create, implement, and evaluate policies and procedures for social worker safety

IVB. CONFIDENTIALITY

This section of the exam may include questions on the following topics:

- The use of client/client system records
- Legal and/or ethical issues regarding confidentiality, including electronic information security
- Legal and/or ethical issues regarding mandatory reporting (e.g., abuse, threat of harm, impaired professionals, etc.)

IVC. PROFESSIONAL DEVELOPMENT AND USE OF SELF

This section of the exam may include questions on the following topics:

- Professional values and principles (e.g., competence, social justice, integrity, and dignity and worth of the person)
- Professional objectivity in the social worker-client/client system relationship
- Techniques for protecting and enhancing client/client system self-determination
- Client/client system competence and self-determination (e.g., financial decisions, treatment decisions, emancipation, age of consent, permanency planning)
- The influence of the social worker's own values and beliefs on the social worker-client/client system relationship

IVC. PROFESSIONAL DEVELOPMENT AND USE OF SELF (continued)

- The influence of the social worker's own values and beliefs on interdisciplinary collaboration
- The impact of transference and countertransference in the social worker-client/client system relationship
- The impact of transference and countertransference within supervisory relationships
- The components of a safe and positive work environment
- Social worker self-care principles and techniques
- Burnout, secondary trauma, and compassion fatigue
- Evidence-based practice
- Professional development activities to improve practice and maintain current professional knowledge (e.g., in-service training, licensing requirements, reviews of literature, workshops)

MFT CALIFORNIA CLINICAL EXAMINATION PLAN

MFT California Clinical Examination Outline

CONTENT AREA	SECTION	WEIGHT	ITEMS
I. Clinical Evaluation		20%	30
	IA. Clinical Assessment	11%	17
	IB. Referral Services	2%	3
	IC. Diagnosis	7%	10
II. Crisis Management		12%	18
	IIA. Crisis Assessment	6%	9
	IIB. Crisis Management	6%	9
III. Treatment Planning		20%	30
	IIIA. Therapeutic Goals	2%	3
	IIIB. Treatment Plan Development	8%	12
	IIIC. Theoretical Orientation	10%	15
IV. Treatment		20%	30
	IVA. Therapeutic Intervention	8%	12
	IVB. Theoretical Orientation	7%	10
	IVC. Adjunctive Services	2%	3
	IVD. Termination	3%	5
V. Ethics		16%	24
	VA. Consent/Confidentiality	4%	6
	VB. Therapeutic Boundaries	4%	6
	VC. Competency	3%	4
	VD. Therapeutic Relationship	5%	8
VI. Law		12%	18
	VIA. Confidentiality/Privilege/Exceptions	7%	11
	VIB. Professional Conduct	5%	7

The exact number of items devoted to each content area or section may vary slightly from one examination version to another in accordance with the clinical features and key factors associated with the scenario presented. In addition, the items may apply to more than one content area. All multiple-choice items are equally weighted.

The following pages contain detailed information regarding examination content. The content areas, sections, and associated task and knowledge statements are provided. It is important for candidates to use this section as a study guide because each item on the LMFT Written Clinical is directly linked to this examination outline. Candidates are encouraged to use this section to consider their strengths and weaknesses in each area in preparing and studying for the examination.

EXAMINATION CONTENT

The simulations on the NCMHCE are designed to sample a broad area of competencies, not the recall of isolated facts. Therefore, the simulations assess clinical problem-solving abilities including conducting empirically supported and professionally indicated assessments and formation of symptom-based DSM diagnoses and clinically aligned treatment plans. The examination consists of 10 clinical mental health counseling cases. Each case is divided into five to 10 sections classified as either Information Gathering (IG) or Decision Making (DM). One of the 10 simulations is included for field-test purposes; it is not scored and only used to generate item statistics for future simulations.

The examination covers the following areas:

Assessment and Diagnosis

Example assessment and diagnosis work behaviors include the following:

- Integrate client assessment and observational data.
- Identify precipitating problems or symptoms.
- Identify individual and/or relationship functioning.
- Identify relevant family issues.

Counseling and Psychotherapy

Example counseling and psychotherapy work behaviors include the following:

- Inform client about ethical standards and practice.
- Clarify counselor/client roles.
- Implement individual counseling in relation to a plan of treatment.
- Evaluate referral information.

Administration, Consultation, and Supervision

Example administration, consultation and supervision work behaviors include the following:

- Maintain case notes, records, and/or files.
- Determine if services meet clients' needs.
- Conduct professional communication.
- Assist clients with obtaining services.

EXAMINATION FORMAT

A clinical mental health counselor is required to make important clinical decisions regarding the well-being of clients. Therefore, a clinical simulation examination more realistically assesses knowledge of such decision-making.

The NCMHCE is a clinical simulation examination. Each simulation consists of three components: a scenario, Information Gathering (IG) sections, and Decision Making (DM) sections. The scenario provides the setting and introductory client information (e.g., age, gender, presenting problem[s]).

In Information Gathering (IG) sections, you are expected to gather all relevant information for diagnosis and treatment of your client. This might include family background, status of physical health, previous experience in counseling, etc. Be sure to read all options before submitting any selections. To make a selection, click the circle next to a response and then click the corresponding "submit" button to obtain feedback. You should select all options that are appropriate. If you select more or fewer options than are appropriate, this will adversely impact your Information Gathering score.

Decision Making (DM) sections provide opportunities for making clinical judgments or decisions. IG and DM sections may be formatted in one of two ways:

1. **Single Best Option**—There may be more than one acceptable option, but one option is generally regarded as most acceptable.
2. **Multiple Options**—Several options are considered appropriate. These sections address decisions in which a combination of actions is required.

In the Decision Making section described as "Single Best Option," the instructions are to "CHOOSE ONLY ONE" option. You should not assume that your response is incorrect if you are directed to make another selection. The simulation examination format sometimes uses this direction. The "Multiple Options" type of Decision Making section will have instructions to "SELECT AS MANY AS INDICATED." When making a selection, click the circle next to a response and then click the corresponding "submit" button to obtain feedback. If you fail to click the circle and submit button, you will not receive information to determine whether to proceed to the next section.

The procedure for taking the NCMHCE is different from that of multiple-choice examinations. Each simulation is identified by a number and the client's name, and each section by a letter.

the board when considering the denial, suspension, or revocation of a license. The criteria must include all of the following (BPC §481):

1. The nature and gravity of the offense.
 2. The number of years elapsed since the date of the offense.
 3. The nature and duties of the profession in which the applicant seeks licensure or is licensed.
- Prohibits a board from denying a license based on a conviction without considering evidence of rehabilitation. (BPC §481)
 - Requires each board to develop criteria to evaluate rehabilitation when considering denying, suspending, or revoking a license. A showing of rehabilitation shall be considered if the applicant or licensee has been completed their criminal sentence without a violation of parole or probation, or if the board finds its criteria for rehabilitation has been met. (BPC §482)

Proposed Regulations

The Board must amend its regulations (shown in **Attachment A**) in order to implement the requirements of AB 2138. Currently, the Board defines substantial relationship criteria and criteria for rehabilitation in regulation sections 1812, 1812, and 1814 (**Attachment B**). However, AB 2138 requires the criteria to be outlined in greater detail.

Key amendments to the regulations are as follows:

1. **Substantial Relationship Criteria (§1812):** Includes professional misconduct in the substantial relationship determination, since §480(a)(2) of AB 2138 includes this as an option.
2. **Substantial Relationship Criteria (§1812):** Includes the nature and gravity of the offense, years elapsed since the offense, and the nature and duties of the profession as criteria for determining whether a crime is substantially related. AB 2138 requires this via §481(b).
3. **Substantial Relationship Criteria (§1812):** Adds language that substantially related crimes include, but are not limited to, violations of Chapter 1 of Article 6 of Division 2 of the Business and Professions Code (these provisions cover rebates, refunds, and discounts, and also false advertising), or violations of any of the Board's practice acts.
4. **Criteria for Rehabilitation (§§1813 and 1814):** The criteria for rehabilitation for denial of licensure (§1813) and for suspensions or revocations (§1814) was expanded upon based on the requirements of AB 2138 §482 and based upon guidance from the DCA Legal Affairs Division.
5. **Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (§1888):** The Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Uniform Standards) are incorporated by reference via §1888 of the

regulations. A portion of Uniform Standards need to be updated because they detail the Board's criteria for rehabilitation, which AB 2138 updated.

- 6. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Cover and Pg. 38):** Page 38 of this document references the Board's criteria for rehabilitation. AB 2138 updated these criteria, and therefore the criteria listed on this page are outdated. Therefore, the section has been updated to directly reference the criteria as listed in section 1814 of the regulations. A section reference on this page has also been updated, and the date on the cover page of the document will be updated with the date OAL determines that the new regulations go into effect upon approval.

(Please note that as regulations affecting the same text cannot be run concurrently, the urgency of the AB 2138 regulations requires that the Board's "Enforcement Process" regulations, which proposed significant and extensive changes to the Uniform Standards document, and which had been in the DCA initial review process since July 2017, must be placed on hold.)

- 7. Required Actions Against Registered Sex Offenders (§1888.1):** Section 480(a)(1)(A) of AB 2138 permits denial of a license for sex offense crimes that require registration pursuant to Penal Code (PC) Section 290(d)(2) or (3). PC §290 outlines sex offense violations by type of offense and length of registration required (See **Attachment D** for text of Penal Code §290).

Regulation §1888.1 needs to be updated because by specifying PC 290(d)(2) or (3) for sex offense denials, AB 2138 narrowed denials for sex offenses. Therefore, §1888.1 of the regulations must be amended to reflect this.

Recommendation

Conduct an open discussion about the proposed regulations. Direct staff to make any discussed changes, as well as any nonsubstantive changes, and bring to the Board for consideration as a regulatory proposal.

Attachments

Attachment A: Proposed Regulations

Attachment B: Current Law: Substantial Relationship Criteria and Criteria for Rehabilitation

Attachment C: AB 2138 Text

Attachment D: Penal Code §290 (Effective January 1, 2021)

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ATTACHMENT A

§1812. SUBSTANTIAL RELATIONSHIP CRITERIA

(a) For purposes of denial, suspension, or revocation of a license or registration pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under Chapters 13, 13.5, 14, and 16 of Division 2 of the Code if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her the license in a manner consistent with the public health, safety or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

1. The nature and gravity of the offense;
2. The number of years that have elapsed since the date of the offense;
3. How the offense relates to the nature and duties of a marriage and family therapist, educational psychologist, clinical social worker, or professional clinical counselor.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

1. Any violation of Article 6, Chapter 1, Division 2 of the Code.
2. Any violation of the provisions of Chapter 13, 13.5, 13.7, 14, or 16 of Division 2 of the Code.

Note: Authority cited: Sections 481, 493, 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 4982, 4989.54, 4992.3, and 4999.90, Business and Professions Code.

§1813. CRITERIA FOR REHABILITATION - DENIAL OF LICENSURE

(a) When considering the denial of a license or registration under Section 480 of the Code, Business and Professions Code on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria: ~~the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license or registration shall consider the following criteria:~~

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:

~~(a)(1)~~ The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

~~(b)(2)~~ Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial ~~which also could be considered as grounds for denial under Section 480 of the Code.~~ under Section 480 of the Business and Professions Code.

~~(c)(3)~~ The time that has elapsed since commission of the act(s) or crime(s) referred to in ~~Section 480 of the Code.~~ subdivision (1) or (2).

~~(d)(4)~~ ~~The extent to which~~ Whether the applicant has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against the applicant.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

~~(e)(6)~~ Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482, 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 141, 480, 481, and 482, 488 and 493, Business and Professions Code.

§ 1814. CRITERIA FOR REHABILITATION - SUSPENSIONS OR REVOCATIONS

(a) When considering the suspension or revocation of a license, ~~the board, in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria:~~ on the ground that the holder of the license has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.

(b) If subdivision (a) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation if, after considering the following criteria, the board finds that the applicant is rehabilitated:

(1) ~~The nature~~Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(2) Evidence of any act(s) or crimes committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) giving rise to the suspension or revocation referred to in subdivision (1) or (2).

(4) Whether the licensee has complied with any terms of probation, parole, restitution or any other sanctions lawfully imposed against such person.

(5) The criteria in subdivision (a)(1)-(5) , as applicable.

~~(5)~~(6) If applicable, evidence of expungement/dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

~~(6)~~(7) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent or immaterial.

~~(7)~~(8) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.

~~(8)~~(9) Evidence, if any, of rehabilitation submitted by the licensee.

~~(b)~~(c) When considering a petition for reinstatement of a license or registration under the provisions of Section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1813 of this article.

Note: Authority cited: Sections 482, 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 141, 480, 481, 482, and 490, 488, and 493, Business and Professions Code.

§1888. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall consider the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [Rev. October 2015(OAL TO INSERT EFFECTIVE DATE)] which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform

Standards Related to Substance Abuse apply to cases of substance abuse. Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

- (b) Notwithstanding subsection (a), if the conduct found to be a violation involves drugs and/or alcohol, the violation is a substance abuse violation for purposes of Section 315 of the Code. If the licensee or registrant does not rebut that the violation is a substance abuse violation, then the Uniform Standards Related to Substance Abuse shall apply without deviation.
- (c) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 315, 315.2, 315.4, 4980.60 and 4990.20, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, 4982, 4989.54, 4992.3, and 4999.90, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§1888.1 REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS

- (a) Except as otherwise provided by law, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:
 - (1) Deny an application by the individual for licensure and registration, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, if the crime meets the conditions for denial specified in Section 480 of the Business and Professions Code.
 - (2) Revoke the license or registration of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or registration on probation.
 - (3) Deny any petition to reinstate or reissue the individual's license or registration.
- (b) This section shall not apply to any of the following:
 - (1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.
 - (2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license or registration under any other provision of state law based upon the licensee's or registrant's conviction under Section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license or registration shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license or registration shall govern.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections [480](#), 4980.40, 4989.24, 4990.30, 4996.2, 4999.42, and 4999.51, Business and Professions Code.

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State of California

Department of Consumer Affairs

Board of Behavioral Sciences

The seal of the California Board of Behavioral Sciences is a circular emblem. It features a central figure of a woman in classical attire, holding a torch and a scale. The text "CALIFORNIA BOARD OF" is arched across the top, and "EUREKA" is written below it. The bottom of the seal contains the text "THE STATE OF CALIFORNIA".

**UNIFORM STANDARDS RELATED
TO SUBSTANCE ABUSE AND
DISCIPLINARY
GUIDELINES**

Revised: ~~October 2015~~ (OAL TO INSERT EFFECTIVE DATE)

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California, or from its web site at www.bbs.ca.gov.

INTRODUCTION

The Board of Behavioral Sciences (hereinafter “the Board”) is a consumer protection agency with the primary mission of protecting consumers by establishing and maintaining standards for competent and ethical behavior by the professionals under its jurisdiction. In keeping with its mandate, the Board has adopted the following uniform standards related to substance abuse and recommended guidelines for the intended use of those involved in the disciplinary process: Administrative Law Judges, respondents and attorneys involved in the discipline process, as well as Board members who review proposed decisions and stipulations and make final decisions.

These guidelines consist of four parts:

I. Uniform Standards Related to Substance Abuse – for those licensees and registrants with a violation related to alcohol and/or a controlled substance, or whose license or registration is on probation due to a substance abuse violation;

II. Penalty Guidelines - an identification of the types of violations and range of penalties for which discipline may be imposed;

III. Model Disciplinary Orders - language for proposed terms and conditions of probation; and

IV. Board Policies and Guidelines – for various enforcement actions.

The Board expects the penalty imposed to be commensurate with the nature and seriousness of the violation.

These penalty guidelines apply only to the formal disciplinary process and do not apply to other alternatives available to the Board, such as citations and fines. See Business and Professions Code Section 125.9 and Title 16 California Code of Regulations Section 1886.

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I. Uniform Standards Related to Substance Abuse

Uniform Standards For Licensees Or Registrants Whose License Or Registration Is On Probation Due To A Substance Abuse Violation

The following standards shall apply in all cases in which a license or registration is placed on probation due, in part, to a substance abuse violation, unless the licensee or registrant rebuts that the violation is a substance abuse violation.

Clinical Diagnostic Evaluations

Whenever a licensee or registrant is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The following practice restrictions apply to each licensee or registrant who undergoes a clinical diagnostic evaluation:

1. The Board shall suspend the license or registration during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the Board.
2. While awaiting the results of a clinical diagnostic evaluation, the licensee or registrant shall be randomly drug tested at least two (2) times per week.

Clinical Diagnostic Evaluation Report

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee or registrant has a substance abuse problem, whether the licensee or registrant is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice, restrictions, or other recommendations related to the licensee or registrant's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, business or professional relationship with the licensee or registrant. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee or registrant is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 calendar days.

The Board shall review the clinical diagnostic evaluation to determine whether or not the licensee or registrant is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee or registrant based on the application of the following criteria:

1. License or registration type;
2. Licensee or registrant's history;
3. Documented length of sobriety;
4. Scope and pattern of substance abuse;
5. Treatment history;
6. Medical history;
7. Current medical condition;
8. Nature, duration and severity of substance abuse problem; and
9. Whether the licensee or registrant is a threat to himself or herself or others.

No licensee or registrant shall be returned to practice until he or she has at least 30 calendar days of negative drug tests.

When determining if the licensee or registrant should be required to participate in inpatient, outpatient, or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license or registration type, licensee or registrant's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee or registrant is a threat to himself or herself or others.

Supervisor Requirements

If the Board determines that a supervisor is necessary for a particular licensee or registrant, the supervisor must meet the following requirements to be considered for approval by the Board:

1. The supervisor shall not have a current or former financial, personal, business or professional relationship with the licensee or registrant, or other relationship that could reasonably be expected to compromise the ability of the supervisor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee or registrant's employer to serve as the supervisor, this requirement may be waived by the Board; however, under no circumstances shall a licensee or registrant's supervisor be an employee or supervisee of the licensee or registrant.

2. The supervisor's license scope of practice shall include the scope of practice of the licensee or registrant who is being monitored or be another health care professional if no supervisor with like scope of practice is available.
3. The supervisor shall be a current California licensed practitioner and have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee or registrant's disciplinary order and agrees to monitor the licensee or registrant as set forth by the Board.

The supervisor must adhere to the following required methods of monitoring the licensee or registrant:

1. Have a face-to-face contact with the licensee or registrant in the work environment on as frequent a basis as determined by the Board, but at least once per week.
2. Interview other staff in the office regarding the licensee or registrant's behavior, if applicable.
3. Review the licensee or registrant's work attendance.

Reporting by the supervisor to the Board shall be as follows:

1. Any suspected substance abuse must be orally reported to the Board and the licensee or registrant's employer within one (1) business day of occurrence. If the occurrence is not during the Board's normal business hours, the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
2. The supervisor shall complete and submit a written report directly to the Board monthly or as directed by the Board. The report shall include:
 - a. the licensee or registrant's name;
 - b. license or registration number;
 - c. supervisor's name and signature;
 - d. supervisor's license number;
 - e. worksite location(s);
 - f. dates licensee or registrant had face-to-face contact with supervisor;
 - g. worksite staff interviewed, if applicable;
 - h. attendance report;
 - i. any change in behavior and/or personal habits; and

- j. any indicators that can lead to suspected substance abuse.

The licensee or registrant shall complete the required consent forms and sign an agreement with the supervisor and the Board to allow the Board to communicate with the supervisor.

Chemical Dependency Support or Recovery Group Meetings

If the Board requires a licensee or registrant to participate in chemical dependency support or recovery group meetings, the Board shall take the following into consideration when determining the frequency of required group meeting attendance:

1. the licensee or registrant's history;
2. the documented length of sobriety;
3. the recommendation of the clinical diagnostic evaluator;
4. the scope and pattern of substance abuse;
5. the licensee or registrant's treatment history; and
6. the nature, duration, and severity of substance abuse.

The group meeting facilitator of a chemical dependency support or recovery group that a Board licensee or registrant is required to participate in must meet the following requirements:

1. Have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
2. Be licensed or certified by the state or other nationally certified organizations to provide substance abuse recovery services;
3. Does not have a financial, personal, business or professional relationship with the licensee or registrant within the last year;
4. Must provide the Board a signed document showing the licensee or registrant's name, the group name, the date and location of the meeting, the licensee or registrant's attendance, and the licensee or registrant's level of participation and progress.
5. Must report to the Board any unexcused absence of a Board licensee or registrant being required to participate within 24 hours.

Major and Minor Violations

Major violations include, but are not limited to, the following:

1. Failure to complete any Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing more than one minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;

5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to report for drug and alcohol testing when ordered;
7. Testing positive for alcohol and/or a controlled substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee or registrant commits a major violation, the Board shall automatically suspend the license or registration and refer the matter for disciplinary action or other action as determined by the Board.

The consequences for a major violation include, but are not limited to, the following:

1. License or registration shall be suspended;
2. Licensee or registrant must undergo a new clinical diagnostic evaluation;
3. Licensee or registrant must test negative for at least one month of continuous drug testing before being allowed to resume practice;
4. Contract or agreement previously made with the Board shall be terminated; and
5. Licensee or registrant shall be referred for disciplinary action, such as suspension, revocation, or other action determined appropriate by the Board.

Minor violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a supervisor and/or monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or registrant or to the public.

If a licensee or registrant commits a minor violation, the Board shall determine what action is appropriate. The consequences for a minor violation include, but are not limited to, the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation and/or testing.

Positive Test for Alcohol and/or a Controlled Substance

If a licensee or registrant tests positive for alcohol and/or a controlled substance, the Board shall do the following:

- Automatically suspend the license or registration;

- Immediately contact the licensee or registrant and inform him or her that his or her license or registration has been suspended and he or she may not practice until the suspension is lifted; and
- Immediately notify the licensee or registrant's employer that the license or registration has been automatically suspended, and that he or she may not practice until the suspension is lifted.

The Board should do the following, as applicable, to determine whether a positive test for alcohol and/or a controlled substance is evidence of prohibited use:

- Consult the specimen collector and the laboratory;
- Communicate with the licensee or registrant and/or treating physician; and
- Communicate with any treatment provider, including a group facilitator.

The Board shall immediately lift the suspension if the positive drug test is not found to be evidence of prohibited use.

Drug Testing Standards

The drug testing standards below shall apply to each licensee or registrant subject to drug testing. At its discretion, the Board may use other testing methods in place of, or to supplement, drug and alcohol testing, if appropriate.

1. Drug testing may be required on any day, including weekends and holidays.
2. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.
3. Licensees or registrants shall be required to make daily contact as directed to determine if drug testing is required.
4. Licensees or registrants shall be drug tested on the date of notification as directed by the Board.
5. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
6. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
7. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
8. Collection of specimens shall be observed.
9. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

10. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

Nothing herein shall limit the Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code Section 11522 or statutes applicable to the Board that contain different provisions for reinstatement or reduction of penalty.

Drug Testing Frequency Schedule

The Board may order a licensee or registrant to drug test at any time. In addition, each licensee or registrant shall be tested randomly according to the following drug testing frequency schedule:

Level	Year of Probation	Minimum Range Number of Random Tests
I	Year 1	52-104 per year
II	Years 2 through 5	36-104 per year
III	After Year 5	Once per month*

*If no positive drug tests in the previous 5 consecutive years.

The Board may increase the number of random tests required at its discretion. If the Board suspects or finds that a licensee or registrant has violated the prescribed testing program, or finds that a licensee or registrant has committed a major violation, it may re-establish the testing cycle by placing that licensee or registrant at the beginning of Level I. This is in addition to any other disciplinary action.

Drug Testing Frequency Schedule Exceptions

The Board may make exceptions to the prescribed drug testing frequency schedule for the following reasons:

1. Licensee or Registrant Demonstrates Previous Testing and Sobriety

The licensee or registrant can demonstrate participation in a treatment or monitoring program which requires random testing, prior to being subject to testing by the Board. In such a case, the Board may give consideration to the previous testing by altering the testing frequency schedule so that it is equivalent to the standard.

2. Violations Outside of Employment

A licensee or registrant whose license or registration is placed on probation for a single conviction or incident, or two convictions or incidents, spanning greater than seven years from each other, where alcohol or drugs were a contributing factor, may bypass Level I and participate in Level II of the testing frequency schedule if the violations did not occur at work or on the way to or from work.

3. Not Employed in Health Care Field

The Board may reduce testing frequency to a minimum of twelve (12) times per year if the licensee or registrant is not practicing or working in any health care field. If reduced testing frequency is established for this reason, and the licensee or registrant returns to practice, the licensee or registrant shall notify and obtain approval from the Board. The licensee or registrant shall then be subject to Level I testing frequency for at least 60 days. If the licensee or registrant had not previously met the Level I frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant had previously met the Level I frequency standard, the licensee or registrant shall be subject to Level II testing after completing Level I testing for at least 60 days.

4. Tolling

The Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. The licensee or registrant shall notify the Board upon his or her return to California and shall be subject to testing as provided in the testing frequency standard. If the licensee or registrant returns to practice and has not previously met the Level I testing frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant has previously met the Level I testing frequency standard, then Level II shall be in effect.

5. Substance Use Disorder Not Diagnosed

If a licensee or registrant is not diagnosed with a current substance use disorder, a lesser period of monitoring and toxicology screening may be adopted by the Board. This period may not be less than 24 times per year.

Criteria to Petition to Return to Practice

In order to petition to return to full time practice, a licensee or registrant shall have demonstrated all of the following:

1. Sustained compliance with his or her current recovery program;
2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information related to his or her substance abuse;
3. Must have at least six (6) months of negative drug screening reports and two (2) positive supervisor reports; and
4. Complete compliance with the other terms and conditions of his or her program.

Criteria to Petition for Reinstatement to Unrestricted License or Registration

In order to petition for reinstatement to a full and unrestricted license or registration, a licensee or registrant shall meet all of the following criteria:

1. Demonstrated sustained compliance with the terms of the disciplinary order (if applicable);
2. Demonstrated successful completion of a rehabilitation program (if required);
3. Demonstration of a consistent and sustained participation in activities that promote and support his or her recovery, including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated ability to practice safely; and
5. Continuous sobriety for at least three (3) to five (5) years.

II. Penalty Guidelines

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the Board of Behavioral Sciences and the appropriate range of penalties for each violation. Each penalty listed is followed in parenthesis by a number, which corresponds with a number under the chapter "Model Disciplinary Orders." Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation; optional conditions not listed as potential minimum terms, should nonetheless be imposed where appropriate. Except as provided in the Uniform Standards Related to Substance abuse, the Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations which take into account unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the Administrative Law Judge hearing the case include an explanation of the deviations or omissions, including all mitigating factors considered by the Administrative Law Judge in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982.26(k) LCSW: B&P § 4992.33 LEP: B&P § 4989.58 LPCC: B&P § 4999.90(k) GP: B&P § 729	Engaging in Sexual Contact with Client / Former Client	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. The law requires revocation/denial of license or registration.
MFT: B&P § 4982(aa)(1) LCSW: B&P § 4992.3(y)(1) LEP: B&P § 4989.54(y)(1) LPCC: B&P § 4999.90(z)(1)	Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act occurred prior to or after registration or licensure. or Engaging in act described in Section 261, 286, 288a, or 289 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.	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. The Board considers this reprehensible offense to warrant revocation/denial.	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. The Board considers this reprehensible offense to warrant revocation/denial.
MFT: B&P § 4982(k), 4982.26 LCSW: B&P § 4992.3(l), 4992.33 CCR § 1881(f) LEP: B&P § 4989.58 B&P § 4989.54(n) LPCC: B&P § 4999.90(k) GP: B&P § 480, 726	Sexual Misconduct (Anything other than as defined in B&P Section 729)	<ul style="list-style-type: none"> Revocation stayed 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation Take and pass licensure examinations as a condition precedent to resumption of practice 7 years probation Standard terms and conditions Psychological/psychiatric evaluation as a condition precedent to resumption of practice Supervised practice 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. (See B&P 4982.26, 4989.58, 4992.33) The Board considers this reprehensible offense to warrant revocation/denial.

		<ul style="list-style-type: none"> • Psychotherapy • Education • Take and pass licensure examination • Reimbursement of probation program <p>And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to drug and alcohol testing; restricted practice, reimbursement of probation program costs.</p>	
<p>MFT: B&P § 4982(k) LCSW: B&P § 4992.3(l) CCR § 1881(f) LEP: B&P § 4989.54(n) LPCC: B&P § 4999.90(k) GP: B&P § 480</p>	Commission of an Act Punishable as a Sexually Related Crime	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • Psychotherapy • 5 years probation; standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to the resumption of practice • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs <p>And if warranted, restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: , 4989.54(c) LPCC: B&P § 4999.90(c) GP: B&P § 480, 820</p>	Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation; standard terms and conditions • Supervised practice • Cost recovery • Reimbursement of probation program costs. <p><u>In addition:</u></p> <ul style="list-style-type: none"> • MENTAL ILLNESS: Psychological/psychiatric evaluation; psychotherapy. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

		<ul style="list-style-type: none"> • PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice • CHEMICAL DEPENDENCY Random drug and alcohol testing, psychological/psychiatric /clinical diagnostic evaluation; supervised practice; therapy; rehabilitation program; abstain from controlled substances/use of alcohol; and if warranted: restricted practice. 	
<p>MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4989.54(c), 4989.56 LPCC: B&P § 4999.90(c) GP: B&P § 480</p>	Chemical Dependency / Use of Drugs With Client While Performing Services	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric clinical diagnostic evaluation and to implement any recommendations from that evaluation • Random drug and alcohol testing • 5 years probation • Standard terms and conditions • Psychological/psychiatric/clinical diagnostic evaluation • Supervised practice • Education • Supervised practice • Education • Rehabilitation program • Abstain from controlled substances/use of alcohol • Cost recovery • Reimbursement of probation program costs <p>And if warranted, psychotherapy; restricted practice</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982(i) LCSW: B&P § 4992.3(j) CCR § 1881(d) LEP: B&P § 4989.54(m) LPCC: B&P § 4999.90(i) GP: B&P § 480</p>	Intentionally / Recklessly Causing Physical or Emotional Harm to Client	<ul style="list-style-type: none"> • Revocation stayed • 90-120 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs <p>And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration application • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(d) LCSW: B&P § 4992.3(d) CCR § 1881(m) LEP: B&P § 4989.54(k) LPCC: B&P § 4999.90(d) GP: B&P § 480	Gross Negligence / Incompetence	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension; 5 years probation • Standard terms and conditions; supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs; And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to drug and alcohol testing; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982 CCR § 1845 LCSW: B&P § 4992.3 CCR § 1881 LEP: B&P § 4989.54 CCR § 1858 LPCC: B&P § 4999.90 GP: B&P § 125.6 480, 821	General Unprofessional Conduct	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery; reimbursement of probation program And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to drug and alcohol testing; restricted practice, law and ethics course.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4980.40(e), 4982(a) LCSW: B&P § 4992.3(a), 4996.2(d), 4996.18(b) LEP: B&P § 4989.20(a)(3), 4989.54(a) LPCC: B&P § 4999.90(a) GP: B&P § 480, 490, 493	Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant	<ul style="list-style-type: none"> • Revocation stayed • 60 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense). <p>CRIMES AGAINST PEOPLE: Add: Psychological/psychiatric evaluation; psychotherapy; restitution; and if warranted: rehabilitation program; restricted practice.</p> <p>DRUGS AND ALCOHOL: Add: Random drug and alcohol testing, psychological/psychiatric/clinical diagnostic evaluation; psychotherapy; supervised practice, rehabilitation program; abstain from controlled substances/use of alcohol, and if warranted: restricted practice.</p> <p>FISCAL AND PROPERTY CRIMES: Add: Restitution, and if warranted: psychotherapy; take and pass licensure exams; rehabilitation program; restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(j) LCSW: B&P § 4992.3(k) CCR § 1881(e) LEP: B&P § 4989.54(g) LPCC: B&P § 4999.90(j) GP: B&P § 480, 650, 810	Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Law and ethics course • Reimbursement of probation program costs And if warranted. psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4980.02, 4982(l), 4982(s), 4982(t) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(m) 4996.9 CCR § 1881(g), 1881(h) LEP: B&P § 4989.14 4989.54(r) CCR § 1858(b) LPCC: B&P § 4999.90(l), 4999.90(s) 4999.90(t) GP: B&P § 480	Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy, take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982.25 LCSW: B&P § 4992.36 LEP: B&P § 4989.54(h), 4989.54(i) LPCC: B&P § 4990.38 GP: B&P § 141, 480	Discipline by Another State or Governmental Agency	<ul style="list-style-type: none"> • Determine the appropriate penalty by comparing the violation under the other state with California law. And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(b) LCSW: B&P § 4992.3(b), B&P § 4992.7 LEP: B&P § 4989.54(b) LPCC: B&P § 4999.90 (b) GP: B&P § 480, 498, 499	Securing or Attempting to Secure a License by Fraud	<ul style="list-style-type: none"> • Revocation / Denial of license or registration application; • Cost recovery. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4980, 4982(f) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(f), 4996 CCR § 1881(a) LEP: B&P § 4989.54(l) LPCC: B&P § 4999.90(f) GP: B&P § 480	Misrepresentation of License / Qualifications	<ul style="list-style-type: none"> • Revocation stayed • 60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: take and pass licensure examinations.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(q) LCSW: B&P § 4992.3(r) CCR § 1881(l) LEP: B&P § 4989.54(s) LPCC: B&P § 4999.90(q) GP: B&P § 123, 480, 496	Violates Exam Security / Subversion of Licensing Exam	<ul style="list-style-type: none"> • Revocation stayed • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(g) LCSW: B&P § 4992.3(h), 4992.7 CCR § 1881(b) LEP: CCR § 1858(a) LPCC: B&P § 4999.90(g) GP: B&P § 119, 480	Impersonating Licensee / Allowing Impersonation	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 5 years probation • Supervised practice • Standard terms and conditions • Psychological/psychiatric evaluation • Psychotherapy • Cost recovery • Reimbursement of probation costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(h) LCSW: B&P § 4992.3(i) CCR § 1881(c) LEP: B&P § 4989.54 (t) LPCC: B&P § 4999.90(h) GP: B&P § 125, 480	Aiding and Abetting Unlicensed / Unregistered Activity	<ul style="list-style-type: none"> • Revocation stayed • 30-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(m) LCSW: B&P § 4992.3(n) CCR § 1881(i) LEP: B&P § 4989.54 (q) LPCC: B&P § 4999.90(m) GP: B&P § 480	Failure to Maintain Confidentiality	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Take and pass licensure exams • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 728 LCSW: B&P § 728 LPCC: B&P § 728 GP: B&P § 480	Failure to Provide Sexual Misconduct Brochure	<ul style="list-style-type: none"> • Revocation stayed • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(r), 4982(t), 4982(u) CCR § 1833.1, 1845(b) LCSW: B&P § 4992.3(s) LEP: B&P § 4989.54(ab), CCR § 1858(b) LPCC: B&P § 4999.90(r) 4999.90(t), 4999.90(u)	Improper Supervision of Trainee / Intern / Associate / Supervisee	<ul style="list-style-type: none"> • Revocation stayed • 30-90 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(e), 4982(u) LCSW: B&P § 4992.3(f), 4992.3(s) LEP: B&P § 4989.54(f) LPCC: B&P § 4999.90(e) 4999.90(u) GP: B&P § 480	Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience	<ul style="list-style-type: none"> • Revocation stayed • Registration on probation until exams are passed and license issued • License issued on probation for one year • Rejection of all illegally acquired hours • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(o) LCSW: B&P § 4992.3(p) CCR § 1881(n) LEP: B&P § 4989.54(p) LPCC: B&P § 4999.90 (o) GP: B&P § 650	Pay, Accept, Solicit Fee for Referrals	<ul style="list-style-type: none"> • Revocation stayed • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs • Law and Ethics course 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(n) LCSW: B&P § 4992.3(o) CCR § 1881(j) LEP: B&P § 4989.54(o) LPCC: B&P § 4999.90 (n)	Failure to Disclose Fees in Advance	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program
MFT: B&P § 4980.46, 4982(p) LCSW: B&P § 4992.3(q) CCR § 1881(k) LEP: B&P § 4989.54(e) LPCC: B&P § 4999.90(p) GP: B&P § 480, 651, 17500	False / Misleading / Deceptive / Improper Advertising	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(v) LCSW: B&P § 4992.3(t) LEP: B&P § 4989.54(j) LPCC: B&P § 4999.90(v)	Failure to Keep Records Consistent with Sound Clinical Judgment	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(y) LCSW: B&P § 4992.3(w) LEP: B&P § 4989.54(x)	Willful Violation Of Chapter 1 (Commencing With Section 123100) Of Part 1 Of Division 106 Of The Health And Safety Code	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(z) LCSW: B&P § 4992.3(x) LEP: B&P § 4989.54(d) LPCC: B&P § 4999.90(ac)	Failure To Comply With Section 2290.5 (Telehealth)	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery; • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

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III. Model Disciplinary Orders

Model Disciplinary Orders are divided into two categories. The first category consists of **Optional Terms and Conditions of Probation** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **Standard Terms and Conditions of Probation** which must appear in all Proposed Decisions and proposed stipulated agreements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (1-16) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (17- 32).

Optional Terms and Conditions of Probation

Depending on the nature and circumstances of the case, the optional terms and conditions of probation that may appear are as follows:

1. Actual suspension
2. Psychological / Psychiatric evaluation
3. Psychotherapy
4. Clinical Diagnostic Evaluation
5. Supervised Practice
6. Education
7. Take and Pass licensure examinations
8. Rehabilitation Program
9. Abstain from Controlled Substances/Submit to Random Drug and Alcohol Testing
10. Abstain from Use of Alcohol /Submit to Random Drug and Alcohol Testing
11. Restricted Practice
12. Restitution
13. Physical Evaluation
14. Monitor Billing System
15. Monitor Billing System Audit
16. Law and Ethics Course

1. Actual Suspension

A. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of ___ days.

OR

B. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of _____ days, and such additional time as may be necessary to obtain and review the clinical diagnostic, psychological or psychiatric evaluation, to implement any recommendations from that evaluation, and to successfully complete the required licensure examinations as a condition precedent to resumption of practice as outlined in condition #____ (Take

and pass licensure examinations).

Respondent shall be responsible for informing his or her employer of the Board's decision, and the reasons for the length of suspension. Respondent shall submit documentation and/or evidence demonstrating satisfactory compliance with this condition. Prior to the lifting of the actual suspension of the license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.

2. Psychological / Psychiatric Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a psychological or psychiatric evaluation by such licensed psychologists or psychiatrists as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such evaluator shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a counselor and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the Board. Respondent shall comply with the recommendations of the evaluator.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

(FYI: The Board requires the appointment of evaluators who have appropriate knowledge, training, and experience in the area involved in the violation).

3. Psychotherapy

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board. Within 15 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, and shall not be the respondent's supervisor. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by respondent.

Respondent may, after receiving the Board's written permission, receive therapy via videoconferencing if respondent's good faith attempts to secure face-to-face counseling are

unsuccessful due to the unavailability of qualified mental health care professionals in the area. The Board may require that respondent provide written documentation of his or her good faith attempts to secure counseling via videoconferencing.

Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist submits quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

(FYI: The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation).

4. Clinical Diagnostic Evaluation

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license or registration shall be automatically suspended for a minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent's license or registration shall remain suspended until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one month of negative drug test results. Respondent shall comply with any restrictions or recommendations made by the Board as a result of the clinical diagnostic evaluation.

5. Supervised Practice

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in

respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent.

If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of mental health care professionals in the area, then the Board may consider the following options for satisfying this probationary term:

- (1) Permitting the respondent to receive supervision via videoconferencing; or,
- (2) Permitting respondent to secure a supervisor not in the respondent's field of practice.

The forgoing options shall be considered and exhausted by the Board in the order listed above. The Board may require that respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision, supervision via videoconferencing or to locate a mental health professional that is licensed in the respondent's field of practice.]

Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding the Respondent and the supervisor's requirements and reporting responsibilities. Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records. Supervision obtained from a probation supervisor shall not be used as experience gained toward licensure.

If the supervisor is no longer available, respondent shall notify the Board within 15 days and shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by respondent. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. The supervisor shall not be the respondent's therapist.

[Optional - Respondent shall not practice until he/she has received notification that the Board has approved respondent's supervisor.]

6. Education

Respondent shall take and successfully complete the equivalency of ____ semester units in each of the following areas _____. All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, or professional clinical counselor or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the violation is related to record keeping, which includes but is not limited to: recordkeeping, documentation, treatment planning, progress notes, security of records, billing and reporting requirements.)

7. Take and Pass Licensure Examinations

Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

8. Rehabilitation Program

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter a rehabilitation and monitoring program within fifteen (15) days after notification of the board's approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant. The respondent shall take all necessary steps to ensure that the rehabilitation program submits quarterly written reports to the Board addressing the respondent's treatment and progress in the program.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random drug and alcohol testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the respondent.

9. Abstain from Controlled Substances / Submit to Drug and Alcohol Testing

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

Respondent shall immediately submit to random and directed drug and alcohol testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse listed herein. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the Respondent's current employer, and the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

10. Abstain from Use of Alcohol / Submit to Drug and Alcohol Testing

Respondent shall completely abstain from the intake of alcohol during the period of probation.

Respondent shall immediately submit to random and directed drug and alcohol testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse listed herein. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the Respondent's current employer, and to the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for alcohol and/or a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

11. Restricted Practice

Respondent's practice shall be limited to _____. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

12. Restitution

Within 90 days of the effective date of this decision, respondent shall provide proof to the Board or its designee of restitution in the amount of \$_____ paid to _____.

13. Physical Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a physical evaluation by such licensed physicians as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such physician shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a therapist and such other information

as the Board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the Board. Respondent shall comply with the recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the Board, respondent shall submit to the Board or its designee the name and qualifications of the medical provider, and a treatment plan by the medical provider by which the respondent's physical treatment will be provided.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

14. Monitor Billing System

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more independent billing systems which monitor and document the dates and times of client visits. Respondent shall obtain the services of the independent billing system monitoring program within fifteen (15) days after notification of the board's approval of such program. Clients are to sign documentation stating the dates and time of services rendered by respondent and no bills are to be issued unless there is a corresponding document signed by the client in support thereof. The billing system service shall submit quarterly written reports concerning respondent's cooperation with this system. The cost of the service shall be borne by respondent.

15. Monitor Billing System Audit

Within 60 days of the effective date of this decision, respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to annually audit respondent's billings for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. The cost of the audits shall be borne by respondent. Failure to pay for the audits in a timely fashion shall constitute a violation of probation.

16. Law and Ethics Course

Respondent shall take and successfully complete the equivalency of two semester units in law and ethics. Course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, professional clinical counselor as defined in Sections 4980.40, 4996.18, 4999.32 or 4999.33 of the Business and Professions Codes and Section 1854 of Title 16 of the California Code of Regulations or through a course approved by the Board. Classroom attendance must be specifically required. Within 90 days of the effective date of this Decision, respondent shall submit a plan for prior Board approval for meeting this educational requirement. Said course must be taken and completed within one year from the effective date of this Decision. The costs associated with the law and ethics course shall be paid by the respondent. Units obtained for an approved course in law and ethics shall not be used for continuing education

units required for renewal of licensure.

(FYI: This term is appropriate when the licensee fails to keep informed about or comprehend the legal obligations and/or ethical responsibilities applicable to their actions. Examples include violations involving boundary issues, transference/countertransference, breach of confidentiality and reporting requirements.)

Standard Terms and Conditions of Probation

The sixteen standard terms and conditions generally appearing in every probation case are as follows:

17. Obey All Laws
18. File Quarterly Reports
19. Comply with Probation Program
20. Interviews with the Board
21. Failure to Practice
22. Change of Place of Employment or Place of Residence
23. Supervision of Unlicensed Persons
24. Notification to Clients
25. Notification to Employer
26. Violation of Probation
27. Maintain Valid License
28. License Surrender
29. Instruction of Coursework Qualifying for Continuing Education
30. Notification to Referral Services
31. Reimbursement of Probation Program
32. Cost Recovery

Specific Language for Standard Terms and Conditions of Probation (To be included in all Decisions)

17. Obey All Laws

Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation, payments and other orders. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.

18. File Quarterly Reports

Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). Respondent shall state under penalty of perjury whether

he/she has been in compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.

19. Comply with Probation Program

Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the program.

20. Interviews with the Board

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

21. Failure to Practice

In the event respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; File Quarterly Reports; Comply With Probation Program; Maintain Valid License/Registration; and Cost Recovery. Respondent's license/registration shall be automatically cancelled if respondent's period of non-practice total two years.

22. Change of Place of Employment or Place of Residence

Respondent shall notify the Board or its designee in writing within 30 days of any change of place of employment or place of residence. The written notice shall include the address, the telephone number and the date of the change.

23. Supervision of Unlicensed Persons

While on probation, respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this Decision.

24. Notification to Clients

Respondent shall notify all clients when any term or condition of probation will affect their therapy or the confidentiality of their records, including but not limited to supervised practice, suspension, or client population restriction. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee,

satisfactory evidence of compliance with this term of probation.

(FYI: Respondents should seek guidance from Board staff regarding appropriate application of this condition).

25. Notification to Employer

Respondent shall provide each of his or her current or future employers, when performing services that fall within the scope of practice of his or her license, a copy of this Decision and the Statement of Issues or Accusation before commencing employment. Notification to the respondent's current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

The Respondent shall provide to the Board the names, physical addresses, and telephone numbers of all employers, supervisors, and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor or contractor regarding the licensee or registrant's work status, performance, and monitoring.

26. Violation of Probation

If respondent violates the conditions of his/her probation, the Board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline (revocation/suspension) of respondent's license [or registration] provided in the decision.

If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, or the Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this decision shall be automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license [or registration] shall be fully restored.

27. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent's license shall be subject to any and all terms of this probation not previously satisfied.

28. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal

acceptance of the surrender, respondent shall within 30 calendar days deliver respondent's license and certificate and if applicable wall certificate to the Board or its designee and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Board for licensure respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational and experience requirements, and taking and passing any and all examinations required of new applicants.

29. Instruction of Coursework Qualifying for Continuing Education

Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

30. Notification to Referral Services

Respondent shall immediately send a copy of this decision to all referral services registered with the Board in which respondent is a participant. While on probation, respondent shall send a copy of this decision to all referral services registered with the Board that respondent seeks to join.

31. Reimbursement of Probation Program

Respondent shall reimburse the Board for the costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be \$_____ per year.

32. Cost Recovery

Respondent shall pay the Board \$_____ as and for the reasonable costs of the investigation and prosecution of Case No. _____. Respondent shall make such payments as follows: [Outline payment schedule.] Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. _____. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation. A period of non-practice by respondent shall not relieve respondent of his or her obligation to reimburse the board for its costs.

Cost recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Enforcement Manager based on good cause shown by the probationer.

IV. BOARD POLICIES AND GUIDELINES

Accusations

The Board of Behavioral Sciences (Board) has the authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The Board requests that this fact be included in the pleading and made part of the accusation.

Statement of Issues

The Board will file a Statement of Issues to deny an application of a candidate for the commission of an act, which if committed by a licensee would be cause for license discipline.

Stipulated Settlements

The Board will consider entering into stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to settlement with the Board, he or she may be required to admit to the violations set forth in the Accusation. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.

Recommended Language for License Surrenders

"Admission(s) made in the stipulation are made solely for the purpose of resolving the charges in the pending accusation, and may not be used in any other legal proceedings, actions or forms, except as provided in the stipulation.

The admissions made in this stipulation shall have no legal effect in whole or in part if the Board does not adopt the stipulation as its decision and order.

Contingency

This stipulation shall be subject to approval by the Board of Behavioral Sciences. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Behavioral Sciences may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his/her counsel. By signing the stipulation, Respondent understands and agrees that he/she may not withdraw his/her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

Respondent fully understands that when the Board adopts the license surrender of respondent's license, respondent will no longer be permitted to practice as a _____ in California. Respondent further understands that the license surrender of his or her license, upon adoption, shall be considered to be a disciplinary action and shall become a part of respondent 's license history with the Board.

The respondent further agrees that with the adoption by the Board of his or her license surrender, respondent may not petition the Board for reinstatement of the surrendered license.

Respondent may reapply to the Board for licensure three years from the date of surrender and must meet all current requirements for licensure including, but not limited, to filing a current application, meeting all current educational and experience requirements, and taking and passing any and all examinations required of new applicants.

Respondent understands that should he or she ever reapply for licensure as a _____ or should he or she ever apply for any other registration or licensure issued by the Board, or by the Board of Psychology, all of the charges contained in Accusation No. _____ shall be deemed admitted for the purpose of any Statement of Issues or other proceeding seeking to deny such application or reapplication."

Recommended Language for Registration Applicants

IT IS HEREBY ORDERED THAT Respondent _____ be issued a Registration as a _____. Said Registration shall be revoked. The revocation will be stayed and Respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is granted a subsequent registration, becomes licensed, or is granted another registration or license regulated by the Board during the probationary period.

Recommended Language for Registrants

IT IS HEREBY ORDERED THAT _____ Registration Number _____ issued to Respondent _____ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is granted a subsequent registration, becomes licensed, or is granted another registration or license regulated by the Board during the probationary period.

Recommended Language for Licensees

IT IS HEREBY ORDERED THAT _____ License Number _____ issued to Respondent _____ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if respondent is granted another registration or license regulated by the Board.

Proposed Decisions

The Board requests that proposed decisions include the following if applicable:

- A. Names and addresses of all parties to the action.
- B. Specific Code section violated with the definition of the code in the Determination of Issues.
- C. Clear description of the acts or omissions that constitute a violation.
- D. Respondent's explanation of the violation in the Findings of fact if he or she is present at the hearing.
- E. Explanation for deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the Order first list the Optional Terms and Conditions (1-16) followed by the Standard Terms and Conditions (17-32) as they may pertain to the

particular case. If the respondent fails to appear for his or her scheduled hearing or does not submit a notice of defense, such inaction shall result in a default decision to revoke licensure or deny application.

Reinstatement / Reduction of Penalty Hearings

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Suspensions or Revocations identified in Title 16, California Code of Regulations Section 1814, and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board is not interested in retrying the original revocation or probation case. The Board shall consider the criteria outlined in Section 1814., pursuant to Section 1814, the following criteria of rehabilitation:

- ~~(1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.~~
- ~~(2) Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for suspension or revocation under Section 490 of the Code.~~
- ~~(3) The time that has elapsed since commission of the acts or crimes giving rise to the suspension or revocation.~~
- ~~(4) Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.~~
- ~~(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.~~
- ~~(6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.~~
- ~~(7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.~~
- ~~(8) Evidence, if any, of rehabilitation submitted by the licensee.~~

In the Petition Decision, the Board requires a summary of the offense and the specific codes violated which resulted in the revocation, surrender, or probation of the license.

In petitioning for Reinstatement or Reduction/Modification of Penalty under Business and Professions Code Section 4982.24990.30, the petitioner has the burden of demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of marriage and family therapy, clinical social work, educational psychology, or professional clinical counselor within the scope of current law, and accepted standards of practice. In reaching its determination, the Board considers various factors including the following:

- A. The original violations for which action was taken against the petitioner's license;
- B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;
- C. The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;
- D. The petitioner's documented rehabilitative efforts;
- E. Assessment of the petitioner's rehabilitative and corrective efforts;

F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the Board should deny a request for reinstatement of a revoked license or reduction of penalty (modification or termination of probation), the Board requests the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such proceeding shall go forth without the petitioner's presence and the Board will issue a decision based on the written evidence and oral presentations submitted.

ATTACHMENT B

CURRENT LAW: SUBSTANTIAL RELATIONSHIP CRITERIA AND CRITERIA FOR REHABILITATION

§1812. SUBSTANTIAL RELATIONSHIP CRITERIA

For purposes of denial, suspension, or revocation of a license or registration pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under Chapters 13, 13.5, 14, and 16 of Division 2 of the Code if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her license in a manner consistent with the public health, safety or welfare.

Note: Authority cited: Sections 4980.60 and 4999.20, Business and Professions Code. Reference: Sections 481, 490, 4982, 4989.54, 4992.3, and 4999.90, Business and Professions Code.

§1813. CRITERIA FOR REHABILITATION-DENIAL OF LICENSURE

When considering the denial of a license or registration under Section 480 of the Code, the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license or registration shall consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in Section 480 of the Code.
- (d) The extent to which the applicant has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against the applicant.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 480 and 482, Business and Professions Code.

§ 1814. CRITERIA FOR REHABILITATION - SUSPENSIONS OR REVOCATIONS

- (a) When considering the suspension or revocation of a license, the board, in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria:
 - (1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
 - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.

- (3) The time that has elapsed since commission of the act(s) or crime(s) giving rise to the suspension or revocation.
 - (4) Whether the licensee has complied with any terms of probation, parole, restitution or any other sanctions lawfully imposed against such person.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent or immaterial.
 - (7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.
 - (8) Evidence, if any, of rehabilitation submitted by the licensee.
- (b) When considering a petition for reinstatement of a license or registration under the provisions of Section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1813 of this article.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 482 and 490, Business and Professions Code.

ATTACHMENT C

Assembly Bill No. 2138

CHAPTER 995

An act to amend, repeal, and add Sections 7.5, 480, 481, 482, 488, 493, and 11345.2 of, and to add Section 480.2 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, Chiu. Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been subject to formal discipline, as specified, or convicted of a crime only if the applicant or licensee has been convicted of a crime within the preceding 7 years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding 7 years, except as specified. The bill would prohibit a board from

denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction, as defined, for a crime, if the conviction has been dismissed or expunged, if the person has provided evidence of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction.

The bill would require the board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession. The bill would require a board to consider whether a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

Existing law authorizes a board, after a specified hearing requested by an applicant for licensure to take various actions in relation to denying or granting the applicant the license.

This bill would revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.

This bill would clarify that the existing above-described provisions continue to apply to the State Athletic Commission, the Bureau for Private Postsecondary Education, and the California Horse Racing Board.

This bill would also make necessary conforming changes.

This bill would make these provisions operative on July 1, 2020.

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

SECTION 1. Section 7.5 of the Business and Professions Code is amended to read:

7.5. (a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 7.5 is added to the Business and Professions Code, to read:

7.5. (a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action which a board is permitted to take following the establishment of a conviction may be taken 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. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(A) The State Athletic Commission.

(B) The Bureau for Private Postsecondary Education.

(C) The California Horse Racing Board.

(c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.

(d) This section shall become operative on July 1, 2020.

SEC. 3. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 4. Section 480 is added to the Business and Professions Code, to read:

480. (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

- (i) Chapter 1 (commencing with Section 5000) of Division 3.
- (ii) Chapter 6 (commencing with Section 6500) of Division 3.

- (iii) Chapter 9 (commencing with Section 7000) of Division 3.
- (iv) Chapter 11.3 (commencing with Section 7512) of Division 3.
- (v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.
- (vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing

with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) “Conviction” as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 5. Section 480.2 is added to the Business and Professions Code, to read:

480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime.
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false

statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing 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, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary

Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, 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 the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(j) This section shall become operative on July 1, 2020.

SEC. 6. Section 481 of the Business and Professions Code is amended to read:

481. (a) Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 7. Section 481 is added to the Business and Professions Code, to read:

481. (a) Each board under this code shall develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

- (1) The nature and gravity of the offense.
- (2) The number of years elapsed since the date of the offense.
- (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation submitted by an applicant pursuant to any process established in the practice act or regulations of the particular board and as directed by Section 482.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

(e) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.

(f) This section shall become operative on July 1, 2020.

SEC. 8. Section 482 of the Business and Professions Code is amended to read:

482. (a) Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(1) Considering the denial of a license by the board under Section 480;
or

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 9. Section 482 is added to the Business and Professions Code, to read:

482. (a) Each board under this code shall develop criteria to evaluate the rehabilitation of a person when doing either of the following:

(1) Considering the denial of a license by the board under Section 480.

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

(2) The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated.

(c) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(d) This section shall become operative on July 1, 2020.

SEC. 10. Section 488 of the Business and Professions Code is amended to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 11. Section 488 is added to the Business and Professions Code, to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(c) This section shall become operative on July 1, 2020.

SEC. 12. Section 493 of the Business and Professions Code is amended to read:

493. (a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and 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, and duties of the licensee in question.

(b) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 13. Section 493 is added to the Business and Professions Code, to read:

493. (a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

- (B) The number of years elapsed since the date of the offense.
- (C) The nature and duties of the profession.
- (2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.
- (c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”
- (d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:
 - (1) The State Athletic Commission.
 - (2) The Bureau for Private Postsecondary Education.
 - (3) The California Horse Racing Board.
- (e) This section shall become operative on July 1, 2020.

SEC. 14. Section 11345.2 of the Business and Professions Code is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. Notwithstanding subdivision (c) of Section 480, if the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 15. Section 11345.2 is added to the Business and Professions Code, to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser

refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become operative on July 1, 2020.

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ATTACHMENT D

State of California

PENAL CODE

Section 290

290. (a) Sections 290 to 290.024, inclusive, shall be known, and may be cited, as the Sex Offender Registration Act. All references to “the Act” in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the period specified in subdivision (d) while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c) The following persons shall register:

Every person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 287, 288, or 289 or former Section 288a, Section 207 or 209 committed with intent to violate Section 261, 286, 287, 288, or 289 or former Section 288a, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, or former Section 288a, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10 years, 20 years, or life, following a conviction

and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1) (A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described in subdivision (c), or for conviction of a felony described in subdivision (c) that was not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) This paragraph does not apply to a person who is subject to registration pursuant to paragraph (2) or (3).

(2) (A) A tier two offender is subject to registration for a minimum of 20 years. A person is a tier two offender if the person was convicted of an offense described in subdivision (c) that is also described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section 286, subdivision (g) or (h) of Section 287 or former Section 288a, subdivision (b) of Section 289, or Section 647.6 if it is a second or subsequent conviction for that offense that was brought and tried separately.

(B) This paragraph does not apply if the person is subject to lifetime registration as required in paragraph (3).

(3) A tier three offender is subject to registration for life. A person is a tier three offender if any one of the following applies:

(A) Following conviction of a registerable offense, the person was subsequently convicted in a separate proceeding of committing an offense described in subdivision (c) and the conviction is for commission of a violent felony described in subdivision (c) of Section 667.5, or the person was subsequently convicted of committing an offense for which the person was ordered to register pursuant to Section 290.006, and the conviction is for the commission of a violent felony described in subdivision (c) of Section 667.5.

(B) The person was committed to a state mental hospital as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(C) The person was convicted of violating any of the following:

(i) Section 187 while attempting to commit or committing an act punishable under Section 261, 286, 287, 288, or 289 or former Section 288a.

(ii) Section 207 or 209 with intent to violate Section 261, 286, 287, 288, or 289 or former Section 288a.

(iii) Section 220.

(iv) Subdivision (b) of Section 266h.

(v) Subdivision (b) of Section 266i.

(vi) Section 266j.

(vii) Section 267.

(viii) Section 269.

(ix) Subdivision (b) or (c) of Section 288.

(x) Section 288.2.

(xi) Section 288.3, unless committed with the intent to commit a violation of subdivision (b) of Section 286, subdivision (b) of Section 287 or former Section 288a, or subdivision (h) or (i) of Section 289.

(xii) Section 288.4.

(xiii) Section 288.5.

(xiv) Section 288.7.

(xv) Subdivision (c) of Section 653f.

(xvi) Any offense for which the person is sentenced to a life term pursuant to Section 667.61.

(D) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(E) The person is a habitual sex offender pursuant to Section 667.71.

(F) The person was convicted of violating subdivision (a) of Section 288 in two proceedings brought and tried separately.

(G) The person was sentenced to 15 to 25 years to life for an offense listed in Section 667.61.

(H) The person is required to register pursuant to Section 290.004.

(I) The person was convicted of a felony offense described in subdivision (b) or (c) of Section 236.1.

(J) The person was convicted of a felony offense described in subdivision (a), (c), or (d) of Section 243.4.

(K) The person was convicted of violating paragraph (2), (3), or (4) of subdivision (a) of Section 261 or was convicted of violating Section 261 and punished pursuant to paragraph (1) or (2) of subdivision (c) of Section 264.

(L) The person was convicted of violating paragraph (1) of subdivision (a) of Section 262.

(M) The person was convicted of violating Section 264.1.

(N) The person was convicted of any offense involving lewd or lascivious conduct under Section 272.

(O) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 286.

(P) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 287 or former Section 288a.

(Q) The person was convicted of violating paragraph (1) of subdivision (a) or subdivision (d), (e), or (j) of Section 289.

(R) The person was convicted of a felony violation of Section 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, or 311.10.

(4) (A) A person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c).

(B) If the person's duty to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two offender, except that the person is subject to registration as a tier three offender if one of the following applies:

(i) The person's risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.

(iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(5) (A) The Department of Justice may place a person described in subdivision (c), or who is otherwise required to register pursuant to the Act, in a tier-to-be-determined category if his or her appropriate tier designation described in this subdivision cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which he or she registers towards his or her mandated minimum registration period.

(B) The Department of Justice shall ascertain an individual's appropriate tier designation as described in this subdivision within 24 months of his or her placement in the tier-to-be-determined category.

(e) The minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with

the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

(f) Nothing in this section shall be construed to require a ward of the juvenile court to register under the Act, except as provided in Section 290.008.

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

(Amended (as added by Stats. 2017, Ch. 541, Sec. 2.5) by Stats. 2018, Ch. 423, Sec. 52. (SB 1494) Effective January 1, 2019. Section operative January 1, 2021, by its own provisions. Note: This section was amended on November 6, 2012, by initiative Prop. 35.)

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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

To: Committee Members

Date: January 29, 2019

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Legislative Update

Board staff is currently pursuing the following legislative proposals:

1. **Licensed Portability to California (No Bill Number Assigned at This Time)**

This bill proposal represents the work of the Board's License Portability Committee and seeks to remove some of the barriers to inter-state licensure. It proposes a pathway for LMFTs, LCSWs, and LPCCs who are actively licensed in another state and have been so for at least two years, to become licensed in California if they complete continuing education coursework specific to the psychotherapy environment in this state, and if they pass a California law and ethics exam.

2. **Psychotherapy Services: Required Notice to Clients (No Bill Number Assigned at This Time)**

This bill proposes requiring all settings where psychotherapy is performed to provide clients, prior to initiating services, with a printed notice disclosing where to file a complaint about the therapist.

3. **Omnibus Legislation (Senate Business, Professions, and Economic Development Committee) (No Bill Number Assigned at This Time)**

This bill proposal, approved by the Board at its November 30, 2018 meeting, makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

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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

To: Policy and Advocacy Committee Members **Date:** January 30, 2019
From: Christy Berger
Regulatory Analyst **Telephone:** (916) 574-7817
Subject: **Status of Board Rulemaking Proposals**

Enforcement Process

This proposal would result in updates to the Board's disciplinary process. It would also make updates to the Board's "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Revised October 2015)," which are incorporated by reference into the Board's regulations. The proposed changes fall into three general categories:

1. Amendments seeking to strengthen certain penalties that are available to the Board;
2. Amendments seeking to update regulations or the Uniform Standards/Guidelines in response to statutory changes to the Business and Professions Code; and
3. Amendments to clarify language that has been identified as unclear or needing further detail.

The proposal was approved by the Board at its meeting in February 2017 and began the DCA initial review process in July 2017. This regulation package is currently on hold due to the passage of AB 2138.

Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee

This proposal would amend the Board's examination rescoring provisions to clarify that rescoring pertains only to exams taken via paper and pencil, since all other taken electronically are automatically rescored. This proposal would also make clarifying, non-substantive changes to the Board's application abandonment criteria, and clarify the fee required for subsequent Associate Professional Clinical Counselor registrations. The proposal was approved by the Board at its meeting in November 2017 and began the DCA initial review process in April 2018 and was approved for filing with OAL on January 11, 2019. Staff is preparing the documents necessary to file with OAL for publishing to initiate the 45-day public comment period.

Supervision

This proposal would:

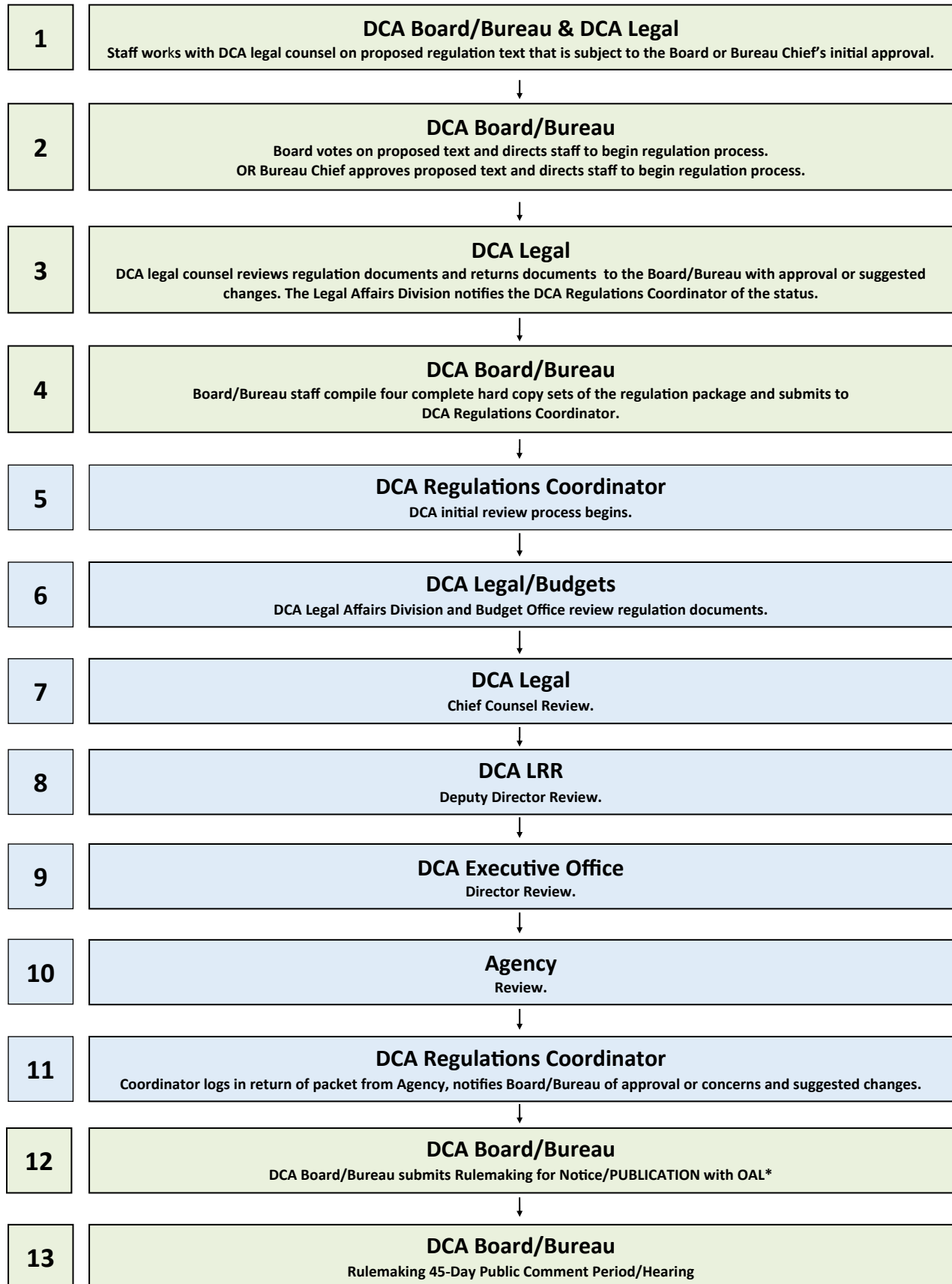
- Revise the qualifications to become supervisor;
- Require supervisors to perform a self-assessment of qualifications and submit the self-assessment to the Board;

- Set forth requirements for substitute supervisors;
- Update and strengthen supervisor training requirements;
- Strengthen supervisor responsibilities, including provisions pertaining to monitoring and evaluating supervisees;
- Strengthen requirements pertaining to documentation of supervision;
- Make supervision requirements consistent across the three licensed professions; and
- Address supervision gained outside of California.

The proposal was approved by the Board at its meeting in November 2016, and was held aside while awaiting passage of the Board's supervision legislation (AB 93). Staff is currently preparing the documents necessary to begin the DCA initial review process.

ATTACHMENT A **REGULAR RULEMAKING PROCESS—DCA BOARDS/BUREAUS**

INITIAL PHASE



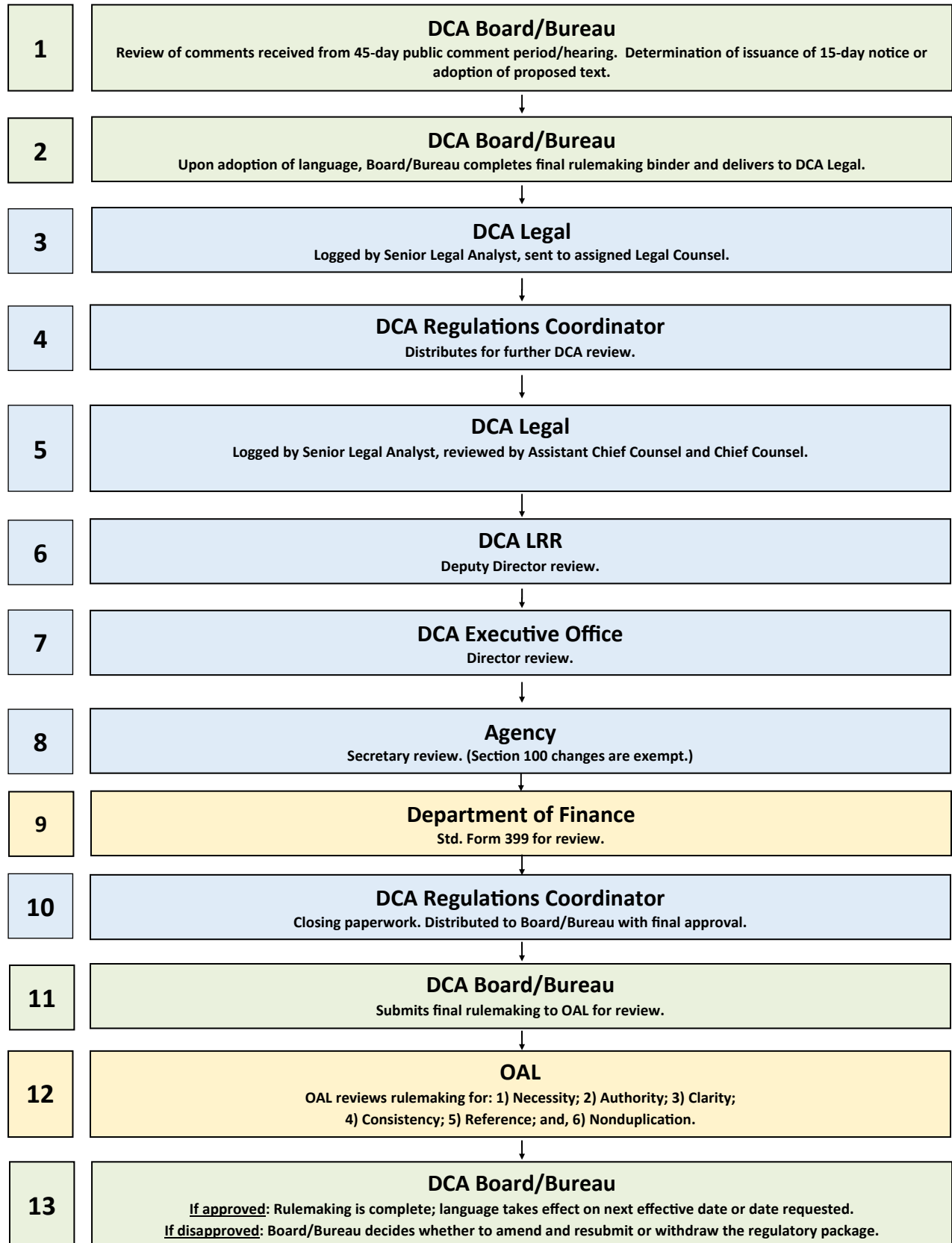
Legend

DCA – Department of Consumer Affairs
 LRR – Division of Legislative Regulatory Review
 OAL – Office of Administrative Law

* If any changes to language last approved by the Board are needed, a vote by the Board may be necessary.

REGULAR RULEMAKING PROCESS—DCA BOARDS/BUREAUS

FINAL PHASE



Legend

DCA – Department of Consumer Affairs
LRR – Division of Legislative Regulatory Review
OAL – Office of Administrative Law

DOF – Department of Finance
Std. Form 399 – Economic and Fiscal Impact Statement
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BBS REGULATION TIMELINE

JANUARY 29, 2019

Regulation Package Name	Date of Board Approval	Submitted to DCA - Initial Review	Submitted to Agency - Initial Review	Date Noticed	Public Hearing Date	Submitted to DCA - Final Review	Submitted to Agency – Final Review	Date Submitted to DOF	Submitted to OAL - Approval	Date OAL Approved
Enforcement Update to Disciplinary Guidelines	3/3/17	7/11/17	9/13/18*							
Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee	11/2/17	4/6/18	9/12/18							
Supervision	11/4/16**									

*This package is on hold due to the passage of AB 2138

**This regulation package was held pending passage of AB 93 and is in the process of being prepared for initial review.

DCA and Agency Initial Review Process: Following review by the Board’s attorney and preparation of the required documentation (Notice, Initial Statement of Reasons, and the Fiscal Impact Std. 399), the package is submitted to DCA’s Legislative and Policy Review Division, who routes it through the budget office and legal office for their review and approval. Next, the package is submitted to DCA Executive Office for review/approval. The package is then submitted to Agency for an initial review. Once approved by Agency, the Board is able to submit the package to the Office of Administrative Law (OAL) to Notice the proposed regulation change.

Notice and Public Hearing: The Notice initiates the 45-day public comment period. Following the 45-day comment period, a public hearing is scheduled. The Board must consider all comments submitted. If any substantive changes are made to the text of the proposal, the Board must approve the language again, and provide the public with a 15-day public comment period. If no changes are made to the proposal, the Board submits the package to DCA for final review.

DCA and Agency Final Review: The initial review process is repeated.

Submission to DOF and OAL for Final Approval: Both the Department of Finance and the Office of Administrative Law must approve the regulation package. The review may occur at the same time. However, OAL is the final approval. Once OAL approves the regulation package, the proposal is adopted, and it is assigned an effective date.

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