

**TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
July 8, 2014
10:00am-11:00am**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on **July 7, 2014** or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 315, 4980.60, and 4990.20 of the Business and Professions Code, and Section 11400.20 of the Government Code, and to implement, interpret, or make specific Sections 315, 315.2, 315.4, 4982, 4989.54, 4992.3, and 4999.90 of the Business and Professions Code, and Section 11425.50(e) of the Government Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Board is the regulatory entity tasked with regulating the practice of marriage and family therapists (LMFTs), licensed educational psychologists (LEPs), licensed clinical social workers (LCSWs) and licensed professional clinical counselors (LPCCs) in the State of California. In total, the Board has approximately 86,000 licensees/registrants. The Board's highest priority is public protection when exercising its licensing, regulatory, and disciplinary functions.

The Board is authorized to investigate the criminal conviction history of applicants and licensees, subsequent arrests, allegations of unprofessional conduct, and unsafe or incompetent practice by its licensees or registrants. The Board is authorized to discipline licensees and applicants who may jeopardize the health, safety, and welfare of the consumer.

Existing law, Business and Professions Code (BPC) Sections 4980.60 and 4990.20, authorize the Board to adopt rules and regulations that are necessary to carry out its mandate as prescribed in law.

Existing law, BPC Sections 4982, 4989.54, 4992.3, and 4999.90 define actions that constitute unprofessional conduct for the Board's LMFT, LEP, LCSW, and LPCC licensees and registrants, respectively.

Existing law, BPC Section 315, established the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (DCA). The purpose of the committee was to formulate uniform standards for all healing arts boards to use when disciplining substance-abusing licensees.

Existing law, BPC Section 315.2, requires a healing arts board to order a licensee to cease practice if the licensee tests positive for any substance prohibited under the terms of the licensee's probation or diversion program.

Existing law, BPC Section 315.4, allows a healing arts board to adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to Section 315.

Existing law, Government Code Section 11400.20 allows an agency to adopt regulations to govern an adjudicative proceeding under the Administrative Procedures Act.

Existing law, Government Code Section 11425.50(e), states that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule unless it has been adopted as a regulation.

There is not an existing federal regulation or statute comparable to this proposal.

Proposed Amendments to BPC Section 1888 and Disciplinary Guidelines

The purpose of this proposal is to amend BPC Section 1888 and the "Board of Behavioral Sciences Disciplinary Guidelines" (Rev. December 2012).

The Board established its Disciplinary Guidelines to facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known. The Disciplinary Guidelines are intended for use by Board licensees and registrants in the disciplinary process, administrative law judges and attorneys, and Board members.

The Board proposes revising the disciplinary guidelines to incorporate the SACC's uniform standards for substance abusing licensees, and to establish when the uniform standards would apply. The revised document would be titled "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines."

Section 1888 requires that when making a decision on disciplinary actions, the Board shall consider the disciplinary guidelines, and the section incorporates the guidelines into regulations by reference.

Section 1888 would be revised to incorporate by reference the new version of the disciplinary guidelines entitled "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines." It would also be amended to define the circumstances under which the Uniform Standards would apply, and would allow the Board the authority to impose additional disciplinary action, beyond the Uniform Standards, if the Board deems it necessary to provide greater public protection.

Policy Statement Overview/Anticipated Benefit: These proposed amendments give the Board a tool to provide uniform and effective disciplinary action to substance abusing licensees. This will benefit members of the public who utilize therapists, by providing greater assurance that their therapist is fit to practice.

Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

Based on the standards created by the SACC, Board staff drafted amendments which incorporated the Uniform Standards into the Disciplinary Guidelines, as appropriate.

The resulting “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” consists of four parts:

1. **Uniform Standards Related to Substance Abuse:** This is a new section and would apply to licensees or registrants who test positive for a controlled substance, or whose license or registration is on probation due to a substance abuse problem.
2. **Penalty Guidelines:** This section was already part of the Disciplinary Guidelines; it lists types of violations and the range of penalties that may be imposed. Amendments have been added where needed to include the new Uniform Standards.
3. **Disciplinary Orders:** This section was already part of the Disciplinary Guidelines. It contains language for proposed optional and standard terms and conditions of probation. It has been modified, where appropriate, to include the new Uniform Standards.
4. **Board Policies and Guidelines:** Already part of the Disciplinary Guidelines, this section explains the policies and guidelines for various enforcement actions. Minor technical amendments have been made where needed.

Policy Statement Overview/Anticipated Benefit: Adoption of these proposed amendments will increase public protection by ensuring that Board licensees who are determined to be substance abusing licensees will be subject to a prescribed set of disciplinary actions, which is consistent with the discipline required of all substance abusing healing arts licensees.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board of Behavioral Sciences has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

The document entitled “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” [Rev. (*OAL to insert effective date*)] has been incorporated by reference into Section 1888.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following types of businesses would be affected:

- Businesses owned by licensees of the Board who face disciplinary action due to substance abuse; and
- Businesses that employ licensees of the Board who face disciplinary action due to substance abuse.

The following reporting, recordkeeping, or other compliance requirements are projected to result from the proposed action:

- None.

A licensee that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data regarding the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative and disciplinary action against a licensee, not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law, as well as licensees employed by these businesses who are in compliance with the law, will not incur any fiscal impact.

The Board has not considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit such proposals. Submissions may include the following considerations:

- A. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- B. Consolidation or simplification of compliance and reporting requirements for businesses.
- C. The use of performance standards rather than prescriptive standards.
- D. Exemption or partial exemption from the regulatory requirements for businesses.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Cost Impacts on Representative Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, unless that individual is licensed by the Board and subject to disciplinary action.

This proposal would impact private persons who are licensees of the Board, or businesses that are owned by licensees of the Board, who face disciplinary action due to substance abuse violations.

A license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be affected cannot be predicted. The Board only has the authority to take administrative action against a licensee and not a business. Therefore, the costs incurred by a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Under the proposed Uniform Standards, a licensee with a substance abuse violation may be subject to several disciplinary actions. Some are mandatory, and some may be required based on the circumstances of the case. Potential disciplinary actions, and their estimated costs, are as follows:

| Potential Costs for a Licensee/Registrant Subject to the Uniform Standards due to Substance Abuse | |
|---|--|
| Disciplinary Action [1] | Estimated Unit Cost [4] |
| Clinical Diagnostic Evaluation | \$1,000 - \$3,000 per evaluation |
| Suspension of License/Registration [2] | individual's salary |
| Inpatient Substance Abuse Treatment | \$10,000 - \$35,000 depending on treatment program |
| Supervised Practice | approx. \$200 - \$400 per month |
| Chemical Dependency Support/Recovery Group Meetings | \$0 - \$100 per month depending on program |
| Drug/Alcohol Testing (52-104 tests in Year 1) [3] | approx. \$70 per test |
| <p>[1] Represents possible disciplinary actions based on the Uniform Standards. Frequency or necessity of each individual action may vary based on the circumstances of the case.</p> <p>[2] Suspension of license/registration is required at a minimum for the duration of the clinical diagnostic evaluation. The suspension would continue if licensee is not found safe to return to practice</p> <p>[3] Required frequency of drug testing is 52-104 times in year 1, 36-104 times in years 2-5, and if no positive tests, once per month after year 5.</p> <p>[4] In addition to these costs, the licensee/registrant may incur other minor costs related to the reporting requirements of the Uniform Standards. These include costs of notifying the employer of the Board's decision, and submission to the Board of required documents such as the clinical diagnostic evaluation.</p> | |

Effect on Housing Costs: None

Effect on Small Businesses

The Board has determined that the proposed regulations may affect small businesses.

A license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the small business where the licensee works depending on the nature and severity of the violation. A small business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be affected cannot be predicted. The Board only has the authority to take administrative action against a licensee and not a small business. Therefore, the costs incurred by a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Small businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses

The Board has determined that the proposed regulatory action may have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

A license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be affected cannot be predicted. The Board only has the authority to take administrative action against a licensee and not a business. Therefore, the costs incurred by a business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

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, because it ensures there are high standards in place to effectively and consistently discipline all healing arts licensees who are found to have substance abuse violations.

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 Uniform Standards provide the Board with an effective tool to discipline substance-abusing licensees, and the public will benefit from this increased protection.

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

Reporting Requirements: This proposed regulation does not impose any reporting requirements upon a licensee who is in compliance with the law. Licensees who are subject to disciplinary action due to substance abuse violations will face requirements to report to the Board and/or employer various information regarding their disciplinary action, clinical diagnostic evaluation, current employment, compliance with supervision requirements, and submittal of other required documentation.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be 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 proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the this Notice under Contact Person listed below, or by accessing the Board's website, www.bbs.ca.gov

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Contact Person named below (or by accessing the website listed below).

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rosanne Helms
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The backup contact person is:

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WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.