

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: August 14, 2012

SUBJECT MATTER OF PROPOSED REGULATIONS: Requirements for advertising by licensees and registrants, requirements for supervisors of associate clinical social workers (ASWs), and continuing education course requirements.

SECTIONS AFFECTED: Sections 1811, 1870, and 1887.3 of Division 18 of Title 16 of the California Code of Regulations.

IDENTIFICATION OF THE PROBLEM

The Board has identified the following problems which this regulatory proposal addresses:

1. **Advertising:** Currently the Board has identified areas of the law related to advertising which are unclear, such as what abbreviations may be used in an advertisement, and whether a licensee can use the term “psychotherapy” when advertising. In addition, AB 956 (Chapter 166, Statutes of 2011) clarified some of these questions for marriage and family therapy (MFT) interns, but did not address the advertising requirements for the Board’s other license types.
2. **Supervision of ASWs:** Supervisors of the Board’s MFT interns are required to be licensed for at least two years before they can become a supervisor. This same requirement does not exist for supervisors of the Board’s ASW registrants, even though supervision requirements are otherwise similar.
3. **LPCC Continuing Education (CE):** The Board’s licensed marriage and family therapist (LMFT) and licensed clinical social worker (LCSW) licensees are required to take a continuing education course covering HIV/AIDS, while this same requirement does not exist for the Board’s licensed professional clinical counselor (LPCC) licensees. However, LPCC licensees are just as likely to treat a patient affected by HIV/AIDS.

SPECIFIC CHANGES AND FACTUAL BASIS/RATIONALE:

1. Amend Section 1803 – Advertising

Proposed Change: Section 1811 provides general requirements regarding advertisements for LMFTs, LCSWs, Licensed Educational Psychologists (LEPs), and LPCCs.

The proposed amendments would require advertisements by the Board’s licensees and registrants to contain more specific information, including requiring the licensee or registrant to include his or her full title or a Board-specified abbreviation, requiring the advertisement to contain the practitioner’s license or registration number, and requiring a registrant to disclose the name of his or her employer or the entity for which he or she is volunteering.

Rationale: These proposed regulation changes are needed to refine and clarify what information a licensee or registrant must provide in an advertisement. The Board already has regulations in place that require certain information in an advertisement, this regulation simply modifies and clarifies what information must be provided, and also makes the regulation consistent with the provisions of AB 956 (Chapter 166, Statutes of 2011) which requires certain information be provided in advertising by MFT interns.

Anticipated Benefit: These amendments will protect the public by clarifying what information can and cannot be contained in an advertisement by a licensee or registrant, and also by requiring the practitioner to include the license number in the advertisement. Inclusion of the license number will make it easier for a consumer to look up a practitioner's license or file a complaint with the Board if necessary.

2. Amend Section 1870 – Supervisors of ASWs

Proposed Change: Section 1870 sets forth the requirements for supervisors of ASWs, including possession of a valid California license in good standing, as well as specific education and experience requirements.

The proposed amendment would require supervisors of ASWs to be licensed for at least two years prior to commencing any supervision.

Rationale: This proposed change makes the requirements for supervisors of ASWs consistent with Section 1833.1, which already requires supervisors of MFT interns be licensed for at least two years prior to performing any supervision.

The Board found as a matter of industry practice that licensees who supervise MFT interns and trainees, who are required to be licensed for at least two years before beginning supervision, are also frequently supervising ASWs.

It would be rare to find a licensee who only supervises ASWs. Therefore, it would be extremely unlikely there would be any additional costs to businesses or individuals to comply with the proposed regulation.

Anticipated Benefit: These amendments would enhance public protection by ensuring that supervisors of ASWs have adequate experience as licensees before they are able to supervise.

3. Amend Section 1887.3 – LPCC CE

Proposed Change: Section 1887.3 sets forth continuing education (CE) criteria for LMFT, LCSW, LEP, and LPCC license renewals. The regulation requires all Board licensees to complete thirty-six (36) hours of CE coursework every two years as a condition of license renewal.

Currently, the Board's LMFT and LCSW licensees are required to take a one-time seven hour continuing education course covering the assessment and treatment of people living with human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as part of their 36 hour CE coursework requirement. (California Code

of Regulation (CCR) Title 16 Section 1887.3(c)).

Current regulations do not require the Board's LPCC licensees to take a continuing education course covering HIV/AIDS.

Rationale: LPCCs are just as likely as LMFTs and LCSWs to treat patients affected by HIV or AIDS. Therefore, the Board is proposing this amendment that would require LPCCs to take the one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS, as part of their 36 hour CE coursework requirement.

This proposed regulation change would not result in an economic impact because LPCC licensees are already required to take 36 hours of CE as a condition of license renewal.

The one time, 7-hour CE course required by this amendment will count toward a licensee's fulfillment of the 36 hour CE requirement. Therefore, there is no additional cost because the licensee is already required to take a total of 36 CE hours.

Anticipated Benefit: Adoption of this amendment will protect consumers by ensuring that LPCC practitioners have education in the subject of patients who are living with HIV and AIDS.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following:

- The proposed regulatory amendments to the advertising requirements in Section 1811 specify that certain information must be disclosed in an advertisement. Providing this information would not have an economic impact on licensees.
- The proposed regulatory amendments to Section 1870 requiring supervisors of ASWs to have held a license for at least two years would affect only a small number of individuals, as newly licensed individuals rarely supervise.
- The proposed regulatory amendments to Section 1887.3 requiring LPCC licensees to take a one-time CE course covering assessment and treatment of people living with HIV and AIDS would not have an economic impact on licensees, because the course can be taken as part of the 36 hours of CE that is already required for license renewal. Therefore, there is no additional cost to the licensee above and beyond what they would already pay to take their required CE.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not

affect small businesses for the reasons specified above.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased by doing the following:

- Increasing and clarifying the information that must be provided in a licensee or registrant's advertisements;
- Ensuring that supervisors of ASW's have been licensed for two years and therefore have experience as a licensee; and
- Requiring that LPCC practitioners have education relating to patients living with HIV and AIDS.

The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None

Comparable Federal Regulations: None

Benefits: Business and Professions Code Section 4990.16 states the following: "Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The public will benefit from the increased protections this proposal provides, as described above.

UNDERLYING DATA

None

BUSINESS IMPACT

Section 1811: None. The proposed regulation changes to advertising requirements will not have an impact as they only affect the content that is required in an advertisement.

Section 1870: None. The Board found as a matter of industry practice that licensees who supervise MFT Interns and trainees, who are required to be licensed for at least two years before beginning supervision, are also frequently supervising ASWs. It would be rare to find a licensee who only supervises ASWs. Therefore, it would be extremely unlikely there would be any additional costs to businesses or individuals to comply with the proposed regulation.

Section 1887.3: None. The one-time, 7 hour CE course required by this amendment is

included in, and is not in addition to, the existing requirement of 36 hours of CE for license renewal.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered:

1. Not adopt the regulations. This alternative was rejected because the Board has identified areas of concern that these regulations address.
2. Adopt the regulations. The Board has determined that this alternative is the most feasible because it will assist the Board in its mandate of consumer protection.