



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

## **BOARD MEETING Notice and Agenda**

**March 5-6, 2020**

*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.*

### **AGENDA**

**Thursday, March 5, 2020  
8:30 a.m.**

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

### **OPEN SESSION**

- I. Call to Order and Establishment of Quorum
- II. 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)]*
- III. Suggestions for Future Agenda Items
- IV. Petition for Modification of Probation for Hosson Hooper, LMFT 79118
- V. Petition for Early Termination of Probation for Chevelle Bourdon, ASW 76998
- VI. Petition for Early Termination of Probation for Jacqueline Gall, AMFT 102973
- VII. Petition for Early Termination of Probation Andrew Warren, ASW 79887

VIII. Petition for Early Termination of Probation Katya Webber Mills, AMFT 102522

**CLOSED SESSION**

IX. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in Closed Session for Discussion and to Take Action on Disciplinary Matters, Including the Above Petitions. The Board will also, Pursuant to Section 11126(a)(1) of the Government Code, Meet in Closed Session to Evaluate the Performance of the Executive Officer and to Discuss Possible Salary Level Change.

**RECONVENE IN OPEN SESSION**

X. Recess Until 8:30 a.m., Friday, March 6, 2020

**AGENDA**  
**Friday, March 6, 2020**  
**8:30 a.m.**

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

**OPEN SESSION**

- XI. Call to Order, Establishment of Quorum, and Introductions\*
- XII. Consent Calendar
  - a. Approval of the May 9-10, 2019 Board Meeting Minutes
  - b. Approval of November 20-22, 2019 Board Meeting Minutes
- XIII. Board Chair Report
  - a. Introduction of New Board Members
  - b. Board Member Activities
  - c. Recognition of Board Staff for Years of Service
- XIV. Budget Presentation by Department of Consumer Affairs Budget Manager Brian Skewis and Budget Analyst J.P. Fletes
- XV. Executive Officer Report
  - a. Budget Report
  - b. Operations Report
  - c. Personnel Report
  - d. Strategic Plan Update
- XVI. Update on 2019-2020 Sunset Review
- XVII. Update on Office of Professional Examination Services Licensed Professional Clinical Counselor Occupational Analysis and Review of the National Clinical Mental Health Counseling Examination
- XVIII. Discussion and Possible Action Regarding the Policy and Advocacy Committee Recommendations
  - a. Recommendation #1: Support. Notice to Clients About Filing a Complaint: Business and Professions Code Sections 4980.01, 4980.32, 4989.17, 4996.14, 4996.75, 4999.22, and 4999.71

- b. Recommendation #2: No Action Recommended. Supervisor Work Setting Requirements (AB 2363)
  - XIX. Discussion and Possible Action Regarding Revisions to the Proposed Rulemaking to Implement AB 2138
  - XX. Discussion and Possible Action Regarding Assembly Bill 1145 (Garcia): Child Abuse: Reportable Conduct
  - XXI. Discussion and Possible Action Regarding Assembly Bill 1616 (Low): Department of Consumer Affairs: Boards: Expunged Convictions
  - XXII. Discussion and Possible Action Regarding Assembly Bill 2028 (Aguiar-Curry): State Agencies: Meetings
  - XXIII. Update on Board-Sponsored and Board-Monitored Legislation
    - a. Assembly Bill 2142 (Medina) Board of Behavioral Sciences Fee Increase
    - b. Assembly Bill 2363 (Arambula) Practice Setting Definitions
    - c. Omnibus Bill Proposal
  - XXIV. Update on Board Rulemaking Proposals
  - XXV. 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)]*
- XXVI. Suggestions for Future Agenda Items
  - XXVII. Adjournment
- 

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

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

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

*NOTICE: The meeting is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting*

*may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*

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**BOARD MEETING MINUTES**1  
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Open sessions of this Board Meeting were webcasted. Records of the webcasts are available at the following links:

- May 9: <https://www.youtube.com/watch?v=WjdNfBdWwIA&feature=youtu.be>  
May 10 (part 1): <https://www.youtube.com/watch?v=eKjeCazrJxc&feature=youtu.be>  
May 10 (part 2): <https://www.youtube.com/watch?v=BwpJuibVSmc&feature=youtu.be>

**DATE** May 9, 2019

**LOCATION** The Mission Inn  
The Galleria  
3649 Mission Inn Ave.  
Riverside, CA 92501

**TIME** 8:30 a.m.

**ATTENDEES**

**Members Present:** Betty Connolly, Chair, LEP Member  
Max Disposti, Vice Chair, Public Member  
Dr. Leah Brew, LPCC Member  
Dr. Peter Chiu, Public Member  
Alexander Kim, Public Member  
Gabriel Lam, LCSW Member  
Jonathan Maddox, LMFT Member  
Dr. Christine Wietlisbach, Public Member  
Christina Wong, LCSW Member

**Members Absent:** Deborah Brown, Public Member  
Vicka Stout, LMFT Member

**Staff Present:** Kim Madsen, Executive Officer  
Steve Sodergren, Assistant Executive Officer  
Jonathan Burke, Enforcement Manager  
Sabina Knight, Legal Counsel  
Christina Kitamura, Administrative Analyst

1 **Other Attendees:** Kimberly Belvedere, Administrative Law Judge  
2 Molly Selway, Deputy Attorney General  
3 See *voluntary sign-in sheet (available upon request)*  
4

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## 6 **OPEN SESSION**

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### 9 **I. Call to Order and Establishment of Quorum**

10 Betty Connolly, Chair of the Board of Behavioral Sciences (Board), called the  
11 meeting to order at 8:34 a.m. Roll was called. Quorum established.  
12

### 14 **II. Public Comment for Items Not on the Agenda**

15 No comments.  
16

### 18 **III. Suggestions for Future Agenda Items**

19 No suggestions.  
20  
21  
22

23 ***Administrative Law Judge Kimberly Belvedere presided over the following***  
24 ***petition hearings. Deputy Attorney General Molly Selway presented the facts of***  
25 ***each case on behalf of the People of the State of California.***  
26

### 27 **IV. Petition for Modification of Probation for Alyssa Renee Bradley LMFT** 28 **106426**

29  
30 The hearing was opened at 8:37 a.m. Alyssa Bradley was present and  
31 represented herself. Ms. Selway presented the background of Ms. Bradley's  
32 probation.  
33

34 Ms. Bradley was sworn in. She presented her request for modification of  
35 probation and information to support the request and was cross-examined by  
36 Ms. Selway and Board members.  
37

38 Jimmy Bradley testified on Ms. Bradley's behalf. No cross-examinations. The  
39 record was closed at 9:44 a.m.  
40

### 41 **V. Petition for Modification of Probation for Donald Lewis, ASW 80267**

42  
43 The hearing was opened at 9:57 a.m. Donald Lewis was present and  
44 represented himself. Ms. Selway presented the background of Mr. Lewis'  
45 probation.



1 Mr. Lewis was sworn in. He presented his request for modification of probation  
2 and information to support the request and was cross-examined by  
3 Ms. Selway and Board members. The record was closed at 10:45 a.m.  
4

5 **VI. Petition for Early Termination of Probation for Chelsea Salas, LMFT 85487**  
6

7 The hearing was opened at 11:00 a.m. Chelsea Salas was present and  
8 represented herself. Ms. Selway presented the background of Ms. Salas'  
9 probation.  
10

11 Ms. Salas was sworn in. She presented her request for early termination of  
12 probation and information to support the request and was cross-examined by  
13 Ms. Selway and Board members. The record was closed at 11:22 a.m.  
14

15 **VII. Petition for Early Termination of Probation for Barek Sharif, LMFT 100734**  
16

17 The hearing was opened at 11:25 p.m. Barek Sharif was present and  
18 represented himself. Ms. Selway presented the background of Mr. Sharif's  
19 probation.  
20

21 Ms. Sharif was sworn in. He presented his request for early termination of  
22 probation and information to support the request and was cross-examined by  
23 Ms. Selway and Board members. The record was closed at 12:04 p.m.  
24

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25  
26 **CLOSED SESSION**  
27

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28  
29 **VIII. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will**  
30 **Meet in Closed Session for Discussion and to Take Action on Disciplinary**  
31 **Matters, Including the Above Petitions.**  
32

33 The Board entered closed session at 12:05 p.m.  
34  
35

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36 **OPEN SESSION**  
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38  
39 **IX. Recess Until 8:30 a.m. on Thursday, May 10, 2019**  
40

41 The Board reconvened in open session and recessed until Thursday, May 10<sup>th</sup>.

1 **DATE** May 10, 2019

2  
3 **LOCATION** The Mission Inn  
4 The Grand Parisian Ballroom  
5 3649 Mission Inn Ave.  
6 Riverside, CA 92501  
7

8 **TIME** 8:30 a.m.  
9

10 **ATTENDEES**

11 **Members Present:** Betty Connolly, Chair, LEP Member  
12 Max Disposti, Vice Chair, Public Member  
13 Dr. Leah Brew, LPCC Member  
14 Dr. Peter Chiu, Public Member  
15 Alexander Kim, Public Member  
16 Gabriel Lam, LCSW Member  
17 Jonathan Maddox, LMFT Member  
18 Dr. Christine Wietlisbach, Public Member  
19 Christina Wong, LCSW Member  
20

21 **Members Absent:** Deborah Brown, Public Member  
22 Vicka Stout, LMFT Member  
23

24 **Staff Present:** Kim Madsen, Executive Officer  
25 Steve Sodergren, Assistant Executive Officer  
26 Sabina Knight, Legal Counsel  
27 Rosanne Helms, Legislative Analyst  
28 Christina Kitamura, Administrative Analyst  
29

30 **Other Attendees:** *See voluntary sign-in sheet (available upon request)*  
31

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32  
33 **OPEN SESSION**  
34

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35  
36 **X. Call to Order, Establishment of Quorum, and Introductions**  
37

38 Ms. Connolly called the meeting to order. Roll was called. A quorum was  
39 established. Board staff and meeting attendees introduced themselves.  
40

41 **XI. Department of Consumer Affairs Update**  
42

43 Kim Madsen reported:

- 44 • Departure of Department of Consumer Affairs (DCA) Director Dean Grafilo
- 45 • DCA is moving forward with Director's Quarterly meeting on June 3<sup>rd</sup>.

- 1 • Executive Officer Salary Study
  - 2 ○ KH Consulting retained to conduct the executive salary study.
  - 3 ○ Estimated completion of project was March 2019.
  - 4 ○ Delay due to challenges receiving timely responses from other states.
  - 5 ○ Timeline has been extended.
- 6 • Future Leadership Development Program

7  
8 Steve Sodergren reported:

- 9 • DCA's Open Data Portal
  - 10 ○ Licensing statistics and information regarding licensing data
  - 11 ○ Accessible to the public
  - 12 ○ Data goes back three years
  - 13 ○ Filter by individual board/bureau
  - 14 ○ Filter by license type

15  
16 **XII. Consent Calendar**

17 **a. Approval of the February 28 – March 1, 2019 Board Meeting Minutes**

18  
19 This item was deferred to the next Board meeting.

20  
21 **XIII. Board Chair Report**

22  
23 Dr. Christine Wietlisbach's term as a Board member ends on June 1<sup>st</sup>.  
24 Ms. Connolly presented a Resolution to Dr. Wietlisbach for her service.

25  
26 **XIV. Executive Officer Report**

27 **a. Budget Report**

28  
29 2018/2019 Budget

- 30 • Budget for fiscal year (FY) 2019/2020 is \$12,547,000, which included an
- 31 augmentation to support enforcement operations
- 32 • Total expenses to date: \$8,091,382 (64%)
- 33 • Experiencing delays in receiving reports from FI\$Cal

34  
35 General Fund Loans

36 Fund condition reflects \$3.3 million loan repayment in FY 2018/2019 (last  
37 payment).

38  
39 Board Fund Condition

40 Fund Condition reflects a 4.5-month reserve.  
41

1           **b. Operations Report**  
2

3           Licensing Program: 3<sup>rd</sup> Quarter

- 4           • Application volumes increased 18%  
5           • Increased processing times due to recent staff vacancies  
6           • Issued 1,418 initial licenses  
7           • 115,753 licensees and registrants as of April 9<sup>th</sup>  
8

9           Examination Program: 3<sup>rd</sup> Quarter

- 10          • Administered 3,873 examinations  
11          • Conducted 10 examination development workshops  
12

13          OPES continues work on the LMFT Occupational Analysis. LMFT licensees  
14          are urged to complete the occupational analysis survey.  
15

16          Administration Program: 3<sup>rd</sup> Quarter

- 17          • Received 8,163 applications (1% increase from last quarter)  
18          • Received 12,408 renewal applications  
19          • 96% of renewal applications were renewed online  
20

21          Enforcement Program: 3<sup>rd</sup> Quarter

- 22          • 391 consumer complaints received  
23          • 252 criminal conviction notifications received  
24          • 550 cases closed  
25          • 28 cases referred to the AG's office for formal discipline  
26          • 442 cases pending as of March 1, 2019  
27          • 28 Accusations and 12 Statement of Issues filed  
28          • 32 final citations issued  
29          • 19 decisions adopted  
30          • 370 average number of days to complete Formal Discipline  
31             (Performance measure is 540 days)  
32          • 528 average number of days a case is with the AG's Office  
33          • 194 average number of days to complete all Board investigations  
34

35          Continuing Education Audits

36          The Board temporarily suspended continuing education audits from  
37          February to April due to operational needs.  
38

39          Outreach Activity

40          Board staff attended/participated in 11 outreach events:

- 41          • MFT consortium meetings  
42          • CAMFT Annual Conference  
43          • NASW Lobby Days  
44          • Chico School of Social Work

1 Board Move Update  
2 Staff moved into the new suite during the week of March 11<sup>th</sup>.

3  
4 **c. Personnel Report**

5  
6 New Employees/Promotions

7 Steve Sodergren was promoted to Career Executive Assignment (CEA) and  
8 serves as the Board's Assistant Executive Officer.

9  
10 Departures

11 Tanya Bordei received a promotion at the Department of Water Resources.

12  
13 Paula Gershon will retire from state service on July 19, 2019.

14  
15 Vacancies

16 The Board has seven vacancies. Due to current budget constraints, the  
17 recruitment process for these vacancies will be conducted during the  
18 upcoming fiscal year.

19  
20 **d. Strategic Plan Update**

21  
22 The Strategic Plan was provided in the meeting materials for review.

23  
24 **XV. Election of Board Chair and Vice Chair**

25  
26 **MOTION:** Chiu nominated Betty Connolly as Board Chair.

27  
28 Wietlisbach seconded. Connolly accepted the nomination. No further  
29 nominations were made. Motion carried; 9 yea, 0 nay.

30  
31 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

32  
33  
34 **MOTION:** Wong nominated Max Disposti as Board Vice Chair.

1 Wietlisbach seconded. Disposti accepted the nomination. No further  
2 nominations were made. Motion carried; 9 yea, 0 nay.

3  
4 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

5  
6  
7 **XVI. Discussion and Possible Action Regarding Board Fee Audit**

8  
9 The Board contracted with CPS HR Consulting (CPS) to provide a fee audit to  
10 determine if fee levels are appropriate for the recovery of the actual cost of  
11 conducting its programs. In March 2019, CPS submitted the final report.

12  
13 The report:

- 14
- 15 • Reviewed 25 main fees that represent approximately 90% of the Board's fee revenue: applications for registrations, licenses, examination and renewals.
  - 16 • Reviewed last four years of revenues and expenditures
  - 17 • Projected 3-4 years of revenues and expenditures
  - 18 • Determined necessary revenue to bridge the gap
- 19

20 Summary of Findings

21 The following finding are listed on page 4 in the CPS report:

- 22
- 23 • The Board has grown steadily since FY 2014/15. In FY 2014/15, the Board was authorized 48.2 permanent positions and 1.8 blanket positions for a total of 50 positions. As of July 1, 2018, the Board has 58.2 authorized positions and 1.8 blanket positions for a total of 60 positions, a 20% increase. The DCA Budget Office uses an average of 1,776 available hours per PY each fiscal year for workload budget projections. Employees are paid for 2,080 hours per fiscal year.
- 24
- 25 • In October 2013, the Board implemented DCA's BreEZe online licensing and enforcement system. The Board incurred significant costs to implement BreEZe.
- 26  
27  
28  
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32  
33

- 1 • Revenue associated with the 25 fees under examination has increased  
2 39.3% from FY 14-15 through FY 2017-2018.  
3
- 4 • On average, BBS Operating Expenses & Equipment costs constitute 58.1%  
5 of total expenses and Personnel Services constitute 41.9%.  
6
- 7 • Overall revenue has not kept up with expenditures since FY 16-17.  
8
- 9 • Beginning in FY 2020-21 and moving forward, revenue and expense  
10 projections indicate that BBS will have insufficient revenue to cover  
11 operational costs and maintain an acceptable 3 to 6-month fund reserve.  
12
- 13 • Fees associated with the Licensed Marriage and Family Therapist (LMFT),  
14 Licensed Clinical Social Worker (LCSW) and Licensed Educational  
15 Psychologist (LEP) licenses have not increased in at least 20 years. The  
16 Licensed Professional Clinical Counselor (LPCC) program was established  
17 in FY 2011-12 and the fees have not increased since.  
18

19 To determine appropriate fees, CPS used three years of average expenditures  
20 and staff hours. Dividing the average expenditures by staff hours for the three  
21 years resulted in a \$120 per hour/\$2.00 per minute fully absorbed cost rate.  
22 The resulting proposed fee increases ranged from \$0 to \$315. These proposed  
23 fees were used to make projections for the fund condition for the next five  
24 years. The fees proposed would increase the Board's revenue by \$6,016,000  
25 per fiscal year and would result in a 5-month reserve by FY 2023-24.  
26

27 Staff will develop a fee schedule based upon the recommendations. Staff will  
28 take into consideration the impact a fee increase may have on the registrants  
29 and licensees. The proposed fee schedule and corresponding draft bill  
30 language will be presented at the next Policy and Advocacy Committee  
31 meeting for discussion. The goal is to implement a new fee schedule on  
32 January 1, 2021.  
33

34 Janlee Wong, National Association of Social Workers California Division  
35 (NASW-CA): NASW-CA requests the Board to consider the following:

- 36 • Statistics/data on average income of licensees and income growth per year  
37 of licensees
- 38 • Re-evaluate the cost per licensee/applicant
- 39 • Have less specialization and more generalization in Board personnel
- 40 • Consider longer or shorter renewal periods
- 41 • Is the cost of disciplinary proceeding and disciplinary monitoring  
42 commensurate with the fines and any recompense owed by those who  
43 violated the law?  
44

1 Kim Madsen: Revenue received as reimbursement to investigative costs,  
2 citations and fines, goes to the fund condition and cannot be spent.

3  
4 Luke Martin, California Association of Marriage and Family Therapists  
5 (CAMFT): suggested a cap on renewal fees based on a licensee's income.  
6

7 Christina Wong: Suggested educating the associations regarding the fees so  
8 that they could educate their memberships.  
9

10 Madsen: Agrees that there should be parity between the license types. The  
11 hardest hit will be associates, those with the least amount of income. Staff will  
12 look at this from a practical standpoint to keep operations moving forward and  
13 anticipate growth.  
14

## 15 **XVII. Update on Exam Vendor Contract**

16  
17 The Board initiated a contract with Pearson VUE to administer the California  
18 Law & Ethics, LMFT Clinical and LEP Standard Written exams. Since February  
19 2019, Board staff have been working with DCA's contract unit to execute the  
20 contract. The Board anticipates switching over to the new vendor in late  
21 summer or early fall. The Board intends for a smooth transition with minimal  
22 disruption to exam candidates.  
23

24 During the next two months, the Board will be working to ensure that exam  
25 candidates are thoroughly informed about how this change will affect them.  
26 Information will be distributed by email, website updates, and social media  
27 postings. Staff is also working to identify the candidate populations that would  
28 be most affected and plans to communicate more directly with those  
29 candidates.  
30

31 There will be no delays of scores for candidates during or after the transition.  
32

## 33 **XVIII. Discussion and Possible Action Regarding the Policy and Advocacy 34 Committee Recommendations**

### 35 36 **a. Recommendation #1: Support Assembly Bill 613 (Low) Professions 37 and Vocations: Regulatory Fees**

38  
39 AB 613 would allow the Board to increase any of its authorized fees once  
40 every four years by an amount up to the Consumer Price Index (CPI) for the  
41 preceding four years.  
42

#### 43 AB 613

- 44 1. Permits specified licensing boards and bureaus under DCA, including  
45 the Board of Behavioral Sciences, to increase any of its authorized fees



1 once every four years by an amount up to the CPI for the preceding four  
2 years.

- 3
- 4 2. Requires a board seeking to increase its fees by the CPI to provide its  
5 calculations and proposed fees to the director. The director must  
6 approve the fee increase except in the following circumstances:
- 7 a. The Board has unencumbered funds that are equal to more than the  
8 board's operating budget for the next two fiscal years; or
- 9 b. The fee would exceed the reasonable cost to the board to administer  
10 the provisions the fee is paying for; or
- 11 c. The director determines the fee increase would injure public health,  
12 safety, or welfare.
- 13
- 14 3. States that this adjustment of fees and their publication is not subject to  
15 the Administrative Procedure Act.
- 16
- 17 4. Provides that the CPI adjustment is allowable for fees the Board is  
18 authorized to impose to cover regulatory costs. The CPI adjustment is  
19 not allowed for administrative fines, civil penalties, or criminal penalties.  
20

21 Intent

22 The intent of this bill is to allow boards to raise their fees once every four  
23 years without going through the rulemaking or legislative process. The  
24 author's office notes that because the legislative and rulemaking processes  
25 are cumbersome, boards tend to delay raising fees until absolutely  
26 necessary to support ongoing operations, and the resulting fee increase is  
27 then significant and controversial. The author's office believes allowing a  
28 fee increase adjustment by the CPI will allow fees to adjust more modestly  
29 over time.  
30

31 Current Process to Increase Fees

32 Currently, the Board must go through the legislative and/or regulatory  
33 process to raise a fee, depending on whether the fee is being charged at its  
34 statutory maximum or not. Both processes take approximately 1 to 2 years  
35 and can involve a significant amount of staff time.  
36

37 Current Board Fee Audit

38 The Board has not raised its fees since the 1990s. The Board is in the  
39 process of conducting a fee audit and expects to pursue legislation and  
40 regulations to raise fees within the next year. It is unlikely that this bill would  
41 allow the Board to avoid pursuing a fee increase via legislation or  
42 regulations this time but having a CPI adjustment option in the future may  
43 allow the Board to keep pace with rising costs.  
44

1 **MOTION:** Support AB 613 and direct staff to make any non-substantive  
2 changes.

3  
4 Brew moved; Maddox seconded. Motion carried; 9 yea, 0 nay.

5  
6 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

7  
8  
9 **b. Recommendation #2: Support Assembly Bill 769 (Smith) Federally**  
10 **Qualified Health Centers and Rural Health Clinics: Licensed**  
11 **Professional Clinical Counselor**

12  
13 AB 769 would allow Medi-Cal reimbursement for covered mental health  
14 services provided by an LPCC employed by a federally qualified health  
15 center (FQHC) or a rural health clinic (RHC).

16  
17 AB 769

- 18 1. Adds an LPCC to the list of health care professionals included in the  
19 definition of a visit to a FQHC or RHC that is eligible for Medi-Cal  
20 reimbursement.
- 21  
22 2. Describes technical procedures for how an FQHC or RHC that employs  
23 LPCCs can apply for a rate adjustment and bill for services.

24  
25 Background

26 There are approximately 600 FQHCs and 350 RHCs in California. These  
27 clinics serve the uninsured and underinsured and are reimbursed by Medi-  
28 Cal on a "per visit" basis. Currently, psychologists, LMFTs, and LCSWs are  
29 authorized for Medi-Cal reimbursement in these settings. However, LPCCs  
30 are not, creating a disincentive for these clinics to hire them.

31  
32 Intent

33 The intent of this legislation is to allow FQHCs and RHCs to be able to hire  
34 LPCCs and be reimbursed through Medi-Cal for covered mental health

1 services. Under current law, only clinical psychologists, LCSWs, or LMFTs  
2 may receive Medi-Cal reimbursement for covered services in such settings.  
3 The sponsor states that adding LPCCs to the list of Medi-Cal reimbursable  
4 provider types in these clinics will help rural areas meet the increase in  
5 demand for mental health services.  
6

7 **MOTION:** Support AB 769 and direct staff to make any non-substantive  
8 changes.  
9

10 Brew moved; Wong seconded. Motion carried; 9 yea, 0 nay.  
11

12 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

13  
14  
15 **c. Recommendation #3: Support Assembly Bill 1145 (Garcia) Child**  
16 **Abuse: Reportable Conduct**  
17

18 AB 1145 specifies that voluntary acts of sodomy, oral copulation, or sexual  
19 penetration are not considered to be mandated reports of sexual assault  
20 under the Child Abuse and Neglect Reporting Act (CANRA) if there are no  
21 indicators of abuse, unless the conduct is between a person age 21 or older  
22 and a minor under age 16.  
23

24 **Intent**

25 The author is attempting to clarify the law due to concerns and feedback  
26 that requirements for mandated reporters of child abuse are confusing,  
27 inconsistent, and discriminatory.  
28

29 Some mandated reporters interpret the law to read that consensual sodomy  
30 and oral copulation is illegal with anyone under age 18, and that it requires a  
31 mandated report as sexual assault under CANRA. They argue that the  
32 same reporting standards do not apply to consensual heterosexual  
33 intercourse.  
34

1 There are also contradictory opinions that the law does not read this way,  
2 and that sodomy and oral copulation are not treated differently from other  
3 acts in the code. However, lack of a clear answer leads to confusion about  
4 what is reportable and what is not.

5  
6 Therefore, the author is seeking to make the law consistent by ensuring that  
7 all types of voluntary activities are treated equally for purposes of mandated  
8 reporting under CANRA.  
9

### 10 Background

11 The Board examined this issue in 2013 when stakeholders expressed  
12 concern that consensual oral copulation and sodomy among minors were  
13 mandated reports under CANRA, while other types of consensual sexual  
14 activity were not.  
15

16 However, Legislature staffers contacted the Board to caution that there had  
17 been past legal opinions stating that this interpretation of CANRA was  
18 incorrect and that amendments could potentially have ramifications for  
19 family planning agencies.  
20

21 The Board was concerned about a potential legal misinterpretation of  
22 CANRA; therefore, it directed staff to obtain a legal opinion from DCA Legal  
23 Affairs.  
24

### 25 DCA Legal Opinion

26 In its legal opinion, DCA found that CANRA does not require a mandated  
27 reporter to report incidents of consensual sex between minors of a similar  
28 age for any actions described in PC Section 11165.1, unless there is  
29 reasonable suspicion of force, exploitation, or other abuse. DCA also found  
30 the following, based on past court cases:  
31

- 32 • Courts have found that the legislative intent of the reporting law is to  
33 leave the distinction between abusive and non-abusive sexual relations  
34 to the judgment of professionals who deal with children.  
35
- 36 • Review of other legal cases has found that the law does not require  
37 reporting of consensual sexual activities between similarly-aged minors  
38 for any sexual acts unless there is evidence of abuse.  
39

### 40 Board of Psychology Action

41 The Board of Psychology sought an opinion from the Attorney General's  
42 (AG's) Office. The Board of Psychology asked the AG to resolve the  
43 following legal questions:  
44

- 45 1. CANRA requires mandated reporters to report instances of child sexual  
46 abuse, assault, and exploitation to specified law enforcement and/or

1 child protection agencies. Does this requirement include the mandatory  
2 reporting of voluntary acts of sexual intercourse, oral copulation, or  
3 sodomy between minors of a like age?  
4

5 2. Under CANRA, is the activity of mobile device “sexting,” between minors  
6 of a like age, a form of reportable sexual exploitation?  
7

8 3. Does CANRA require a mandated reporter to relay third-party reports of  
9 downloading, streaming, or otherwise accessing child pornography  
10 through electronic or digital media?  
11

12 The opinion request was sent to the AG in February 2015. However, a  
13 related case is currently under review by the California Supreme Court, and  
14 the AG’s office suspended the opinion until the litigation is concluded.  
15

#### 16 Recommended Position

17 At its April 2019 meeting, the Policy and Advocacy Committee (Committee)  
18 recommended that the Board consider taking a support position. The  
19 Committee directed staff to reach out to the author’s office to discuss the  
20 possibility of also clarifying the reportability of filming, “sexting”, or similar  
21 use of technology between minors, as it noted there is also a lack of clarity  
22 in law regarding those activities.  
23

24 The author’s office stated that it would consider including it. However, the  
25 bill, as currently written, was encountering some challenges in the  
26 committee process at the legislature.  
27

#### 28 Discussion

29 Dr. Leah Brew: Supports AB 1145. This would protect the LGBTQ  
30 community.  
31

32 Max Disposti: In favor of AB 1145. In his center, about 99% of the time the  
33 parent is rejecting the consensual relationship between their minor child and  
34 another (LGBTQ) minor, and adults intervene and attempt to stop the  
35 relationship. There have been cases where abuse was reported and  
36 misinterpreted by the police. He has not seen a case where there was  
37 actual child abuse. The interpretation is always applicable to “queer kids.”  
38 Different interpretations by various agencies is detrimental.  
39

40 Kathy Atkins, CAMFT: CAMFT supports AB 1145.  
41

42 Rebecca Gonzales, National Association of Social Workers, California  
43 Division (NASW-CA): NASW-CA supports AB 1145.  
44

45 Gerry Grossman: The bill would eliminate the idea that a minor who is  
46 engaged in consensual intercourse with a minor close in age is not

1 reportable. However, Penal Code 11165.1 states that if a minor is engaged  
2 in consensual oral sex or anal sex is reportable. This law is “homophobic.”  
3 Most mental health professionals are not reporting consensual oral or anal  
4 sex. However, some are reporting. The consequence is that it harms the  
5 therapeutic relationship on these consensual sexual acts and the possibility  
6 that these people are accused of being sex offenders.  
7

8 Maddox: This bill would also protect minors engaging in heterosexual  
9 activities that would be considered sexual curiosity or alternatives to  
10 intercourse.

11 **MOTION:** Support AB 1145 and direct staff to make any non-substantive  
12 changes.  
13

14 Wong moved; Disposti seconded. Motion carried; 9 yea, 0 nay.  
15  
16

17 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

18  
19  
20 **d. Recommendation #4: Neutral on Assembly Bill 1540 (Holden) Music**  
21 **Therapy**  
22

23 AB 1540 seeks to define music therapy in statute and to provide guidance to  
24 consumers and agencies regarding the education and training requirements  
25 of a qualified music therapist.  
26

27 **AB 1540**

- 28 1. Establishes the Music Therapy Act.  
29  
30 2. Defines “music therapy.”  
31  
32 3. Provides a scope of practice for music therapy.  
33  
34 4. Defines music therapy interventions.

- 1 5. Prohibits referring to oneself as a “Board Certified Music Therapist”  
2 unless the person has completed all of the following:  
3 a. Has a bachelor’s degree, equivalent, or higher from a music therapy  
4 degree program approved by the American Music Therapy  
5 Association.  
6 b. Completes at least 1,200 hours of supervised clinical work.  
7 c. Completes the current certification requirements established by the  
8 Certification Board for Music.  
9  
10 6. States that this act does not authorize someone engaging in music  
11 therapy to state or imply that they provide mental health counseling,  
12 psychotherapy, or occupational therapy. Also states that the use of  
13 music does not imply or suggest that a person is a Board-Certified Music  
14 Therapist.  
15  
16 7. States that it is an unfair business practice for a person to use the title  
17 “Board Certified Music Therapist” unless they are certified.  
18  
19 8. States that the bill shall not be construed to require a music therapist  
20 currently employed by the State of California to obtain certification as a  
21 Board-Certified Music Therapist.  
22

23 Intent

24 The author notes inconsistencies in law and is seeking to create a uniform  
25 definition for music therapy in statute.  
26

27 Single Specialty Recognition

28 Music therapy is one of several sub-types of specialty therapies. Many of  
29 these specialty therapies have an independent certification board that will  
30 issue a certification or credential if requirements are met.  
31

32 Effect on Board Licensees

33 AB 1540 contains language stating that the use of music therapy is not  
34 restricted to any profession. This would permit Board licensees who use  
35 music therapy to continue doing so, as long as they do not state that they  
36 are a Board-Certified Music Therapist unless they hold that certification.  
37

38 Position

39 The Board did not take a position on AB 1540.  
40

1 **e. Recommendation #5: Support if Amended Assembly Bill 1651 (Medina)**  
2 **Licensed Educational Psychologists: Supervision of Associates and**  
3 **Trainees**  
4

5 AB 1651 would allow applicants for licensure as a marriage and family  
6 therapist, professional clinical counselor, or clinical social worker to gain  
7 some supervised experience hours under a licensed educational  
8 psychologist (LEP).  
9

10 AB 1651

- 11 1. Would permit the Board's LEP licensees to be supervisors of marriage  
12 and family therapist and professional clinical counselor associates and  
13 trainees, and associate clinical social workers, if they meet all of the  
14 Board's other requirements to supervise.  
15  
16 2. Limits hours that may be gained under supervision of an LEP to no more  
17 than 1,200 hours.  
18  
19 3. Adds unprofessional conduct provisions into LEP statute related to  
20 supervision of unlicensed persons.  
21

22 Intent

23 The California Association of School Psychologists (CASP) states that a  
24 2011 law change shifted the responsibility to provide special education  
25 students' mental health services from county mental health departments to  
26 school districts.  
27

28 School districts provide Educationally Related Mental Health Services  
29 (ERMHS) to students with disabilities. ERMHS can occur in both  
30 educational and clinical settings, and the purpose is to provide mental  
31 health support so that students can access their educational programs.  
32

33 CASP notes that many school districts are employing BBS associates to  
34 provide ERMHS, and that the law requires ERMHS service providers to be  
35 supervised by someone with a pupil personnel services (PPS) credential.  
36 LEPs have a PPS credential and training in the educational system, but they  
37 are currently not permitted to supervise BBS associates. They point out that  
38 allowed supervisors of BBS associates do not necessarily have a PPS  
39 credential or the specialized educational system experience that LEPs have.  
40

41 LEP Supervisor Settings

42 This bill would permit LEPs to supervise a BBS associate for up to 1,200 of  
43 the required experience hours.  
44



1                   Recommended Position

2                   The Policy and Advocacy Committee (Committee) recommended that the  
3                   Board consider taking a “support if amended” position on this bill. It  
4                   recommended that the bill be amended to limit LEP supervision of  
5                   associates to ERMHS services only.  
6

7                   Staff has been working with CASP to define ERMHS services and define  
8                   the appropriate setting in which LEPs could supervise.  
9

10                   Discussion

11                   Rosanne Helms: Written statement from Kenneth Edwards, California  
12                   Association of Licensed Professional Clinical Counselors (CALPCC):  
13                   CALPCC will not take a position on AB 1651.  
14

15                   Connolly: In regard to defining ERMHS, the education code and federal law  
16                   is non-prescriptive when it comes to defining related services and that  
17                   applies to all related services (speech therapy, occupational therapy, mental  
18                   health services). The definition of any of those related services is that they  
19                   are necessary for the student with disabilities to be able to access their  
20                   education.  
21

22                   Jonathan Maddox: The proposal speaks to the needs of the school districts  
23                   and the students; however, it does not speak to the needs of the developing  
24                   therapists. Questioned if LEPs are equipped to supervise associates in  
25                   areas that they must be proficient in: theoretical orientation, relational  
26                   therapeutic stance, documentation that meets Medi-Cal standards and the  
27                   Department of Health Care Services standards.  
28

29                   Brew: At a previous meeting, LEP degree coursework was discussed,  
30                   which included theoretical orientation, documentation.  
31

32                   Connolly: The LEP’s role is misunderstood. Testing is a component and  
33                   evaluating functions of behavior is a component of what LEPs do. There is  
34                   a significant counseling component that addresses beyond a function of  
35                   what the behaviors are and looks much more at the full range of mental  
36                   health needs that students have in schools.  
37

38                   Maddox: 1,200 hours is significantly high; it’s a lot for someone who will not  
39                   become an LEP or will not work long term in ERMHS setting. Suggested  
40                   cutting the hours to 500-600. Associates typically receive one hour of  
41                   supervision for every 10 hours of client contact (40 hours/month x 12  
42                   months = 500 hours). That is a fair opportunity to be supervised in ERMHS  
43                   setting and to get majority of hours in another setting that is more aligned  
44                   with their specific scope.  
45

1 Brew: Typically, students who go into school settings want to make it their  
2 career. 1,200 is the maximum number of hours – they do not have to obtain  
3 the full 1,200 hours in that setting. Professional clinical counselor students  
4 need 1,750, which would require them to get 500 hours in another setting.  
5 Furthermore, an employer will not hire someone for 3 months to earn 500  
6 hours. LEPs do more similar work to the LMFT and LPCC fields than what  
7 is realized.

8  
9 Wong: 1,200 hours is acceptable.

10  
11 Connolly: If associates do not want to work with students, they will not be  
12 drawn towards this. This will appeal to those who want to work in school  
13 settings as a profession.

14  
15 Helms: Presented supplemental materials: The first CASP proposed  
16 amendment states that an LEP may only supervise the provision of ERMHS  
17 and other services consistent with the scope of practice of an educational  
18 psychologist. The second proposed amendment adds the scope of practice  
19 to the first proposed amendment.

20  
21 Rebecca Gonzales, NASW-CA: NASW-CA is in support of AB 1651.

22  
23 Kathy Atkins, CAMFT: CAMFT has not taken a position on AB 1651. Has  
24 concerns regarding the consumer protection, number of hours, supervision  
25 availability and competence, how they're implementing the services and  
26 how the associates are being utilized. Feels that this is moving too fast.

27  
28 Dr. Wendell Callahan: 1,200 hours equates to an academic school year for  
29 services that would equal to 20-25 hours of clinical contact. He searches for  
30 student placements that are an academic year so they can develop a sense  
31 of their therapeutic stance. As an employer, he is not going to hire a  
32 counselor that cannot commit to more than an academic year because that  
33 is disruptive to the student. ERMHS is long term, and IEPs are written year-  
34 to-year, and therefore, 1,200 hours is reasonable. It would be disruptive to  
35 have associates rotating into year-long services.

36  
37 Chris Jones, CASP: The need for mental health services in schools has  
38 increased tenfold in the last 5-10 years. With the passage of AB 114 to  
39 develop ERMHS programs, the traditional model is shifting. School  
40 psychologists are being hired or transferred specifically to ERMHS  
41 programs where they are only counseling. Within the last 15 years, there  
42 has been a movement away from traditional assessment with the  
43 implementation of RTI (response to intervention), a multi-tiered system of  
44 support and TSS (trauma-skilled schools model). Schools are developing  
45 more comprehensive mental health programs for children, and school  
46 psychologists are involved in those programs full time.

1 Agrees with Dr. Callahan regarding 1,200 hours; school districts are not  
2 going to hire an associate for 400 hours. 1,200 hours is a school year.  
3 Removing an associate partway through the year because they maxed out  
4 their hours, would be cause for concern regarding the effect of the  
5 therapeutic relationship with the student.

6 1,200 hours formula: 180 school days in a year; 6-hour school day; within  
7 6-hour school day, about 5-6 hours are spent with clients. 6 hours x 180  
8 days = 1,080 hours plus supervision hours.

9  
10 Maddox: Feels that this legislation is being rushed.

11  
12 Dr. Christine Wietlisbach: Clarified that the language allows *up to* 1,200  
13 hours.

14  
15 Connolly: There has been a lot of conversation on this and does not feel  
16 that this matter has been rushed.

17  
18 Helms: Referred to Supplemental Materials for discussion - CASP  
19 Proposed Amendments, LMFT laws §4980.03(g) and §4980.43(c)(9).

20  
21 After Board discussed proposed amendments, Ms. Helms summarized  
22 Board discussion to strike “and other services” from §4980.03(g); strike  
23 “providing educationally related mental health services and other services  
24 that are consistent with the scope of practice of an educational psychologist”  
25 from §4980.43(c)(9) and apply the same amendments to the other BBS  
26 license laws.

27  
28 **MOTION:** Support AB 1651 if amended to strike “and other services” from  
29 §4980.03(g); strike “providing educationally related mental health services  
30 and other services that are consistent with the scope of practice of an  
31 educational psychologist” from §4980.43(c)(9) and apply the same  
32 amendments to the LPCC and LCSW sections.

33  
34 Brew moved; Chiu seconded. Motion carried; 8 yea, 1 nay.  
35

1

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox		x			
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

2

3

4

**f. Recommendation #6: Support Senate Bill 10 (Beall) Mental Health Services: Peer, Parent, Transition-Age, and Family Support Specialist Certification**

5

6

7

8

SB 10 requires the State Department of Health Care Services (DHCS) to establish a certification body for adult, parent, transition-age youth, and family peer support specialists. It also requires DHCS to amend the state’s Medicaid plan to include these providers as a provider type within the Medi-Cal program.

9

10

11

12

13

14

**SB 10**

15

1. Defines “peer support specialist services.”

16

17

2. Requires DHCS to establish a certification body.

18

19

3. Requires the certifying body to define responsibilities and practice guidelines for each type of peer support specialist using best practices, and to determine specific curriculum and core competencies.

20

21

22

4. Requires the certification body to specify training requirements.

23

24

5. Requires the certification body to establish a code of ethics.

25

26

6. Provides minimum requirements for adult peer support specialists, transition-age youth peer support specialists, family peer support specialists, and parent peer support specialists.

27

28

29

30

7. States that this Act does not imply that a certification-holder is qualified or authorized to diagnose an illness, prescribe medication, or provide clinical services. It also does not alter the scope of practice for a health care professional or authorize delivery of services in a setting or manner

31

32

33

34

1 not authorized under the Business and Professions Code or Health and  
2 Safety Code.

- 3  
4 8. Allows DHCS to implement this law via notices, plan letters, bulletins, or  
5 similar instructions, until regulations are adopted. Regulations must be  
6 adopted by July 1, 2022.

7  
8 Intent

9 The goals of SB 10:

- 10 • Requires DHCS to establish a certification program for peer support  
11 providers; and  
12 • Provides increased family support and wraparound services.

13  
14 The author notes that California lags behind the rest of the country in  
15 implementing a peer support specialist certification program. Currently, the  
16 Department of Veteran’s Affairs and 48 states either have or are developing  
17 such a program.

18  
19 Scope of Practice and Scope of Practice Exclusions

20 SB 10 appears to outline a scope of practice for peer support specialists,  
21 although somewhat indirectly, in WIC §§14045.12, and 14045.13(I).

22  
23 Section 14045.19 contains language that excludes “providing clinical  
24 services” from work that peer support specialists are qualified or authorized  
25 to do.

26  
27 Identification of Supervisors

28 SB 10 does not mention supervision requirements for peer support  
29 specialists or specify the amount of supervision that would be needed. Past  
30 versions of the bill have identified acceptable supervisors but left out  
31 LPCCs.

32  
33 Fingerprinting not Required for Certification

34 SB 10 does not specify fingerprinting as a requirement to obtain certification  
35 as a peer support specialist.

36  
37 Recommended Position

38 At its April 2019 meeting, the Committee recommended that the Board  
39 consider taking a “support” position. It also directed staff to discuss the  
40 concerns regarding scope of practice exclusions, identification of  
41 supervisors, and fingerprinting.

42  
43 Staff contacted the author’s office to discuss concerns and received the  
44 following feedback:

- 1 • Scope of practice exclusions: Staff recommended more specific  
2 language. The author's office expressed a willingness to review and  
3 consider the language.  
4
- 5 • Identification of supervisors: The author's office indicated that the lack of  
6 identification of appropriate supervisors for peer support specialists was  
7 an oversight.  
8
- 9 • Fingerprinting: The author's office indicated that the bill permits DHCS to  
10 include a fingerprinting requirement via regulations if it chooses.  
11

## 12 Discussion

13 Helms: Written statement received from Kenneth Edwards, CALPCC:

14 *"While CALPCC is supportive of the peer specialist bill, it is important to*  
15 *note that LPCCs are still not able to bill under the state's Medi-Cal*  
16 *program. Through multiple emails to agency directors, there has been*  
17 *little movement on remedying this issue.'*  
18

19 Maddox: This is a good opportunity to standardize the certification process  
20 for many of these staff who are already providing this work in many systems  
21 of care. Certification with core competencies would serve the interests of  
22 those with learned experience who are an asset. Licensed staff is a luxury  
23 and some agencies have few licensed staff who are over worked.  
24 Questioned if it could be considered to open supervision up to associates.  
25

26 Brew: Agrees that it may be difficult for an agency to hire a licensee.  
27 However, hesitant to allow an associate to supervise because they are still  
28 "too green." A complaint can ruin an associate's opportunity for licensure.  
29 Associates may not be trained enough to work through crisis situations or  
30 personality disorders. Some associates struggle to pass the exam or intend  
31 to be a career associate.  
32

33 Helms: Currently, there are no specifications regarding supervision. The  
34 Board is requesting that if licensees are included on the list, that all of the  
35 Board license types are included.  
36

37 Brew: Added that LEPs should also be included.  
38

39 Wong: Requests requirements specified for supervision that includes BBS  
40 licensees and requests the language that Board staff provided to address  
41 scope of practice exclusions.  
42

43 Gabriel Lam: Language should specify oversight.  
44

1 Janlee Wong, NASW-CA: Peer support and peer specialists are built into  
 2 the Mental Health Services Act. One of the intents was for people with  
 3 mental illness to have a career pathway through recovery. The National  
 4 Certified Peer Specialist certification program included a minimum of 3,000  
 5 hours of supervised work or volunteer experience providing direct peer  
 6 support. It also requires a supervisory letter of recommendation for  
 7 certification. Supervision is always provided for entry-level positions in the  
 8 mental health system.

9  
 10 **MOTION:** Support SB 10 if amended to include the language in paragraph  
 11 number three (page 267) and include a supervision component, including  
 12 but not limited to the Board’s license types, including LEPs and LPCCs.

13  
 14 Wong moved; Maddox seconded. Motion carried; 9 yea, 0 nay.

15  
 16 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

17  
 18  
 19 **g. Recommendation #7: Support Senate Bill 163 (Portantino) Healthcare**  
 20 **Coverage: Pervasive Developmental Disorder or Autism**

21  
 22 SB 163 seeks to close some of the loopholes that insurance companies use  
 23 to deny treatment for behavioral health treatment for pervasive  
 24 developmental disorder or autism (PDD/A). It also revises the definitions of  
 25 a “qualified autism service professional” and a “qualified autism service  
 26 paraprofessional.”

27  
 28 **SB 163**

- 29 1. Modifies the definition of “behavioral health treatment.” The new  
 30 definition: professional services and treatment programs based on  
 31 behavioral, developmental, behavior-based, or other evidence-based  
 32 models, including applied behavior analysis and other evidence-based  
 33 behavior intervention programs.  
 34

- 1 2. Specifies that the behavioral health treatment’s intervention plan utilizes  
2 evidence-based practices with demonstrated clinical efficacy.  
3
- 4 3. Makes the following changes to the definition of a “qualified autism  
5 service professional”:
  - 6 a) Specifies that they may provide behavioral health treatment, provided  
7 that the services are consistent with their experience, training, or  
8 education.
  - 9 b) Requires them to meet one of the following criteria:
    - 10 i. Meet the education and experience requirements to be  
11 classified as a vendor by a California regional, or
    - 12 ii. Have a Bachelor of Arts or science degree and:
      - 13 • Be an ASW, AMFT, or APCC.
- 14 4. Tightens up the definition of a “qualified autism service  
15 paraprofessional”.  
16  
17
- 18 5. Removes the clause exempting health care service plans and health  
19 insurance policies in the Medi-Cal program from the requirements to  
20 provide behavioral health treatment for PDD/A.  
21
- 22 6. Specifies that the setting, location, or time of treatment recommended by  
23 the qualified autism service provider cannot be used as the only reason  
24 to deny or reduce coverage for medically necessary services.  
25

#### 26 Intent

27 Patients with PDD/A are being denied treatment coverage for prescribed  
28 behavioral health treatment, due to loopholes in the law. This bill seeks to  
29 remove these loopholes and to increase the requirements to qualify as an  
30 autism service paraprofessional.  
31

#### 32 Prior Year Legislation

33 Last year, the Board considered a similar bill, SB 399. At its May meeting,  
34 the Board took a “support if amended” position on the bill and asked that  
35 LEPs also be included as a “qualified autism service professional.”  
36

37 Upon discussion with the author’s office and sponsor, staff learned that  
38 LEPs are already included as qualified autism service providers, which is a  
39 higher category than qualified autism service professionals, and can  
40 supervise qualified autism service professionals and paraprofessionals.  
41 The sponsor advised that including LEPs as professionals could be counter-  
42 productive, because it could allow insurance companies to require them to  
43 be supervised and to be paid at a reduced rate.  
44



1 SB 399 was vetoed by Governor Brown.

2  
3 Rebecca Gonzales, NASW-CA: NASW-CA supports SB 163.

4  
5 **MOTION:** Support SB 163 and direct staff to make any non-substantive  
6 changes.

7  
8 Brew moved; Wong seconded. Motion carried; 9 yea, 0 nay.

9  
10 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

11  
12  
13 **h. Recommendation #8: Support Senate Bill 601 (Morrell) State Agencies:**  
14 **Licensees: Fee Waiver**

15  
16 SB 601 would allow the Board to reduce or waive fees for a license or  
17 registration, license or registration renewal, or replacement of a physical  
18 display license if the licensee or registrant can demonstrate being affected  
19 or displaced by a state or federal emergency.

20  
21 SB 601 would require this to be done within one year of the proclaimed or  
22 declared emergency and requires the requestor to demonstrate being  
23 displaced or affected to the satisfaction of the state agency.

24  
25 Existing law defines three types of state emergencies:

- 26 1. State of emergency: proclaimed existence of disaster or extremely  
27 perilous conditions to safety of persons or property in the state.
- 28  
29 2. Local emergency: proclaimed existence of disaster or extremely  
30 perilous conditions to safety of persons or property in a county and/or  
31 city.

32

1 3. State of war emergency: a condition in which the state or nation is  
2 attacked by an enemy or warned by the federal government that an  
3 attack is probable or imminent.  
4

5 Intent

6 In recent years, California has experienced several costly natural disasters,  
7 including the Tubbs Fire, the Southern California mudslides, and the Camp  
8 Fire. The author's office states that these disasters have affected an  
9 estimated 381,700 businesses, and many of these individuals must replace  
10 licensing documents. The goal of this bill is to help relieve pressure on  
11 these individuals and help them get back to work.  
12

13 Potential Fiscal Impact

14 It is difficult to predict the potential fiscal impact to the Board of lost fee  
15 revenue due to declared emergencies. In most cases, any impact would be  
16 minor if several hundred licensees or registrants were affected. However,  
17 the fiscal impact could be significant if a major disaster were to occur in an  
18 area with a high concentration of licensees.  
19

20 Need for Regulation

21 If this bill were to pass, the Board may need to consider regulations to  
22 determine the process to request a fee waiver and to determine acceptable  
23 proof of being displaced or affected. Alternatively, the Board could choose  
24 to leave this decision to be made on a case-by-case basis.  
25

26 **MOTION:** Support SB 601.  
27

28 Wietlisbach moved; Wong seconded. Motion carried; 9 yea, 0 nay.  
29

30 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

31  
32

1           **i. Recommendation #9: Support if Amended Senate Bill 660 (Pan)**  
2           **Postsecondary Education: Mental Health Counselors**  
3

4           SB 660 would require specified higher educational entities in California to  
5           hire one full-time equivalent mental health counselor per 1,500 students  
6           enrolled at each of their campuses.  
7

8           SB 660

9           1) Specifies that this requirement is a minimum requirement.  
10

11           2) Defines a “mental health counselor” as someone who meets both of the  
12           following:

- 13           • Provides individual and group counseling, crisis intervention,  
14           emergency services, referrals, program evaluation and research, or  
15           outreach and consultation interventions to the campus community, or  
16           any combination of these; and
- 17           • Is licensed in California.  
18

19           3) Requires educational institutions subject to this requirement to report to  
20           the legislature every three years on how funding was spent and on the  
21           number of mental health counselors employed on each of its campuses.  
22           The report must include the following:

- 23           • Results from a campus survey and focus groups regarding student  
24           needs and challenges regarding their mental health, emotional well-  
25           being, sense of belonging, and academic success; and
- 26           • Campus data on attempted suicides.  
27

28           Intent

29           The International Association of Counseling Services (IACS) recommends  
30           one full-time equivalent mental health counselor for every 1,000 to 1,500  
31           students. The UC system reports that their ratio falls within this  
32           recommended range; however, it is estimated to be significantly higher for  
33           the CSU system. It is difficult to know exact ratios due to a lack of reporting  
34           and data. The author believes this bill will address the mental health crisis  
35           facing California’s public higher education system.  
36

37           Recommended Position

38           At its April 2019 meeting, the Committee recommended that the Board  
39           consider taking a “support if amended” position on the bill, and suggested  
40           the following amendments:

- 41           • The bill defines a “mental health counselor” as someone who provides  
42           specified services and who is licensed in the State of California by the  
43           applicable licensing entity. The Committee suggested that it would be  
44           clearer to specify the acceptable licensing boards or license types.

- 1                   • The bill specifies that acceptable “mental health counselors” hold a  
2                   license. However, the Committee suggested that the Board’s registrants  
3                   be considered acceptable and count toward the ratio as well.  
4

5                   Staff relayed these suggestions to the author’s office. They noted the  
6                   potential for some concern about including registrants, as it could  
7                   encourage schools to hire more registrants for less pay.  
8

9                   Discussion

10                  Brew: The model in many mental health service clinics on campuses  
11                  provide for trainee-level staff, and currently, they do not receive pay. Half of  
12                  associates do not receive pay, so this is not problematic. Campuses are  
13                  good training grounds. Her students are currently working in college  
14                  counseling settings. Current CSU ratios are 2,500 students to one  
15                  counselor, and many students are referred out due to the long wait list.

16                  Concerned about funding. If registrants are not included, funds will be cut  
17                  from students in some other area to hire licensees.  
18

19                  Wietlisbach: Mental health on campus is vital and should be priority for  
20                  students.  
21

22                  Maddox: Associates who provide services are a benefit as they develop  
23                  professionally. The sponsor’s argument that associates are going to be  
24                  abused is a disingenuous argument because any behavioral health program  
25                  will have sufficient supervisory oversight. It should not be limited to licensed  
26                  individuals.  
27

28                  Chiu: The Board should support this bill.  
29

30                  Kathy Atkins, CAMFT: CAMFT struggled with the lack of definition of  
31                  mental health counselor, concerns about unintended consequences to  
32                  associates and trainees with current positions or future positions. CAMFT is  
33                  waiting for analysis coming out of suspense file in Appropriations  
34                  Committee. The sponsor is aware of CAMFT’s concerns. CAMFT will re-  
35                  engage with the sponsor following the current committee status.  
36

37                  Rebecca Gonzales, NASW-CA: NASW-CA supports SB 660 as written.  
38

39                  **MOTION:** Support SB 660.  
40

41                  Wietlisbach moved; Disposto seconded. Motion carried; 9 yea, 0 nay.  
42

1

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

2

3

4

**XIX. Discussion and Possible Action Regarding Assembly Bill 184 (Mathis)  
Board of Behavioral Sciences: Registrants and Licensees**

5

6

7

This item was removed from the agenda.

8

9

**XX. Discussion and Possible Action Regarding Senate Bill 425 (Hill) Health  
Care Practitioners: Licensee’s File: Probationary Physician’s and  
Surgeon’s Certificate: Unprofessional Conduct**

10

11

12

13

**SB 425**

14

1. Requires a health facility, clinic, or other entity that makes arrangement allowing healing arts licensees to practice or provide care for patients, to report any allegation of licensee sexual abuse or sexual misconduct to the applicable licensing board within 15 days of receiving the allegation. This includes, but is not limited to, arrangements where licensees have full staff privileges, or active, limited, auxiliary, provisional, temporary, or courtesy staff privileges, locum tenens arrangements, and contractual arrangements.

21

22

2. Requires any employee or healing arts licensee that works in any health facility, clinic, or other entity as described in item 1 above, who has knowledge of any allegation of sexual abuse or sexual misconduct by a healing arts licensee to file a report with the applicable licensing board and the administration of the health facility, clinic or other entity, within 15 days of knowing about it.

23

24

25

26

27

28

29

3. Makes a willful failure to file a report punishable by a fine of up to \$100,000 per violation and may also constitute unprofessional conduct. The fine can be imposed in a civil or administrative action or brought by the applicable licensing board.

30

31

32

33

- 1 4. Makes any failure to file a report punishable by a fine of up to \$50,000 per  
2 violation. The fine can be imposed in a civil or administrative action or  
3 brought by the applicable licensing board and shall be proportional to the  
4 severity of the failure to report.  
5
- 6 5. States that a person or entity shall not incur civil or criminal liability as a  
7 result of making the required report if made in good faith.  
8
- 9 6. Requires the applicable licensing board to investigate the circumstances  
10 underlying a required report it receives.  
11

### 12 Background and Intent

13 The author is seeking to close legal loopholes that can allow a practitioner with  
14 repeated sexual abuse and misconduct complaints to keep practicing at a  
15 health facility for years without their licensing board being notified.  
16

17 The issue was brought to light by a May 2018 report by the L.A. Times, which  
18 disclosed multiple unresolved complaints by a USC gynecologist who had  
19 worked at the university for almost 30 years. None of the complaints had been  
20 reported to the Medical Board.  
21

22 The author of this bill conducted a hearing on sexual misconduct reporting in  
23 the medical profession in response to the L.A. Times report. The hearing found  
24 that there are different reporting standards for different types of health facilities.  
25 For example, some facility types have no requirement to report sexual abuse or  
26 misconduct allegations to a licensing board. Some have peer review groups  
27 that decide whether a report should be sent to the licensing board.  
28

### 29 Expansion of Setting Reporting Requirements

30 Sections 805 and 805.01 require peer review bodies, licensed health care  
31 facilities, or clinics to make reports to the Board under certain circumstances.  
32 These circumstances include for sexual misconduct, if there has been a formal  
33 investigation and if a final decision or recommendation has been made.  
34 However, this does not guarantee a report will be made to the Board for sexual  
35 misconduct for two reasons: (1) different peer review bodies can have different  
36 standards; (2) a report is only required if a final decision or recommendation  
37 has been made.  
38

39 This bill expands reporting by requiring a report to be filed for any allegation of  
40 sexual abuse or sexual misconduct. The individuals who must report are also  
41 greatly expanded: a health facility or clinic, or other entity that makes  
42 arrangements for a healing arts licensee to practice or provide care for patients.  
43 The reporting requirements also extend to employees of these entities.  
44

45 Staff asked the author's office to clarify whether "other entities" that arrange for  
46 a Board licensee to practice or provide care for patients would include all

1 practice settings in the reporting requirements. The author's office indicated  
2 that their intent is to ensure that all instances or complaints of sexual  
3 misconduct be reported in any setting.  
4

#### 5 Potential Fiscal Impact on Board Operations

6 SB 425 could result in an increase in complaints because it significantly  
7 changes the reporting requirements to the Board for licensee sexual  
8 misconduct. It is unknown if the new reporting requirements will lead to a  
9 significant increase in complaints. Complaints by a 3<sup>rd</sup> party are more likely to  
10 close because the victim does not wish to participate and without their  
11 participation, there is often a lack of evidence. For this reason, staff believes  
12 that the increased caseload would be minimal and could be absorbed within  
13 existing resources.  
14

#### 15 Recommended Position

16 At its April 2019 meeting, the Committee decided not to recommend a position  
17 on continue to watch the bill.  
18

#### 19 Discussion

20 Wietlisbach: Concerned that there will be reporting when there is any  
21 allegation, regardless whether the allegation has been substantiated. However,  
22 if the allegation cannot be substantiated, then it goes nowhere. It's a slippery  
23 slope.  
24

25 Chiu: Does not support SB 425. The bill lacks a definition of allegation and  
26 believes the bill is flawed.  
27

28 Disposti: There's a need for this, but the bill is not responding to the need. The  
29 bill is not clear.  
30

31 Connolly: Requested that staff reach out to the author's office and provide  
32 feedback regarding lack of specificity, definition of allegation and how that could  
33 be problematic.  
34

35 Madsen: If an allegation came to the Board, it would have to investigate, but  
36 the Board usually waits for the entity to complete their investigation first. The  
37 Board may receive an allegation but may not receive any patient information. If  
38 patient information is received, the Board would have to reach out to that  
39 individual and ask the him or her to participate in the investigation.  
40

41 Maddox: This does not hold the institutions, where the abuse occurred,  
42 accountable.  
43

44 The Board did not take a position and directed staff to relay concerns to the  
45 author.  
46

1 **XXI. Discussion and Possible Action Regarding Assembly Bill 8 (Chu) Pupil**  
2 **Health: Mental Health Professionals**

3  
4 AB 8 would require schools to employ at least one mental health professional  
5 for every 400 pupils.  
6

7 AB 8

8 1. By December 31, 2022 requires schools to have at least one mental health  
9 professional for every 400 pupils generally accessible to pupils on campus  
10 during school hours.

11  
12 2. Requires schools with less than 400 pupils do at least one of the following:

13 a. Have at least one mental health professional generally accessible to  
14 pupils on campus during school hours; or

15 b. Employ at least one mental health professional to provide services at  
16 multiple schools; or

17 c. Enter into an agreement with a county or community-based organization  
18 for at least one mental health professional to provide services at the  
19 school.

20  
21 3. Outlines the role of the required mental health professional in the school,  
22 which includes providing individual and small group counseling.  
23

24 4. Requires a school mental health professional who does not hold a PPS  
25 credential or a services credential with a specialization in health to be under  
26 the supervision of an individual with a PPS credential or a services  
27 credential in administrative services in order to work with pupils.  
28

29 5. Defines a “mental health professional” as:

30 a. An individual who holds a PPS credential that authorizes the person to  
31 perform school counseling, school psychology, or school social work.

32 b. An individual who holds a services credential with a specialization in  
33 health for a school nurse.

34 c. A professional licensed in California to provide mental health services,  
35 including, but not limited to, psychologists, marriage and family  
36 therapists, and clinical counselors.

37 d. A marriage and family therapist intern or trainee.

38 e. A clinical counselor intern or trainee.  
39

40 Intent

41 The author stated, “Schools provide the ideal place to reach all students,  
42 especially those who currently face barriers to access.”  
43



1 The author also notes that he will be requesting funds through the budget  
2 process so that schools can implement the bill.

#### 3 4 Debate over Appropriate License/Credential

5 This bill requires a mental health professional working in a school who does not  
6 hold a services credential to be supervised by an individual with a services  
7 credential. This appears to already be a requirement in regulations.

8  
9 One group opposing the bill, the California Teachers Association (CTA),  
10 believes that only individuals holding a PPS credential should count toward the  
11 ratio. They note that these personnel are trained specifically to deal with  
12 children, as opposed to other mental health licensees trained to work in clinical,  
13 but not school, settings.

#### 14 15 Inclusion of Clinical Social Workers

16 This bill does not include LCSWs, ASWs, or social work interns in the definition  
17 of "mental health professionals." The definition does not necessarily limit  
18 clinical social workers from this definition, but they are not listed specifically.

#### 19 20 Reference to Marriage and Family Therapist and Professional Clinical 21 Counselor "Interns"

22 This bill refers to LMFT and LPCC registrants as "interns". The "intern"  
23 references should be changed to "associate".

24  
25 Connolly: Supports AB 8, although some adjustments are needed in the  
26 language.

27  
28 Wong: Supports AB 8. However, is concerned about other professionals  
29 (nurses) that should not be providing mental health clinical services. Should  
30 the Board insert language that excludes them from mental health clinical  
31 services?

32  
33 Madsen: Comfortable the way the bill is written.

34  
35 Helms: The bill is trying to accomplish something very specific and changing  
36 the language may change the intent and do more harm.

37  
38 Rebecca Gonzales, NASW-CA: NASW-CA supports AB 8; however,  
39 associates and trainees should be defined separately in its own category. The  
40 author intends to amend the bill to include LCSWs and ASWs.

41  
42 Kathy Atkins, CAMFT: CAMFT supports AB 8.

43  
44 **MOTION:** Support AB 8.

45  
46 Disposti moved; Chiu seconded. Motion carried; 9 yea, 0 nay.

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Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Dr. Leah Brew	x				
Deborah Brown				x	
Dr. Peter Chiu	x				
Betty Connolly	x				
Max Disposti	x				
Alexander Kim	x				
Gabriel Lam	x				
Jonathan Maddox	x				
Vicka Stout				x	
Dr. Christine Wietlisbach	x				
Christina Wong	x				

**XXII. Discussion and Possible Action Regarding Assembly Bill 544 (Brough) Professions and Vocations: Inactive License Fees and Accrued and Unpaid Renewal Fees**

AB 544

1. Prohibits boards under DCA, including this Board, from requiring a person to pay accrued and unpaid renewal fees as a condition of reinstating an expired license or registration.
2. Prohibits the fee to renew a license in an inactive status from being more than 50 percent of the active renewal fee.

Intent

The author’s office stated:

*“For someone who might have decided to let his/her license lapse for a period of time in order to focus on raising children, dealing with personal or family illness, etc., it does not seem fair to require them to pay several years of accrued renewal fees to reinstate the license and start working again.”*

Current Practice

The Board’s inactive renewal fees are already one-half of the active renewal fees.

The Board currently charges accrued unpaid renewal fees in order to renew any license that is within three years of its expiration date. Licensees that have been expired more than three years must reapply for licensure. The Board does not charge accrued unpaid renewal fees to renew a registration.

1 Number of Delinquent Licensees Renewing

2 For each of the past 4 years, the Board has seen fewer than 50 cases per year  
3 of licensees owing back renewal fees for its four license types combined.  
4 Therefore, any fiscal impact of this bill is estimated to be minor.  
5

6 Amendment Needed: BPC §4989.68

7 Section 4989.68(a)(4) of the LEP licensing statute regarding accrued fees is  
8 not being amended in this bill. If the bill moves forward, this section should be  
9 amended to be consistent with section 4989.36. The author's office indicated  
10 they are working to address the issue.  
11

12 Amendment Needed: BPC §4999.104

13 The bill strikes section 4999.104(b) of the LPCC statute, which states that to  
14 renew an expired license, the licensee must "pay all fees that would have been  
15 paid if the license had not become delinquent." Striking this sentence is  
16 consistent with the intent of the bill to not charge back-fees; however, unlike the  
17 Board's other three license types, there is no specification in this section that  
18 the renewing licensee still has to pay the current renewal fee. This should be  
19 specified. The author's office indicated they are working to address the issue.  
20

21 The Board did not take a position on AB 544.  
22

23 **XXIII. Discussion and Possible Action Regarding Assembly Bill 1529 (Low)**  
24 **Telephone Medical Advice Services**

25 This item was removed from the agenda.  
26  
27

28 **XXIV. Update on Board-Sponsored Legislation**

29 Board staff is currently pursuing the following legislative proposals:  
30

31 1. SB 679 (Bates) Healing Arts: Therapists and Counselors: Licensing

32 Status: SB 679 passed the Senate and is now in the Assembly.  
33

34 2. AB 630 (Low) Board of Behavioral Sciences: Marriage and Family  
35 Therapists: Clinical Social Workers: Educational Psychologists: Professional  
36 Clinical Counselors: Required Notice  
37

38 Status: AB 630 passed the Assembly and is now in the Senate.  
39

40 3. SB 786 (Senate Business, Professions, and Economic Development  
41 Committee): Healing Arts (Omnibus Bill)

42 The Board requested eight items be included in SB 786. At this time, the  
43 Committee has indicated that one item has been rejected for inclusion. All  
44 other requested items will likely be included. The rejected item is as  
45 follows:

1 *Amend BPC Sections 4980.50, 4989.22, 4992.1, and 4999.52 – Pending*  
2 *Complaints or Investigations and Examinations*

3  
4 *These sections outline, for each of the Board’s four license types, the*  
5 *parameters regarding examination when an applicant has a pending*  
6 *complaint against him or her or is under Board investigation. The sections*  
7 *permit the Board to deny admission to an exam, or to refuse to issue a*  
8 *license if an accusation or a statement of issues has been filed against the*  
9 *applicant. The Board’s Enforcement Unit also sees cases where it issues a*  
10 *petition to revoke, while the applicant is in the process of applying to take a*  
11 *Board exam or is applying for licensure. The Board believes it is also*  
12 *appropriate to deny exam admission or refuse to issue a license in this case*  
13 *as well.*

14  
15 Status: SB 786 is in the Senate Appropriations Committee.

16  
17 **XXV. Update on Board Rulemaking Proposals**

18  
19 Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)

20 The proposal was submitted to DCA to begin the initial review process on April  
21 18, 2019.

22  
23 Enforcement Process

24 The proposal was submitted to DCA to begin the initial review process in July  
25 2017. This regulation package was placed on hold due to the passage of AB  
26 2138 and remains on hold pending passage of the AB 2138 regulations.

27  
28 Examination Rescoring; Application Abandonment; APCC Subsequent  
29 Registration Fee

30 The proposal was submitted to DCA to begin the initial review process in April  
31 2018 and was approved in January 2019 for filing with the Office of  
32 Administrative Law. The public comment period ended on April 8, 2019, and  
33 the package was submitted to DCA to initiate the final review process in April  
34 2019.

35  
36 Supervision

37 This proposal was submitted to DCA to begin the initial review process in April  
38 2019.

39  
40 Brew: Expressed concern regarding lengthy regulation process.

41  
42 Wong: It has been taking so long to pass regulation proposals, and it has  
43 created more burden for Board staff.

44  
45 Connolly: This concern was shared with legal, and stakeholders have  
46 expressed concerns.

1 **XXVI. Public Comment for Items not on the Agenda**

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Brew: Stated that Gabriel Lam, Alexander Kim, and Vicka Stout will not be continuing on the Board, and acknowledged them for their work this past year. Dr. Christine Wietlisbach will be missed.

7 **XXVII. Suggestions for Future Agenda Items**

8

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10

11

12

13

14

Brew: Exploring continuing education, in general and in law & ethics, for those who have been associates for a lengthy period of time.

12 **XXVIII. Adjournment**

13

14

The Board adjourned at 4:15 p.m.

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### **2019/2020 Budget**

Following adjustments for employee compensation, the Board's budget for fiscal year (FY) 2019/2020 is now \$12,597,000. As of February 19, 2020, the Board has spent \$6,966,946 (55%) of its budget.

- Personnel \$3,114,326 (25%)
- Operating Expenses \$3,062,200 (24%)
- Enforcement \$ 790,420 (6%)

Current projections indicate that the Board will end the year with nearly \$600,000 in unexpended funds. The projections include additional expenses for a \$175,000 contract to convert all documents on the Board's website into documents that are compliant with the American Disabilities Act (ADA) as required by Assembly Bill 434, Chapter 780, Statutes of 2017.

### **General Fund Loans**

The Board does not have any outstanding loans to the General Fund. All prior loans to the General Fund have been repaid to the Board.

### **Board Fund Condition**

The Board's Fund Condition for FY 2019/2020 reflects a 2.1-month reserve. This figure assumes the implementation of the Board's request to increase fees.

### **Fi\$Cal Update**

The DCA Budget Office reports that it is continuing to work to closeout FY 2018/2019. FY 2017/2018 was recently reconciled with the State Controller's Office. Additionally, the Budget Office is collaborating with the Office of Information Services to generate financial reports to provide Boards and Bureaus with a level of detail that will reflect expenditures on a monthly. These reports are in the final review process.

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**BOARD OF BEHAVIORAL SCIENCES  
FY 2019-20 BUDGET REPORT  
FM7**

OBJECT DESCRIPTION	FY 2018-19		FY 2019-20				
	ACTUAL	PRIOR YEAR	CY REVISED	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES (Prelim FM12)	EXPENDITURES (MONTH 7)	BUDGET 2019-20	EXPENDITURES (2/19/2020 Activity Log)			
<b>PERSONNEL SERVICES</b>							
Salary & Wages (Staff)	2,772,619	1,779,963	3,635,000	1,828,246	50%	3,151,812	483,188
Temp Help	282,247	146,420	0	28,841	0%	57,682	(57,682)
Statutory Exempt (EO)	108,288	65,695	91,000	67,991	75%	117,000	(26,000)
Board Member Per Diem	16,600	6,800	13,000	1,300	10%	13,000	0
Overtime/Flex Elect	104,857	15,379	2,000	21,404	1070%	35,000	(33,000)
Staff Benefits	1,758,138	1,179,553	2,364,000	1,166,544	49%	2,016,000	348,000
<b>TOTALS, PERSONNEL SVC</b>	<b>5,042,749</b>	<b>3,193,810</b>	<b>6,105,000</b>	<b>3,114,326</b>	<b>51%</b>	<b>5,390,494</b>	<b>714,506</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>							
General Expense	151,532	207,859	83,000	35,698	43%	72,000	11,000
Printing	110,545	47,996	55,000	107,901	196%	125,000	(70,000)
Communication	22,060	2,520	22,000	5,682	26%	11,364	10,636
Postage	76,370	0	72,000	1,180	2%	70,000	2,000
Insurance	17,250	0	0	140	0%	280	(280)
Travel In State	60,481	6,553	61,000	6,326	10%	12,652	48,348
Travel, Out-of-State	607	767	72,000	(409)	-1%	72,000	0
Training	2,702	1,250	29,000	500	2%	28,000	1,000
Facilities Operations	441,988	206,351	229,000	251,176	110%	412,000	(183,000)
Utilities	0	0	4,000	0	0%	4,000	0
C & P Services - Interdept.	0	0	15,000	269	2%	15,000	0
Attorney General	1,123,302	685,354	1,527,000	551,870	36%	1,151,000	376,000
Office of Administrative Hearings	310,425	173,880	258,000	95,050	37%	221,050	36,950
C & P Services - External	891,833	1,307,280	905,000	1,053,004	116%	1,323,000	(418,000)
DCA Pro Rata	2,576,648	0	2,529,000	1,475,250	58%	2,529,000	0
DOI - Investigations	555,300	0	246,000	143,500	58%	246,000	0
Interagency Services	0	24,537	1,000	15,762	1576%	10,000	(9,000)
IA w/ OPES	323,944	157,426	325,000	79,054	24%	298,361	26,639
Consolidated Data Center	16,909	1	31,000	3	0%	1,000	30,000
Information Technology	2,769	56,377	14,000	5,257	38%	10,514	3,486
Equipment	39,980	455	45,000	25,407	56%	30,000	15,000
Other Items of Expense	1,125	0	0	0	0%	0	0
Vehicle Operations	0	0	19,000	0	0%	19,000	0
<b>TOTALS, OE&amp;E</b>	<b>6,725,770</b>	<b>2,878,606</b>	<b>6,542,000</b>	<b>3,852,620</b>	<b>59%</b>	<b>6,661,221</b>	<b>(119,221)</b>
<b>TOTAL EXPENSE</b>	<b>11,768,519</b>	<b>6,072,416</b>	<b>12,647,000</b>	<b>6,966,946</b>	<b>55%</b>	<b>12,051,715</b>	<b>595,285</b>
Sched. Reimb. - Fingerprints	(10,535)	(6,016)	(24,000)	(11,856)	49%	(24,000)	0
Sched. Reimb. - Other	(574)	0	(26,000)	0	0%	(26,000)	0
Unsched. Reimb. - Other	(242,086)	(128,193)	0	(184,108)	0%	0	0
<b>NET APPROPRIATION</b>	<b>11,515,324</b>	<b>5,938,207</b>	<b>12,597,000</b>	<b>6,770,982</b>	<b>54%</b>	<b>12,001,715</b>	<b>595,285</b>

**SURPLUS/(DEFICIT): 4.7%**

**0773 - Behavioral Science  
Analysis of Fund Condition**

Prepared 12/23/2019

(Dollars in Thousands)

Governor's Budget 2020-21  
w/ AB 434 Funding

	PY 2018-19	CY 2019-20	Governor's Budget BY 2020-21	BY+1 2021-22
<b>BEGINNING BALANCE</b>				
Prior Year Adjustment	\$ 5,165	\$ 6,404	\$ 2,349	\$ 1,641
Adjusted Beginning Balance	\$ 1,413	\$ -	\$ -	\$ -
	\$ 6,578	\$ 6,404	\$ 2,349	\$ 1,641
<b>REVENUES AND TRANSFERS</b>				
Revenues:				
4121200 Delinquent fees	\$ 198	\$ 201	\$ 203	\$ 203
4127400 Renewal fees	\$ 5,497	\$ 5,512	\$ 6,700	\$ 7,832
4129200 Other regulatory fees	\$ 196	\$ 225	\$ 232	\$ 232
4129400 Other regulatory licenses and permits	\$ 3,532	\$ 3,486	\$ 5,537	\$ 7,553
4150500 Interest Income - Interfund Loans	\$ 97	\$ -	\$ -	\$ -
4143500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -
4163000 Income from surplus money investments	\$ 120	\$ 19	\$ 40	\$ 31
4171400 Escheat of unclaimed checks and warrants	\$ 53	\$ 53	\$ 53	\$ 53
4171500 Escheat of unclaimed property	\$ -	\$ -	\$ -	\$ -
4172500 Miscellaneous revenues	\$ 6	\$ 11	\$ 11	\$ 11
Totals, Revenues	\$ 9,699	\$ 9,507	\$ 12,776	\$ 15,915
Transfers from Other Funds				
F00001 GF loan repayment per item 1110-011-0773 BA of 2008	\$ -	\$ -	\$ -	\$ -
F00001 GF loan repayment per item 1110-011-0773 BA of 2011	\$ 3,300	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 12,999	\$ 9,507	\$ 12,776	\$ 15,915
Totals, Resources	\$ 19,577	\$ 15,911	\$ 15,125	\$ 17,556
<b>EXPENDITURES</b>				
Disbursements:				
8880 FSCU (State Operations)	\$ -	\$ -	\$ -	\$ -
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations) AB 434 Funding	\$ 12,115	\$ 12,597	\$ 12,550	\$ 12,927
8880 Financial Information System for California (State Operations)	\$ -	\$ -	\$ 179	\$ -
9892 Supplemental Pension Payment (State Operations)	\$ 1	\$ -1	\$ -	\$ -
9892 Supplemental Pension Payment (State Operations)	\$ 100	\$ 212	\$ 212	\$ 212
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 957	\$ 754	\$ 543	\$ 543
Total Disbursements	\$ 13,173	\$ 13,562	\$ 13,484	\$ 13,682
<b>FUND BALANCE</b>				
Reserve for economic uncertainties	\$ 6,404	\$ 2,349	\$ 1,641	\$ 3,875
Months in Reserve	5.7	2.1	1.4	3.3



**Board Statistics**

Attached for your review are the quarterly performance statistics for the second quarter of FY 2019/2020.

**Licensing Program Applications**

Overall, licensing application volumes decreased 39% in the second quarter of FY 2019/2020.

<b>APPLICATION</b>	<b>2<sup>nd</sup> QTR FY 19/20 VOLUMES</b>	<b>1<sup>st</sup> QTR FY 19/20 VOLUMES</b>	<b>Difference</b>
AMFT Registration	484	1127	-57%
AMFT Registration Subsequent Number	167	204	-18%
LMFT Examination	720	793	-9%
ASW Registration	487	1416	-65%
ASW Registration Subsequent Number	164	164	0
LCSW Examination	602	561	+7%
LEP Examination	10	58	-83%
APCC Registration	250	484	-48%
APCC Registration Subsequent Number	12	12	0
LPCC Examination	94	109	-13%
<b>Total Applications</b>	<b>2990</b>	<b>4928</b>	<b>-39%</b>

Because of the increased volume of applications and recent staff vacancies, the Board recognized an increase in processing times. The Board has been able to refill some vacancies and expects the processing times to decrease within the coming months.

<b>APPLICATION</b>	<b>2<sup>nd</sup> QTR FY 19/20 PROCESSING DAYS</b>	<b>1<sup>st</sup> QTR FY 19/20 PROCESSING DAYS</b>	<b>Difference</b>
AMFT Registration	84	40	+44
LMFT Examination	143	113	+30
ASW Registration	21	28	-7
LCSW Examination	74	66	+8
LEP Examination	22	17	+5
APCC Registration	19	20	-1
LPCC Examination	34	13	+21

**Licensing Population**

A total of 1,348 initial licenses were issued in the second quarter. As of February 1, 2020 the Board has 119,906 licensees and registrants. This figure includes all licenses that have been issued that are current and/or eligible to renew.

<b>LICENSE POPULATION (As of 2/1/2020)</b>				
<b>LICENSE TYPE</b>	<b>ACTIVE</b>	<b>CURRENT INNACTIVE</b>	<b>DELINQUENT</b>	<b>TOTAL POPULATION</b>
AMFT	12,832	N/A	3,474	16,306
ASW	12,968	N/A	3,657	16,625
APCC	3,167	N/A	1,567	4,734
LMFT	40,241	4,285	2,883	47,408
LCSW	26,455	2,405	1,744	30,604
LEP	1,424	393	279	2,096
LPCC	1,930	140	63	2,133
<b>TOTAL</b>	<b>99,017</b>	<b>7,233</b>	<b>13,666</b>	<b>119,906</b>

### **Renewal Activity**

Overall, renewal activity decreased by 24% in the second quarter of FY 2019/2020

<b>RENEWALS</b>	<b>2<sup>nd</sup> QTR FY 19/20</b>	<b>1<sup>st</sup> QTR FY 19/20</b>	<b>Difference</b>
AMFT	2,330	3,470	-33%
LMFT	4,636	4,989	-7%
ASW	1,772	3,660	-52%
LCSW	2,907	3,207	-9%
LEP	174	228	-24%
APCC	523	741	-29%
LPCC	234	243	-4%
<b>TOTAL Renewals</b>	<b>12,576</b>	<b>16,538</b>	<b>-24%</b>

### **Administrative Applications**

Overall, administrative application volumes decreased by 16% in the second quarter of FY 2019/2020

<b>APPLICATION</b>	<b>2<sup>nd</sup> QTR FY 19/20 VOLUMES</b>	<b>1<sup>st</sup> QTR FY 19/20 VOLUMES</b>	<b>Difference</b>
NAME CHANGE	347	389	-11%
ADDRESS CHANGE	2,294	2,935	-22%
DUPLICATE LICENSE	618	732	-16%
LICENSE CERTIFICATION	424	342	+24%
<b>TOTAL Admin Applications</b>	<b>3,683</b>	<b>4,398</b>	<b>-16%</b>

### **Examination Program**

Attached for your review are the examination statistics by school. A total 4,387 examinations were administered in the second quarter of FY 2019/2020.

	<b>TOTAL 2<sup>nd</sup> QTR 19/20</b>	<b>PASS % 2<sup>nd</sup> QTR 19/20</b>	<b>TOTAL FIRST TIME 2<sup>nd</sup> QTR 19/20</b>	<b>PASS % FIRST TIME 2<sup>nd</sup> QTR 19/20</b>	<b>TOTAL 1<sup>st</sup> QTR 19/20</b>	<b>PASS % 1<sup>st</sup> QTR 19/20</b>	<b>TOTAL FIRST TIME 1<sup>st</sup> QTR 19/20</b>	<b>PASS % FIRST TIME 1<sup>st</sup> QTR 19/20</b>
<b>LMFT L/E</b>	984	74%	731	80%	1,276	80%	994	85%
<b>LMFT Clinical</b>	1,120	64%	670	75%	1,107	67%	688	79%
<b>LCSW L/E</b>	889	68%	648	74%	1,334	76%	889	80%
<b>LCSW ASWB</b>	929	57%	559	76%	839	58%	521	73%
<b>LPCC L/E</b>	303	62%	227	65%	400	62%	311	64%
<b>LPCC NCMH CE</b>	100	70%	81	73%	102	71%	83	72%
<b>LEP</b>	62	65%	42	81%	60	62%	39	74%
<b>TOTAL</b>	4,387				5,118			

Twelve examination development workshops were conducted from September 30 to December 31, 2019.

The Office of Professional Examination Services (OPES) completed are in the process of completing the LMFT Occupational Analysis. The occupational analysis is a study of the profession and provides the basis for the LMFT Written Clinical licensing examination. After board staff review, the report will be presented at the May board meeting.

### **Enforcement Program**

During the second quarter, the Enforcement staff received 533 consumer complaints and 245 criminal convictions. A total of 732 cases were closed and 43 cases were referred to the Attorney General's office for formal discipline. As of December 31, 2019, there were 134 cases pending at the Attorney General's Office. A total of 24

Accusations and 5 Statement of Issues were filed this quarter. The number of final citations for the second quarter was 60.

There was a total of 35 Final Disciplinary Orders. The average number of days to complete Formal Discipline in the second quarter was 461 days. This statistic is measured by the average number of days to complete the Enforcement process for cases investigated and transmitted to the AG's Office for formal discipline within the reference period. The DCA Performance Measure to complete Formal Discipline is 540 days.

The average number of days the case is with the Attorney General's Office in the second quarter was 357. This statistic is measured from the date the Board refers the matter to the Attorney General's to the date the case is complete. The average number of days to complete all Board investigations in the first quarter was 49 days.

**Continuing Education Audits for 2019**

During 2019 the board performed 738 continuing education audits. The overall pass rate was 71%.

	<b>Total</b>	<b>PASS</b>	<b>FAIL</b>	<b>% Pass</b>	<b>% Fail</b>
<b>LMFT</b>	412	288	124	70%	30%
<b>LCSW</b>	278	206	72	74%	26%
<b>LEP</b>	24	13	11	54%	46%
<b>LPCC</b>	24	14	10	58%	42%
<b>Grand Total</b>	738	521	217	71%	29%

**Outreach Activity**

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

- |                    |   |
|--------------------|---|
| November 2, 2019   | NASW Conference, San Mateo, CA            |
| November 7-9, 2019 | ASWB Annual Delegate Meeting, Orlando, FL |
| November 8-9, 2019 | CAMFT Fall Conference, Santa Ana, CA      |
| November 20, 2019  | Orange County LMFT Consortium             |
| November 21, 2019  | Inland Empire LMFT Consortium             |
| December 6, 2019   | Los Angeles LMFT Consortium               |
| January 15, 2019   | Orange County Consortium                  |
| February 8, 2020   | CAMFT Job Fair, Orange County             |
| February 20, 2020  | Inland Empire Consortium                  |

## **Exam Vendor**

On November 4, 2019 the Board initiated a contract with Pearson Vue. This contract has been fully executed and at the time of this memo fully implemented. Pearson Vue will be currently administering the CA Law & Ethics, LMFT Clinical and LEP Standard Written exam. Exam candidates for all exam types currently able to schedule and take exams.

Pearson Vue is a recognized leader in computer-based-testing and the currently the administrator of two of the Clinical exams required for licensure in California: Association of Social Work Boards Clinical Exam (ASWB) and the National Clinical Mental Health Counselor Exam (NCMHCE). They have twenty-seven sites within CA and have and more than two hundred sites nationally. Pearson Vue also allows testing at select test centers on military installations. As part of the contract, Pearson VUE is responsible for approving and providing special accommodations for qualified exam candidates.

At the time of this memo Board staff is manually entering all exam scores. Board staff, the Department of Consumer Affairs IT Department, and Pearson VUE's IT staff are working to get the scores to transmit via the interface. This process should be fully implemented by early March.

The Board also plans to review exit surveys and contact individuals who have taken their exam with Pearson VUE to ensure that the Board's expectations regarding customer service levels are met.



**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

LICENSE TYPE: LCSW

**EXAM: LCSW Clinical Exam (ASWB)**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Azusa Pacific University, Azusa	103	23	15	65%	8	35%	11	9	82%	2	18%
California State University, Bakersfield	002	20	10	50%	10	50%	11	8	73%	3	27%
California State University, Chico	003	13	7	54%	6	46%	6	5	83%	1	17%
California State University, Dominguez Hills	004	25	13	52%	12	48%	14	10	71%	4	29%
California State University, Fresno	005	21	5	24%	16	76%	9	5	56%	4	44%
California State University, Fullerton	006	20	18	90%	2	10%	19	17	89%	2	11%
California State University, Hayward	007	41	24	59%	17	41%	22	16	73%	6	27%
California State University, Long Beach	008	79	36	46%	43	54%	41	26	63%	15	37%
California State University, Los Angeles	009	46	23	50%	23	50%	19	13	68%	6	32%
California State University, Northridge	010	36	16	44%	20	56%	19	10	53%	9	47%
California State University, Sacramento	011	49	25	51%	24	49%	34	22	65%	12	35%
California State University, San Bernardino	012	29	12	41%	17	59%	19	12	63%	7	37%
California State University, Stanislaus	013	29	13	45%	16	55%	10	9	90%	1	10%
Humboldt State University, Arcata	014	6	4	67%	2	33%	3	3	100%	0	0%
Loma Linda University, Orinda	125	19	5	26%	14	74%	4	3	75%	1	25%
Monterey Bay State University	018	8	6	75%	2	25%	8	6	75%	2	25%
OUT-OF-COUNTRY	400	6	1	17%	5	83%	0	0		0	
Out-of-State	300	109	80	73%	29	27%	83	69	83%	14	17%
San Diego State University	015	25	21	84%	4	16%	19	19	100%	0	0%
San Francisco State	016	14	6	43%	8	57%	3	3	100%	0	0%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
University											
San Jose State University	017	52	26	50%	26	50%	31	22	71%	9	29%
San Marcos University	019	6	6	100%	0	0%	5	5	100%	0	0%
UC, Berkeley	050	16	16	100%	0	0%	16	16	100%	0	0%
UC, Los Angeles	052	20	13	65%	7	35%	13	10	77%	3	23%
University of Southern California, Los Angeles	145	214	129	60%	85	40%	137	105	77%	32	23%

**LCSW Clinical Exam (ASWB) TOTAL: 926 530 57% 396 43% 556 423 76% 133 24%**

**EXAM: LCSW Law and Ethics**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Azusa Pacific University, Azusa	103	9	7	78%	2	22%	5	3	60%	2	40%
California Baptist University	146	1	1	100%	0	0%	1	1	100%	0	0%
California State University, Bakersfield	002	12	8	67%	4	33%	12	8	67%	4	33%
California State University, Chico	003	6	4	67%	2	33%	5	4	80%	1	20%
California State University, Dominguez Hills	004	18	6	33%	12	67%	9	4	44%	5	56%
California State University, Fresno	005	23	12	52%	11	48%	14	9	64%	5	36%
California State University, Fullerton	006	16	13	81%	3	19%	13	11	85%	2	15%
California State University, Hayward	007	39	22	56%	17	44%	25	16	64%	9	36%
California State University, Long Beach	008	53	30	57%	23	43%	33	22	67%	11	33%
California State University, Los Angeles	009	32	14	44%	18	56%	20	12	60%	8	40%
California State University, Northridge	010	34	26	76%	8	24%	25	18	72%	7	28%
California State University, Sacramento	011	30	19	63%	11	37%	21	15	71%	6	29%
California State University, San Bernardino	012	21	14	67%	7	33%	15	11	73%	4	27%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
California State University, Stanislaus	013	16	11	69%	5	31%	8	7	88%	1	12%
Humboldt State University, Arcata	014	9	7	78%	2	22%	9	7	78%	2	22%
Loma Linda University, Orinda	125	13	6	46%	7	54%	7	5	71%	2	29%
Monterey Bay State University	018	8	6	75%	2	25%	5	4	80%	1	20%
OUT-OF-COUNTRY	400	10	4	40%	6	60%	2	2	100%	0	0%
Out-of-State	300	229	173	76%	56	24%	193	150	78%	43	22%
San Diego State University	015	24	21	88%	3	12%	23	21	91%	2	9%
San Francisco State University	016	13	8	62%	5	38%	6	5	83%	1	17%
San Jose State University	017	35	22	63%	13	37%	27	18	67%	9	33%
San Marcos University	019	9	9	100%	0	0%	8	8	100%	0	0%
UC, Berkeley	050	9	7	78%	2	22%	7	5	71%	2	29%
UC, Los Angeles	052	7	4	57%	3	43%	5	4	80%	1	20%
University of Southern California, Los Angeles	145	213	152	71%	61	29%	150	112	75%	38	25%

**LCSW Law and Ethics TOTAL: 889 606 68% 283 32% 648 482 74% 166 26%**

**LICENSE TYPE: LEP**

**EXAM: LEP Standard Written Exam**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Alliant International University (aka CSPP)	112	3	3	100%	0	0%	3	3	100%	0	0%
Alliant International University (aka US International)	139	1	1	100%	0	0%	1	1	100%	0	0%
Azusa Pacific University, Azusa	103	4	2	50%	2	50%	2	2	100%	0	0%
California Baptist University, Riverside	105	1	0	0%	1	100%	1	0	0%	1	100%
California Graduate Institute, Los Angeles	203	1	1	100%	0	0%	1	1	100%	0	0%
California State University, Chico	003	1	1	100%	0	0%	1	1	100%	0	0%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
California State University, Dominguez Hills	004	1	0	0%	1	100%	0	0		0	
California State University, Hayward	007	2	2	100%	0	0%	2	2	100%	0	0%
California State University, Long Beach	008	2	2	100%	0	0%	1	1	100%	0	0%
California State University, Los Angeles	009	4	2	50%	2	50%	1	1	100%	0	0%
California State University, Sacramento	011	4	2	50%	2	50%	3	2	67%	1	33%
Chapman University, Orange	113	6	2	33%	4	67%	3	2	67%	1	33%
John F. Kennedy University, Orinda	124	1	1	100%	0	0%	1	1	100%	0	0%
La Sierra University	252	2	1	50%	1	50%	2	1	50%	1	50%
Loyola Marymount University, Los Angeles	126	3	2	67%	1	33%	1	1	100%	0	0%
National University	129	4	1	25%	3	75%	1	0	0%	1	100%
Out-of-State	300	13	12	92%	1	8%	12	11	92%	1	8%
San Diego State University	015	1	1	100%	0	0%	1	1	100%	0	0%
San Francisco State University	016	2	1	50%	1	50%	1	1	100%	0	0%
San Jose State University	017	1	0	0%	1	100%	1	0	0%	1	100%
St. Mary's College of CA, Moraga	136	1	0	0%	1	100%	0	0		0	
UC, Berkeley	050	1	1	100%	0	0%	0	0		0	
University of San Diego, San Diego	142	1	1	100%	0	0%	1	1	100%	0	0%
University of the Pacific, Stockton	146	2	1	50%	1	50%	2	1	50%	1	50%

**LEP Standard Written Exam TOTAL: 62 40 65% 22 35% 42 34 81% 8 19%**

**LICENSE TYPE: LMFT**

**EXAM: LMFT Clinical Exam**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Alliant International University (aka US International)	139	26	21	81%	5	19%	20	17	85%	3	15%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Antioch University, Los Angeles	241	53	34	64%	19	36%	36	24	67%	12	33%
Antioch University, Santa Barbara	243	13	6	46%	7	54%	5	3	60%	2	40%
Argosy University (aka American School of Prof. Psych.	204	59	28	47%	31	53%	25	12	48%	13	52%
Azusa Pacific University, Azusa	103	27	22	81%	5	19%	22	18	82%	4	18%
Bethany College	157	1	0	0%	1	100%	0	0		0	
Bethel Theological Seminary	152	4	4	100%	0	0%	4	4	100%	0	0%
Brandman University	253	31	20	65%	11	35%	16	11	69%	5	31%
Calif. Polytechnic State University, San Luis Obispo - Cal Poly	001	4	4	100%	0	0%	4	4	100%	0	0%
California Baptist University, Riverside	105	37	25	68%	12	32%	23	16	70%	7	30%
California Graduate Institute, Los Angeles	203	1	0	0%	1	100%	0	0		0	
California Institute of Integral Studies, S.F.	107	42	37	88%	5	12%	37	34	92%	3	8%
California Lutheran University, Thousand Oaks	108	9	5	56%	4	44%	4	3	75%	1	25%
California Southern University	246	4	4	100%	0	0%	2	2	100%	0	0%
California State Polytechnic University, Pomona	019	2	1	50%	1	50%	2	1	50%	1	50%
California State University, Bakersfield	002	4	3	75%	1	25%	2	2	100%	0	0%
California State University, Chico	003	3	2	67%	1	33%	2	2	100%	0	0%
California State University, Dominguez Hills	004	14	6	43%	8	57%	5	5	100%	0	0%
California State University, Fresno	005	20	15	75%	5	25%	11	10	91%	1	9%
California State University, Fullerton	006	17	10	59%	7	41%	9	8	89%	1	11%
California State University, Hayward	007	11	4	36%	7	64%	5	3	60%	2	40%
California State University, Long Beach	008	14	13	93%	1	7%	10	10	100%	0	0%
California State University, Los Angeles	009	5	2	40%	3	60%	2	2	100%	0	0%
California State University, Northridge	010	24	14	58%	10	42%	11	7	64%	4	36%
California State University,	011	9	7	78%	2	22%	7	7	100%	0	0%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Sacramento											
California State University, San Bernardino	012	2	2	100%	0	0%	2	2	100%	0	0%
California State University, Stanislaus	013	2	2	100%	0	0%	2	2	100%	0	0%
Chapman University, Orange	113	9	4	44%	5	56%	3	2	67%	1	33%
Dominican University of California	117	1	1	100%	0	0%	1	1	100%	0	0%
Fresno Pacific Biblical Seminary, Fresno	127	1	1	100%	0	0%	0	0		0	
Fuller Theological Seminary, Pasadena	119	8	7	88%	1	12%	8	7	88%	1	12%
Golden Gate University	151	5	2	40%	3	60%	1	1	100%	0	0%
Holy Names University, Oakland	122	6	4	67%	2	33%	4	4	100%	0	0%
Hope International University	131	18	11	61%	7	39%	11	10	91%	1	9%
Humboldt State University, Arcata	014	2	1	50%	1	50%	1	1	100%	0	0%
John F. Kennedy University, Orinda	124	35	24	69%	11	31%	20	18	90%	2	10%
Loma Linda University, Orinda	125	5	4	80%	1	20%	4	3	75%	1	25%
Loyola Marymount University, Los Angeles	126	5	5	100%	0	0%	4	4	100%	0	0%
Meridian University	231	2	2	100%	0	0%	2	2	100%	0	0%
Mount St. Mary's University, Los Angeles	128	7	6	86%	1	14%	2	2	100%	0	0%
National University	129	81	38	47%	43	53%	34	17	50%	17	50%
New College of California, San Francisco	130	2	0	0%	2	100%	2	0	0%	2	100%
Northcentral University	256	1	1	100%	0	0%	1	1	100%	0	0%
Notre Dame de Namur University	116	21	12	57%	9	43%	14	9	64%	5	36%
OUT-OF-COUNTRY	400	1	0	0%	1	100%	1	0	0%	1	100%
Out-of-State	300	38	26	68%	12	32%	25	19	76%	6	24%
Pacific Oaks College, Pasadena	133	29	17	59%	12	41%	17	11	65%	6	35%
Pacifica Graduate Institute, Carpinteria	154	24	15	62%	9	38%	13	11	85%	2	15%
Palo Alto University	258	8	6	75%	2	25%	8	6	75%	2	25%
Pepperdine University, Malibu	135	52	40	77%	12	23%	39	31	79%	8	21%
Phillips Graduate Institute	106	36	20	56%	16	44%	20	14	70%	6	30%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Ryokan College, Los Angeles	216	2	0	0%	2	100%	0	0		0	
San Diego State University	015	10	4	40%	6	60%	8	3	38%	5	62%
San Diego University for Integrative Studies	244	1	0	0%	1	100%	0	0		0	
San Francisco State University	016	13	10	77%	3	23%	7	7	100%	0	0%
Santa Barbara Graduate Institute	245	1	1	100%	0	0%	0	0		0	
Santa Clara University	144	11	10	91%	1	9%	6	6	100%	0	0%
Saybrook University	137	1	1	100%	0	0%	1	1	100%	0	0%
Simpson University	254	4	2	50%	2	50%	2	0	0%	2	100%
Sofia University, San Jose	155	3	2	67%	1	33%	2	2	100%	0	0%
Sonoma State University	018	5	5	100%	0	0%	4	4	100%	0	0%
Southern California Seminary (aka Southern CA Bible College and Seminary)	237	5	3	60%	2	40%	4	3	75%	1	25%
St. Mary's College of CA, Moraga	136	14	10	71%	4	29%	11	9	82%	2	18%
The Chicago School of Professional Psychology at Los Angeles	251	20	15	75%	5	25%	13	10	77%	3	23%
TOURO UNIVERSITY	262	1	1	100%	0	0%	1	1	100%	0	0%
Trinity College of Graduate Studies, Orange	201	3	3	100%	0	0%	1	1	100%	0	0%
University of La Verne, La Verne	140	8	4	50%	4	50%	5	3	60%	2	40%
University of Phoenix, Sacramento	238	4	0	0%	4	100%	1	0	0%	1	100%
University of Phoenix, San Diego	236	113	56	50%	57	50%	53	27	51%	26	49%
University of San Diego, San Diego	142	5	5	100%	0	0%	5	5	100%	0	0%
University of San Francisco, San Francisco	143	22	12	55%	10	45%	10	7	70%	3	30%
University of Southern California, Los Angeles	145	13	12	92%	1	8%	13	12	92%	1	8%
University of the West	255	3	3	100%	0	0%	3	3	100%	0	0%
Vanguard University of Southern California	156	8	7	88%	1	12%	6	6	100%	0	0%
Webster University	248	1	0	0%	1	100%	1	0	0%	1	100%
Western Seminary (Western Conservative Baptist Seminary)	232	8	7	88%	1	12%	5	5	100%	0	0%
Wright Institute, Berkeley	150	6	5	83%	1	17%	5	5	100%	0	0%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
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LMFT Clinical Exam TOTAL: 1,120 716 64% 404 36% 670 503 75% 167 25%

**EXAM: LMFT Law and Ethics**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Alliant International University (aka US International)	139	31	27	87%	4	13%	23	22	96%	1	4%
Antioch University, Los Angeles	241	50	38	76%	12	24%	38	32	84%	6	16%
Antioch University, San Francisco	242	1	1	100%	0	0%	1	1	100%	0	0%
Antioch University, Santa Barbara	243	21	17	81%	4	19%	20	17	85%	3	15%
Argosy University (aka American School of Prof. Psych.)	204	56	27	48%	29	52%	34	22	65%	12	35%
Azusa Pacific University, Azusa	103	19	17	89%	2	11%	17	16	94%	1	6%
Bethel Theological Seminary	152	4	4	100%	0	0%	4	4	100%	0	0%
Brandman University	253	54	42	78%	12	22%	43	33	77%	10	23%
Calif. Polytechnic State University, San Luis Obispo - Cal Poly	001	4	3	75%	1	25%	4	3	75%	1	25%
California Baptist University, Riverside	105	43	31	72%	12	28%	29	21	72%	8	28%
California Institute of Integral Studies, S.F.	107	42	34	81%	8	19%	37	31	84%	6	16%
California Lutheran University, Thousand Oaks	108	5	3	60%	2	40%	3	2	67%	1	33%
California Southern University	246	12	10	83%	2	17%	9	9	100%	0	0%
California State Polytechnic University, Pomona	019	3	3	100%	0	0%	3	3	100%	0	0%
California State University, Bakersfield	002	2	2	100%	0	0%	2	2	100%	0	0%
California State University, Chico	003	3	2	67%	1	33%	3	2	67%	1	33%
California State University, Dominguez Hills	004	7	5	71%	2	29%	3	3	100%	0	0%
California State University, Fresno	005	14	8	57%	6	43%	12	7	58%	5	42%
California State University, Fullerton	006	18	17	94%	1	6%	16	15	94%	1	6%
California State University, Hayward	007	7	6	86%	1	14%	5	5	100%	0	0%
California State University, Long Beach	008	12	12	100%	0	0%	10	10	100%	0	0%
California State University, Los Angeles	009	2	2	100%	0	0%	0	0		0	



**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
California State University, Northridge	010	16	12	75%	4	25%	14	11	79%	3	21%
California State University, Sacramento	011	5	4	80%	1	20%	3	2	67%	1	33%
California State University, Stanislaus	013	3	3	100%	0	0%	3	3	100%	0	0%
Capella University	260	1	1	100%	0	0%	1	1	100%	0	0%
Chapman University, Orange	113	8	7	88%	1	12%	6	6	100%	0	0%
Fresno Pacific Biblical Seminary, Fresno	127	1	0	0%	1	100%	0	0		0	
Fuller Theological Seminary, Pasadena	119	11	8	73%	3	27%	10	8	80%	2	20%
Golden Gate University	151	4	3	75%	1	25%	4	3	75%	1	25%
HIS University	247	3	3	100%	0	0%	2	2	100%	0	0%
Holy Names University, Oakland	122	4	4	100%	0	0%	3	3	100%	0	0%
Hope International University	131	11	9	82%	2	18%	9	8	89%	1	11%
Humboldt State University, Arcata	014	4	3	75%	1	25%	4	3	75%	1	25%
John F. Kennedy University, Orinda	124	30	20	67%	10	33%	25	17	68%	8	32%
La Sierra University	252	1	0	0%	1	100%	1	0	0%	1	100%
Loma Linda University, Orinda	125	3	2	67%	1	33%	2	2	100%	0	0%
Loyola Marymount University, Los Angeles	126	6	6	100%	0	0%	5	5	100%	0	0%
Meridian University	231	1	1	100%	0	0%	1	1	100%	0	0%
Mount St. Mary's University, Los Angeles	128	12	7	58%	5	42%	9	7	78%	2	22%
National University	129	58	37	64%	21	36%	28	19	68%	9	32%
New College of California, San Francisco	130	2	1	50%	1	50%	0	0		0	
Northcentral University	256	5	5	100%	0	0%	3	3	100%	0	0%
Notre Dame de Namur University	116	17	13	76%	4	24%	12	10	83%	2	17%
OUT-OF-COUNTRY	400	3	1	33%	2	67%	2	1	50%	1	50%
Out-of-State	300	32	26	81%	6	19%	25	21	84%	4	16%
Pacific Oaks College, Pasadena	133	26	17	65%	9	35%	13	11	85%	2	15%
Pacifica Graduate Institute, Carpenteria	154	13	13	100%	0	0%	12	12	100%	0	0%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Palo Alto University	258	24	16	67%	8	33%	22	14	64%	8	36%
Pepperdine University, Malibu	135	36	26	72%	10	28%	29	22	76%	7	24%
Phillips Graduate Institute	106	31	20	65%	11	35%	25	19	76%	6	24%
POINT LOMA NAZARENE UNIVERSITY	261	3	3	100%	0	0%	3	3	100%	0	0%
San Diego State University	015	4	3	75%	1	25%	3	2	67%	1	33%
San Francisco State University	016	6	5	83%	1	17%	6	5	83%	1	17%
San Jose State University	017	1	0	0%	1	100%	1	0	0%	1	100%
Santa Clara University	144	15	13	87%	2	13%	14	13	93%	1	7%
Saybrook University	137	2	2	100%	0	0%	2	2	100%	0	0%
Simpson University	254	2	2	100%	0	0%	2	2	100%	0	0%
Sofia University, San Jose	155	2	1	50%	1	50%	1	1	100%	0	0%
Sonoma State University	018	4	4	100%	0	0%	4	4	100%	0	0%
St. Mary's College of CA, Moraga	136	6	5	83%	1	17%	4	3	75%	1	25%
The Chicago School of Professional Psychology at Los Angeles	251	21	11	52%	10	48%	13	8	62%	5	38%
TOURO UNIVERSITY	262	12	8	67%	4	33%	9	7	78%	2	22%
University of La Verne, La Verne	140	7	7	100%	0	0%	4	4	100%	0	0%
University of Phoenix, Sacramento	238	1	0	0%	1	100%	0	0		0	
University of Phoenix, San Diego	236	64	36	56%	28	44%	31	19	61%	12	39%
University of San Diego, San Diego	142	3	3	100%	0	0%	3	3	100%	0	0%
University of San Francisco, San Francisco	143	20	15	75%	5	25%	16	12	75%	4	25%
University of Southern California, Los Angeles	145	5	4	80%	1	20%	5	4	80%	1	20%
University of the West	255	1	1	100%	0	0%	1	1	100%	0	0%
Vanguard University of Southern California	156	3	3	100%	0	0%	1	1	100%	0	0%
Webster University	248	1	1	100%	0	0%	0	0		0	
Western Institute for Social Research, Berkeley	220	1	1	100%	0	0%	1	1	100%	0	0%
Western Seminary (Western Conservative Baptist Seminary)	232	2	2	100%	0	0%	2	2	100%	0	0%
Wright Institute, Berkeley	150	17	15	88%	2	12%	16	14	88%	2	12%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
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LMFT Law and Ethics TOTAL: 984 724 74% 260 26% 731 585 80% 146 20%

LICENSE TYPE: LPCC

EXAM: LPCC Law and Ethics

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Alliant International University (aka CSPP)	112	6	3	50%	3	50%	5	3	60%	2	40%
Antioch University, Los Angeles	241	2	2	100%	0	0%	2	2	100%	0	0%
Antioch University, San Francisco	242	1	1	100%	0	0%	0	0		0	
Argosy University (aka American School of Prof. Psych.)	204	9	4	44%	5	56%	6	4	67%	2	33%
Azusa Pacific University, Azusa	103	12	7	58%	5	42%	6	4	67%	2	33%
Bethel Theological Seminary	152	1	0	0%	1	100%	1	0	0%	1	100%
Brandman University	253	11	8	73%	3	27%	10	7	70%	3	30%
California Baptist University, Riverside	105	8	5	62%	3	38%	6	3	50%	3	50%
California Institute of Integral Studies, S.F.	107	2	2	100%	0	0%	1	1	100%	0	0%
California Southern University	246	6	5	83%	1	17%	6	5	83%	1	17%
California State University, Fresno	005	1	1	100%	0	0%	1	1	100%	0	0%
California State University, Fullerton	006	11	10	91%	1	9%	11	10	91%	1	9%
California State University, Hayward	007	1	1	100%	0	0%	0	0		0	
California State University, Long Beach	008	1	1	100%	0	0%	1	1	100%	0	0%
California State University, Los Angeles	009	1	0	0%	1	100%	1	0	0%	1	100%
California State University, Northridge	010	2	1	50%	1	50%	2	1	50%	1	50%
California State University, Sacramento	011	7	4	57%	3	43%	5	4	80%	1	20%
California State University, San Bernardino	012	8	5	62%	3	38%	5	4	80%	1	20%
California State University, Stanislaus	013	5	2	40%	3	60%	3	1	33%	2	67%
Chapman University, Orange	113	3	2	67%	1	33%	3	2	67%	1	33%
Concordia University	268	1	1	100%	0	0%	1	1	100%	0	0%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Eisner Institute for Professional Studies	250	1	1	100%	0	0%	0	0		0	
Golden Gate University	151	2	1	50%	1	50%	1	1	100%	0	0%
GRAND CANYON UNIVERSITY	264	2	0	0%	2	100%	0	0		0	
John F. Kennedy University, Orinda	124	6	3	50%	3	50%	5	2	40%	3	60%
LA SIERRA	252	3	2	67%	1	33%	3	2	67%	1	33%
Loyola Marymount University, Los Angeles	126	9	5	56%	4	44%	6	4	67%	2	33%
National University	129	2	2	100%	0	0%	1	1	100%	0	0%
Notre Dame de Namur University	116	2	1	50%	1	50%	2	1	50%	1	50%
OUT-OF-COUNTRY	400	2	2	100%	0	0%	1	1	100%	0	0%
Out-of-State	300	84	49	58%	35	42%	62	36	58%	26	42%
Pacific Graduate School of Psychology, Palo Alto	149	1	0	0%	1	100%	1	0	0%	1	100%
Pacific Oaks College, Pasadena	133	2	2	100%	0	0%	2	2	100%	0	0%
Pacifica Graduate Institute, Carpinteria	154	2	2	100%	0	0%	2	2	100%	0	0%
Palo Alto University	258	13	10	77%	3	23%	12	9	75%	3	25%
Pepperdine University, Malibu	135	14	11	79%	3	21%	12	9	75%	3	25%
Point Loma Nazarene University	261	1	0	0%	1	100%	1	0	0%	1	100%
San Diego State University	015	9	4	44%	5	56%	6	3	50%	3	50%
San Francisco State University	016	1	0	0%	1	100%	0	0		0	
San Jose State University	017	6	2	33%	4	67%	2	0	0%	2	100%
Santa Clara University	144	1	1	100%	0	0%	1	1	100%	0	0%
St. Mary's College of CA, Moraga	136	3	3	100%	0	0%	3	3	100%	0	0%
The Chicago School of Professional Psychology at Los Angeles	251	2	1	50%	1	50%	1	0	0%	1	100%
TOURA UNIVERSITY	262	2	2	100%	0	0%	2	2	100%	0	0%
University of La Verne, La Verne	140	8	5	62%	3	38%	5	2	40%	3	60%
University of Redlands	259	6	3	50%	3	50%	4	2	50%	2	50%
University of San Diego, San Diego	142	9	6	67%	3	33%	6	4	67%	2	33%
University of San Francisco, San Francisco	143	9	4	44%	5	56%	8	4	50%	4	50%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
University of Southern California, Los Angeles	145	1	1	100%	0	0%	1	1	100%	0	0%
Wright Institute, Berkeley	150	1	1	100%	0	0%	1	1	100%	0	0%

**LPCC Law and Ethics TOTAL: 303 189 62% 114 38% 227 147 65% 80 35%**

**EXAM: NCMHCE Exam**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
Alliant International University (aka CSPP)	112	1	1	100%	0	0%	1	1	100%	0	0%
Argosy University (aka American School of Prof. Psych.)	204	5	4	80%	1	20%	4	3	75%	1	25%
Azusa Pacific University, Azusa	103	4	2	50%	2	50%	2	1	50%	1	50%
Brandman University	253	3	1	33%	2	67%	3	1	33%	2	67%
California Baptist University, Riverside	105	1	1	100%	0	0%	1	1	100%	0	0%
California Southern University	246	2	1	50%	1	50%	2	1	50%	1	50%
California State University, Chico	003	1	0	0%	1	100%	1	0	0%	1	100%
California State University, Fresno	005	5	2	40%	3	60%	4	2	50%	2	50%
California State University, Fullerton	006	5	5	100%	0	0%	5	5	100%	0	0%
California State University, Long Beach	008	1	1	100%	0	0%	1	1	100%	0	0%
California State University, San Bernardino	012	1	0	0%	1	100%	1	0	0%	1	100%
Capella University	260	1	1	100%	0	0%	0	0		0	
GRAND CANYON UNIVERSITY	264	2	1	50%	1	50%	1	1	100%	0	0%
Holy Names University, Oakland	122	1	1	100%	0	0%	1	1	100%	0	0%
John F. Kennedy University, Orinda	124	4	2	50%	2	50%	3	2	67%	1	33%
Loma Linda University, Orinda	125	3	2	67%	1	33%	1	1	100%	0	0%
National University	129	2	1	50%	1	50%	2	1	50%	1	50%
Out-of-State	300	32	25	78%	7	22%	27	21	78%	6	22%
Palo Alto University	258	2	2	100%	0	0%	2	2	100%	0	0%
Pepperdine University, Malibu	135	2	2	100%	0	0%	1	1	100%	0	0%

**Board of Behavioral Sciences**  
**EXAM RESULTS BY SCHOOL**  
**EXAM DATES: Oct 1, 2019 THROUGH Dec 31, 2019**

SCHOOL		EXAM RESULTS					FIRST TIMER				
SCHOOL NAME	CODE	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT	TAKING EXAM	PASSED	PASSED PERCENT	FAILED	FAILED PERCENT
San Diego State University	015	1	1	100%	0	0%	1	1	100%	0	0%
San Francisco State University	016	1	1	100%	0	0%	1	1	100%	0	0%
San Jose State University	017	1	0	0%	1	100%	0	0		0	
Sonoma State University	018	2	2	100%	0	0%	2	2	100%	0	0%
St. Mary's College of CA, Moraga	136	1	1	100%	0	0%	1	1	100%	0	0%
The Chicago School of Professional Psychology at Los Angeles	251	3	2	67%	1	33%	2	2	100%	0	0%
University of La Verne, La Verne	140	2	1	50%	1	50%	1	0	0%	1	100%
University of Phoenix, San Diego	236	1	1	100%	0	0%	0	0		0	
University of Redlands	259	3	1	33%	2	67%	3	1	33%	2	67%
University of San Diego, San Diego	142	3	3	100%	0	0%	3	3	100%	0	0%
University of San Francisco, San Francisco	143	1	0	0%	1	100%	1	0	0%	1	100%
WALDEN UNIVERSITY	263	1	1	100%	0	0%	1	1	100%	0	0%
Western Seminary (Western Conservative Baptist Seminary)	232	1	0	0%	1	100%	1	0	0%	1	100%
Wright Institute, Berkeley	150	1	1	100%	0	0%	1	1	100%	0	0%
<b>NCMHCE Exam TOTAL:</b>		<b>100</b>	<b>70</b>	<b>70%</b>	<b>30</b>	<b>30%</b>	<b>81</b>	<b>59</b>	<b>73%</b>	<b>22</b>	<b>27%</b>



Board of Behavioral Sciences

# Memo

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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:** February 27, 2020  
**From:** Laurie Williams                                      **Telephone:** (916) 574-7850  
Human Resources Liaison  
**Subject: Personnel Update – March 2020**

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## **New Employees**

Staff Services Manager I (Specialist) (SSMI) / Executive Office – Rosanne Helms promoted to this position and acts as the Board’s Legislative Manager effective January 2, 2020. Ms. Helms was initially hired at the Board on April 2, 2010 to be the Board’s Legislation Analyst. Her work as our Legislation Analyst is instrumental to the success of all Board legislative proposals. This SSMI will be the subject matter expert responsible for the legislative process; related advocacy and represent the Board at all legislative hearings and meetings.

Staff Services Analyst / Criminal Conviction Unit / Enforcement – Effective January 1, 2020, Lori Larish accepted a promotion to transfer to the Board as an Enforcement Analyst. This position conducts subsequent arrest investigations. Ms. Larish transferred from the Contractor State Licensing Board where she functioned as an Enforcement Technician.

Office Technician (OT) / Licensing – Effective January 22, 2020, Kimberly Covington promoted to this position in the Licensing Unit. Ms. Covington is responsible to provide licensing support to the Licensing Unit. In her former position with the Board she prepared Licensing Certifications and was the back-up receptionist.

Management Services Technician (MST) / Licensing – Martin Gamez promoted to an MST effective January 31, 2020 in the Licensing Unit. Mr. Gamez is responsible for the evaluation of Licensed Clinical Social Workers (LCSW) applications. Mr. Gamez was the main receptionist for the Board prior to his promotion.

Management Services Technician (MST) / Licensing – Annie Hu promoted to an MST effective January 31, 2020 in the Licensing Unit. Ms. Hu is responsible for the evaluation of Associate Licensed Marriage and Family Therapist (AMFT) applications. Ms. Hu transferred from the Criminal Conviction Unit / Enforcement and she functioned as the Fingerprint Technician for the Board.

Office Technician (OT) / Discipline & Probation Unit / Enforcement – Effective February 3, 2020, Cynthia Dias transferred to the Board to function as an Enforcement Technician in the Discipline & Probation Unit. Ms. Dias was a Program Technician II for the Department of Housing and handled public calls in regards to the Ombudsman Program and Registration and Title inquiries.

Management Services Technician (MST) / Licensing – Christopher Catalano will promote to the Board as an MST effective March 2, 2020. Mr. Catalano will be responsible for the evaluation of Licensed Marriage and Family Therapist (LMFT) applications. Mr. Catalano worked at the Department of Public Health as Legislative Technician tracking legislation for the Department. Previously he worked for the Board of Psychology providing support to the licensing unit and Board Members.

Management Services Technician (MST) / Licensing – Effective March 2, 2020, Jim Khang will promote to the Board as an MST in the Licensing Unit. Mr. Khang will be responsible for the evaluation of Licensed Clinical Social Workers (LCSW) applications. Mr. Khang worked for the Bureau of Automotive Repair (BAR) responding to consumer inquiries regarding BAR's laws and regulations as well as entering complaints into their database. He also has a background in Information Technology.

### **Departures**

Currently the Board has no departures to report.

### **Vacancies**

The Board currently has six (6) vacancies. Recruitment efforts to fill these vacancies are as follows:

Staff Services Manager I / Licensing – This manager oversees, monitors, assigns, and maintains the daily oversight of the Licensing Unit. The Board will begin recruitment for this vacancy in the upcoming month.

Associate Governmental Program Analyst / Administration – This vacancy was responsible for the legislative process for the Board. Board management is currently reviewing the duties for this vacancy to determine the current business needs of the Board.

Staff Services Analyst / Consumer Complaint & Investigations Unit / Enforcement – This position is assigned to perform the duties of a Continuing Education (CE) Compliance Analyst. The Board received approval to refill this vacancy. This vacancy is currently being advertised and the final filing date is February 29, 2020.

Office Technician (OT) / Criminal Conviction Unit / Enforcement – This position functions as an Enforcement Technician processing fingerprints and supporting the unit. The Request for Personnel Action packet for this vacancy was submitted to the Office of Human Resources (OHR) for review and the Board is awaiting approval to fill this vacancy.



Office Technician (OT) / Administration – This position functions as the main receptionist for the Board. The request to fill this vacancy will be submitted to OHR to begin the recruitment in the coming weeks.

Office Technician (OT) / Administration – This position processes licensing certifications and assists as the back-up receptionist for the Board. The request to fill this vacancy will be submitted to OHR to begin the recruitment in the coming weeks.

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Board of Behavioral Sciences

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# *Memo*

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[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Board Members

**Date:** February 27, 2020

**From:** Kim Madsen  
Executive Officer

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

**Subject: Strategic Plan Update**

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Attached for your review is the Strategic Plan update.

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Licensing	DUE DATE	STATUS
<i>Establish licensing standards to protect consumers and allow reasonable and timely access to the profession.</i>		
<b>1.1</b> Identify and implement enhanced communication during the application process to respond to stakeholder concerns regarding communication between applicants and the Board.	<b>July 2021</b>	<b>January 2020</b> Implemented use of social media to communicate application processing times and new examination vendor.
<b>1.2</b> Improve and expand the Board’s virtual online BreEZe functionality to provide applicants with the precise status of their applications and license.	<b>July 2020</b>	
<b>1.3</b> Research and explore a comprehensive online application process to improve efficiency.	<b>January 2021</b>	<b>March 2018</b> – Request submitted to revise BreEZe to allow L/E exam and Initial Licensure Applications submitted online. <b>March 2019</b> - Online submission for Law and Ethics exam and request for certification of licensure available.
<b>1.4</b> Evaluate and revise current laws and regulations relating to licensure portability to increase consumer access to mental health care.	<b>January 2021</b>	<b>August 2018</b> – License Portability Committee recommendations and draft regulations will be considered during the August 2018 Policy and Advocacy meeting. <b>September 2018</b> -Board members approve recommendations <b>January 2019</b> – Author for bill obtained <b>March 2019</b> – In the Senate Appropriation committee <b>September 2019</b> Governor signs bill SB 679. <b>Completed</b>

**CALIFORNIA BOARD OF BEHAVIORAL SCIENCES STRATEGIC PLAN UPDATE  
NOVEMBER 2019**

<b>Examinations</b> <i>Administer fair, valid, comprehensive, and relevant licensing examinations.</i>	<b>DUE DATE</b>	<b>STATUS</b>
<b>2.1</b> Improve the efficiency and reduce processing times to streamline the online exam application.	<b>January 2021</b>	<b>February 2019</b> – Submission of Law and Ethics application via online available March 2019
<b>2.2</b> Explore methods to improve the candidate’s exam experience to address concerns relating to the quality and customer service.	<b>July 2019</b>	<b>August 2018</b> Board management initiates process to procure a vendor to administer Board developed examinations. <b>February 2019</b> Contract submitted to DCA <b>November 2019</b> New vendor to begin January 2, 2020 <b>Completed January 2020</b>
<b>2.3</b> Improve the Board’s examination study materials to increase access to exam preparation.	<b>July 2019</b>	<b>October 2018</b> Board management met with OPES to discuss options to assist candidates in examination preparation. <b>November 2019</b> Candidate handbook will be updated.
<b>2.4</b> Evaluate the Association of Marriage and Family Therapy Regulatory Board’s (AMFTRB) national examination to determine if appropriate for use in California.	<b>July 2020</b>	<b>September 2018</b> Executive Officer attended presentation regarding national exam at the AMFTRB annual meeting. <b>October 2018</b> OPES indicates evaluation will occur upon completion of Board’s OA for LMFTs. <b>September 2019</b> EO attends presentation regarding national exam at the AMFTRB annual meeting.

Enforcement <i>Protect the health and safety of consumers through the enforcement of laws.</i>	DUE DATE	STATUS
<p><b>3.1</b> Explore the feasibility of additional staff resources to address the increase in number of licensees placed on probation.</p>	<p><b>July 2020</b></p>	<p><b>June 2018</b> – Restructured the Enforcement Program to establish a manager position to provide oversight of the Probation and Discipline Unit.  <b>July 2018</b> – Request for 1 full time and 1 half time position to monitor probationers was approved. Initiated recruitment for manager. Initiated recruitment for probation monitor positions.  <b>August 2018</b> – Manager hired.  <b>July 2019</b> New staff member hired. Unit is fully staffed.  <b>Completed</b></p>
<p><b>3.2</b> Educate registrant and licensees about general legal requirements and consequences to practitioners who fail to adhere to these legal requirements.</p>	<p><b>July 2019</b></p>	<p><b>April 2018</b>- CALPCC Annual Meeting Unprofessional Conduct Presentation  <b>May 2019</b> CALPCC Annual Meeting Unprofessional Conduct Presentation</p>
<p><b>3.3</b> Educate the Deputy Attorney Generals and Administrative Law Judges regarding the disease of addiction and substance abuse to increase their awareness during the discipline process.</p>	<p><b>July 2021</b></p>	
<p><b>3.4</b> Establish uniform standards and templates for reports and evaluations submitted to the Board related to disciplinary matters.</p>	<p><b>July 2020</b></p>	<p><b>April 2018, June 2018, October 2018</b> – Board staff attends Substance Abuse Coordination Committee to discussion possible revisions to Uniform Standard #4.</p>

Legislation and Regulation <i>Ensure that statutes, regulations, policies, and procedures strengthen and support the Board's mandate and mission.</i>	DUE DATE	STATUS
<p><b>4.1</b> Pursue legislation to implement the recommendations of the License Portability Committee to improve license portability.</p>	<p><b>January 2020</b></p>	<p><b>August 2018</b> – Recommendations presented at August 24, 2018 Policy and Advocacy Committee meeting.  <b>September 2018</b>-Board approves language – directs staff to initiate legislation process.  <b>January 2019</b>- Author for bill obtained  <b>March 2019</b> – In the Senate Appropriation committee  <b>September 2019</b> Governor signs bill <b>Completed</b></p>
<p><b>4.2</b> Reorganize the statutes and regulations specific to each Board license type to improve understanding of application statutes and regulations.</p>	<p><b>January 2021</b></p>	<p><b>December 2019</b> – Management Team and staff met to discuss viable options to improve organization of law book.</p>
<p><b>4.3</b> Continue to review statutory parameters for exempt settings and modify, if necessary, to ensure adequate public protection.</p>	<p><b>January 2021</b></p>	<p><b>August 2018</b>- Final meeting of the Exempt Setting Committee scheduled for September 12, 2018.  <b>October 2018</b> P&amp;A members recommend approving proposed setting definitions to full board.  <b>February 2019</b> P&amp;A Committee refer definitions back to Exempt Committee for additional revisions.  <b>April 2019</b> Set meeting date for June 7, 2019 to discussion definitions.  <b>November 2019</b> Board considers proposed language for 2020 legislation  <b>February 2020</b> AB 2363 introduced</p>



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<b>4.4</b> Explore the feasibility of improving the law and ethics renewal requirements to inform licensees about updates in relevant laws.	<b>July 2021</b>	<b>July 2018</b> – Board’s Continuing Education Analyst attends all major outreach events to educate licensees regarding continuing education requirements. <b>October 2018 &amp; 2019</b> CE Presentation to LEPs at CASP Conference
<b>4.5</b> Review and update existing telehealth regulations to improve consumer protection and access to services.	<b>January 2020</b>	<b>May 2018</b> -Board established a Telehealth Committee to begin work after January 1, 2019. <b>October 2019</b> AEO and Legislative Analyst attend meeting California Telehealth Policy Coalition Briefing

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Organizational Effectiveness <i>Build an excellent organization through proper Board governance, effective leadership, and responsible management.</i>	DUE DATE	STATUS
<p><b>5.1</b> Implement a strategic succession plan of Board staff to ensure continued success of the Board's operations.</p>	<p><b>January 2020</b></p>	<p><b>October 2018</b> – Probation unit updates procedure manuals. <b>January 2020</b> All units directed to update procedure manuals</p>
<p><b>5.2</b> Support DCA efforts to contract with independent organizations to perform occupational analyses and salary surveys of management-level positions equivalent to the Executive Officer and Bureau Chief classifications to enhance the Board's ability to attract and retain competitive applicants.</p>	<p><b>July 2020</b></p>	<p><b>Spring 2018</b> – Board management contacts DCA Executive Management offering assistance with the EO survey and process. <b>July 2018</b> DCA reports requests for bid to conduct EO survey near completion. <b>October 2018</b> DCA reports some EO's participated in phone interviews with contractor. Contractor will develop survey for all EO's to complete. ETA for report early 2019. <b>March 2019</b> DCA reports study concluded and will share study information with EO's and Boards at a later date. <b>Report released</b></p>
<p><b>5.3</b> Explore the feasibility of hiring in-house counsel to ensure consistency in the application of law.</p>	<p><b>July 2021</b></p>	<p><b>Winter and Spring 2018</b> – Board management initiates review of existing laws that allow Board's to hire in-house counsel. Board management engaged in discussions to seek similar hiring authority. <b>August 2018</b> - Proposed language to provide the Board with the hiring authority is removed from bill.</p>
<p><b>5.4</b> Explore the feasibility of hiring a media and internet technology specialist to increase consistency in messaging to stakeholders.</p>	<p><b>July 2021</b></p>	<p><b>January – March 2019</b> AEO and EO meet with DCA PIO Officer to establish schedule for consistent messaging in Social Media. <b>May 2019</b> Initiated use of an APP to load messages for distribution on Social Media.</p>

**5.5**

Improve customer service with stakeholders to expand (or support) effective communication and accessibility to the Board.

**July 2019**

**Spring 2018** – Implemented revised phone system.

**January and March 2019** - Began working with department to develop and implement instructional videos and social media campaign that will increase engagement of registrants and licensees.

**December 2019** Contacted DCA Central Communication Team to explore the possibility of using CIC Team’s phone answering service

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<b>Outreach and Education</b> <i>Engage stakeholders through continuous communication about the practice and regulation of the professions, and mental health.</i>	<b>DUE DATE</b>	<b>STATUS</b>
<p><b>6.1</b> Explore modalities of communication to expand and increase outreach.</p>	<b>January 2020</b>	<p><b>January and March 2019</b> Meeting with assigned PIO officer to discuss strategies to enhance social media presence.  <b>May 2019</b> Initiated use of an APP to load messages for distribution on Social Media.  <b>November – December 2019</b> – Actively using social media to communicate important reminders and messages on a scheduled basis.</p>
<p><b>6.2</b> Advocate to increase Board presence at national professional association meetings to enhance awareness of national trends and best practices.</p>	<b>July 2021</b>	<p><b>May 2018</b> – Received approval for Board EO to attend ASWB Spring Education Conference in Halifax, Nova Scotia to present draft license portability plan.  <b>July 2018</b>- Received approval for Board EO to attend NBCC, AMFTRB, and ASWB national meetings in Fall 2018.  <b>July 2019</b> EO and Board Members approved to attend NBCC and ASWB national meetings. EO to attend AMFTRB meeting.  <b>November 2019</b> Board EO elected to ASWB Board of Directors  <b>February 2020</b> Board EO participates in AASCB Regulatory Committee meeting to discuss license portability.</p>
<p><b>6.3</b> Develop an outreach program to educate the public about the benefits of mental health to reduce barriers and destigmatize mental health care.</p>	<b>July 2020</b>	<p><b>January and March 2019</b>-Initiated a plan with assigned PIO to develop an instructional video to explain more about our licensees and what they do.  <b>October 2019</b> AEO and EO attend workshop related to suicide prevention.</p>

**6.4**

Explore opportunities to coordinate with stakeholders to increase diversity of mental health practitioners to better serve California's diverse population.

**July 2021**

**October 2018-** Board staff participates in meeting with various stakeholders to discuss implementation of AB 2105.

**November 2019** OSHP Workforce and Development presentation.

**6.5**

Improve outreach activities to educational institutions, students, and applicants to educate incoming registrants of application requirements for licensure.

**January 2021**

**August 2018** – Board management initiates discussions with SOLID to discuss developing video tutorials for Board website.  
**January and March 2019-**Initiated a plan with PIO to develop an instructional video to guide associates through the registrant process.

**February 2020** - LMFT unit staff attend CAMFT and MFT Consortium Event for students.

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Board of Behavioral Sciences

# Memo

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[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Board Members

**Date:** February 27, 2020

**From:** Kim Madsen  
Executive Officer

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

**Subject: Sunset Review 2020**

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The Board submitted its final Sunset Review Report in December 2019 to the Assembly and Senate Business, Professions, and Economic Committees. This report provides a comprehensive review of the Board's programs and operations since the last review in 2016.

Board management and staff from the Assembly and Senate Business, Professions, and Economic Committees have met to discuss the report in preparation for the upcoming hearings. The hearing dates are tentatively set for March 17, 2020 and March 24, 2020.

As of the date of this memo, the Board does not have a date for its hearing. Once a hearing date for the Board is sent all Board Members will be notified.

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Board of Behavioral Sciences

# Memo

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**To:** Board Members

**Date:** February 27, 2020

**From:** Kim Madsen  
Executive Officer

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

**Subject:** Office of Professional Examination Services' Review of the National  
Board for Certified Counselors National Clinical Mental Health  
Counseling Examination

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The Board's contract with the National Board of Certified Counselors (NBCC) to use the National Clinical Mental Health Counseling Examination (NCMHCE) for licensure in California for Licensed Professional Clinical Counselors (LPCCs) allows for periodic reviews of the examination. The purpose of the review is to ensure the examination remains relevant for use in California.

The attached Executive Summary from the Office of Professional Examination Services (OPES) provides the results of the review of the National Clinical Mental Health Counseling Examination (NCMHCE).

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## EXECUTIVE SUMMARY

Licensing boards and bureaus within the California Department of Consumer Affairs (DCA) are required to ensure that examination programs used in the California licensure process comply with psychometric and legal standards. The Board of Behavioral Sciences (Board) requested that DCA's Office of Professional Examination Services (OPES) complete a comprehensive review of the National Board for Certified Counselors (NBCC), National Clinical Mental Health Counseling Examination (NCMHCE) program. The purpose of the OPES review was to evaluate the suitability of the NCMHCE for continued use in California licensure for Licensed Professional Clinical Counselors (LPCCs).

OPES, in collaboration with the Board, received and reviewed the documents provided by NBCC. Follow-up emails and phone communications were conducted in order to clarify the procedures and practices used to validate and develop the NCMHCE. OPES performed a comprehensive evaluation of the documents to determine whether the following test program components met professional guidelines and technical standards: (a) occupational analysis, (b) examination development, (c) passing scores, (d) test administration, (e) examination scoring and performance, (f) information available to candidates, and (g) test security procedures.

OPES found that the procedures used to establish and support the validity and defensibility of the above test program components of the NCMHCE appear to meet professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing* (2014) (*Standards*) and California Business and Professions Code (B&P) section 139.

In March 2019, OPES convened a panel of California LPCCs to serve as subject matter experts (SMEs) to review the content of the NCMHCE. The SMEs were selected by the Board based on their geographic location, experience, and practice specialty. The purpose of the review was to compare the content of the NCMHCE with the 2018 California Licensed Professional Clinical Counselor examination outline (2018 California examination outline) resulting from the 2018 California Licensed Professional Clinical Counselor Occupational Analysis (2018 California LPCC OA) performed by OPES.

Specifically, the SMEs performed a comparison by linking the task and knowledge statements of the 2018 California examination outline to the examination outline of the NCMHCE. The SMEs also performed a comparison by linking the task and knowledge statements of the 2018 California examination outline to the examination contents of the NCMHCE. The linkages were performed to identify whether there were areas of California LPCC practice not measured by the NCMHCE.

The results of the linkage study indicate that the NCMHCE assesses general knowledge required for entry-level LPCC practice in California.

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Board of Behavioral Sciences

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**To:** Board Members  
**Date:** February 27, 2020  
**From:** Rosanne Helms  
Legislative Manager  
**Telephone:** (916) 574-7897  
**Subject: Notice to Clients About Filing a Complaint**

## Background

Last year, the Board sponsored AB 630 (Chapter 229, Statutes of 2019). The bill amended the law (effective July 1, 2020) to require that unlicensed or unregistered individuals providing psychotherapy services in exempt settings provide their clients with a notice about where to file a complaint about the therapist. AB 630 also requires Board licensed or registered therapists in any setting provide their clients with a similar notice stating that a complaint may be filed with the Board. These notices must be provided prior to initiating psychotherapy services.

The Board may wish to consider two clarifying amendments to the provisions of AB 630.

### **Amendment #1: Additional Information to Clients of Unlicensed or Unregistered Therapists (Amend BPC §§4980.01, 4996.14, and 4999.22)**

In its review of AB 630 last summer, the Senate Committee on Business, Professions, and Economic Development (Committee) suggested the following additional language be included in the notice provided to clients of unlicensed or unregistered practitioners:

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

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

At the time, it was too late in the legislative session to take this suggestion back to the Board for consideration without AB 630 becoming a two-year bill. The Committee let

the bill proceed, and staff agreed to take the amendment to the next Board meeting for consideration.

The Board discussed the amendment at its November 22, 2019 meeting and suggested some minor changes (which are included in the language in italics above and in **Attachment A**). However, during the discussion, stakeholders suggested that an additional clarification to the language in AB 630 might be helpful (see Amendment #2 below). Therefore, the Board directed staff to consider the new suggestion and bring proposed language back at a later date.

**Amendment #2: Timing of Providing the Notice to Clients (Amend BPC §§4980.01, 4980.32, 4989.17, 4996.14, 4996.75, 4999.22 and 4999.71)**

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

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

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

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

The Board also may wish to discuss whether or not it would be helpful to include language stating that the delivery of the notice shall be documented. The provision of law regarding telehealth (BPC §2290.5) requires a patient’s consent for telehealth to be documented.

Policy and Advocacy Committee Discussion

At its February 7, 2020 meeting, the Policy and Advocacy Committee discussed the proposed language shown in **Attachment A** and determined that it should proceed to the Board for consideration as a legislative proposal.

### Recommendation

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

### Attachments

**Attachment A:** Proposed Language

**Attachment B:** Example Language: Penal Code §11166

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**ATTACHMENT A  
PROPOSED LANGUAGE**

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

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

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

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

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

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

**NOTICE TO CLIENTS**

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

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

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

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

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

#### **AMEND §4980.32.**

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

##### NOTICE TO CLIENTS

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

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

#### **AMEND §4989.17.**

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

##### NOTICE TO CLIENTS

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

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

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

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

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

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

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

## NOTICE TO CLIENTS

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

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

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

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

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

### **AMEND §4996.75.**

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

## NOTICE TO CLIENTS

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

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

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

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

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

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

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

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

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

#### NOTICE TO CLIENTS

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

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

[\(3\) The delivery of the notice to the client shall be documented.](#)

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

#### **AMEND §4999.71.**

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

## NOTICE TO CLIENTS

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

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

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**ATTACHMENT B**  
**PENAL CODE §11166**

**Penal Code §11166.**

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in the mandated reporter's professional capacity or within the scope of the mandated reporter's employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person's training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If, after reasonable efforts, a mandated reporter is unable to submit an initial report by telephone, the mandated reporter shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which the mandated reporter filed the report. A mandated reporter who files a one-time automated written report because the mandated reporter was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in

lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) This section does not supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals the mandated reporter's failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of the clergy member's church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in the clergy member's professional capacity or within the scope of the clergy member's employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse and that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.



(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) (1) A commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of that person's professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall, immediately or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

(2) A commercial computer technician who has knowledge of or observes, within the scope of the technician's professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or materials are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (43) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, "sexual conduct" means any of the following:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(B) Penetration of the vagina or rectum by any object.

(C) Masturbation for the purpose of sexual stimulation of the viewer.

(D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(E) Exhibition of the genitals, pubic, or rectal areas of a person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, the mandated reporter makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom the person knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, "any other person" includes a mandated reporter who acts in the person's private capacity and not in the person's professional capacity or within the scope of the person's employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article. An internal policy shall not direct an employee to allow the employee's supervisor to file or process a mandated report under any circumstances.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose the employee's identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) (1) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within

36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(2) A county probation or welfare department shall immediately, and in no case in more than 24 hours, report to the law enforcement agency having jurisdiction over the case after receiving information that a child or youth who is receiving child welfare services has been identified as the victim of commercial sexual exploitation, as defined in subdivision (d) of Section 11165.1.

(3) When a child or youth who is receiving child welfare services and who is reasonably believed to be the victim of, or is at risk of being the victim of, commercial sexual exploitation, as defined in Section 11165.1, is missing or has been abducted, the county probation or welfare department shall immediately, or in no case later than 24 hours from receipt of the information, report the incident to the appropriate law enforcement authority for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

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Board of Behavioral Sciences

# Memo

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www.bbs.ca.gov

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**To:** Board Members **Date:** February 14, 2020  
**From:** Rosanne Helms **Telephone:** (916) 574-7897  
Legislative Manager  
**Subject: Update on Setting Definitions Bill Proposal: Policy and Advocacy  
Committee Discussion of Supervisor Work Setting Requirements**

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At its November 22, 2019 meeting, the Board of Behavioral Sciences (Board) approved language for a bill proposal that provides concise definitions of the types of settings where its licensees and pre-licensees work. The bill has been introduced as AB 2363 (Arambula)

The goal of the proposal is to reduce the confusion that often arises of where pre-licensees may or may not work based on how a business is structured. While the Board approved the bill's language and directed staff to pursue a legislative proposal, it determined one aspect should be brought back to Policy and Advocacy Committee for further discussion.

#### Policy and Advocacy Committee Findings

The Policy and Advocacy discussed the bill proposal at its February 7, 2020 meeting. The bill proposal requires that **in a private practice or a professional corporation**, the supervisor of an associate must be employed or contracted by the associate's employer, or be an owner of the practice; and they must also provide psychotherapeutic services to clients at the same site.

The question discussed is whether it would be appropriate to extend this requirement to supervisors of associates and trainees in all non-exempt settings, not just those in a private practice or professional corporation.

Due to the uncertainty of how extending this limitation to all non-exempt settings would affect the supply of supervisors available to associates and trainees, staff suggested leaving the proposal as written for now (i.e. the restriction on requiring the supervisor to practice psychotherapeutic services at the same site would only apply to private practice and professional corporations). If concerns arose in the future, this topic could be reconsidered.

The Policy and Advocacy Committee agreed with this assessment and found that no further action is needed.

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**CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS**

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**BILL NUMBER: AB 1145**                      **VERSION: INTRODUCED FEBRUARY 21, 2019**

**AUTHOR: GARCIA**                              **SPONSOR: EQUALITY CALIFORNIA**

**PREVIOUS POSITION: SUPPORT**

**SUBJECT: CHILD ABUSE: REPORTABLE CONDUCT**

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**Overview:**

This bill would specify that voluntary acts of sodomy, oral copulation, and sexual penetration are not considered acts of sexual assault that must be reported by a mandated reporter as child abuse if there are no indicators of abuse, unless it is between a person age 21 or older and a minor under age 16.

**Existing Law:**

- 1) Establishes the Child Abuse and Neglect Reporting Act (CANRA) which requires a mandated reporter to make a report in instances in which he or she knows or reasonably suspects that a child has been the victim of child abuse or neglect. (Penal Code (PC) 11164 et seq)
- 2) Defines “sexual abuse” for the purposes of CANRA as sexual assault or exploitation. It further defines “sexual assault” as consisting of any of the following: rape, statutory rape, rape in concert, incest, sodomy, oral copulation, lewd or lascivious acts upon a child, sexual penetration, or child molestation. (PC §11165.1(a))
- 3) Except under certain specified circumstances, declares any person who participates in an act of sodomy or oral copulation with a person under age 18 shall be punished by up to one year in state prison or county jail. (PC §§ 286(b)(1), 287(b)(1))
- 4) Except under certain specified circumstances, declares any person over age 21 who participates in an act of sodomy or oral copulation with someone under age 16 is guilty of a felony. (PC §§ 286(b)(2), 287(b)(2))
- 5) States that a person who engages in unlawful sexual intercourse with a minor who is not more than three years older or three years younger, is guilty of a misdemeanor. (PC §261.5(b))

- 6) States that a person who engages in unlawful sexual intercourse with a minor who is more than three years younger is guilty of either a misdemeanor or a felony. (PC §261.5(c))
- 7) States that any person age 21 or older who engages in unlawful sexual intercourse with a minor under age 16 is guilty of either a misdemeanor or a felony. (PC §261.5(d))

**This Bill:**

- 1) Specifies that voluntary acts of sodomy, oral copulation, or sexual penetration are not considered to be mandated reports of sexual assault under CANRA if there are no indicators of abuse, unless the conduct is between a person age 21 or older and a minor under age 16. (PC §11165.1(a))

**Comment:**

- 1) **Intent.** The author's is attempting to clarify the law due to concerns and feedback that requirements for mandated reporters of child abuse are confusing, inconsistent, and discriminatory.

Some mandated reporters interpret the law to read that consensual sodomy and oral copulation is illegal with anyone under age 18, and that it requires a mandated report as sexual assault under CANRA. They argue that the same reporting standards do not apply to consensual heterosexual intercourse.

There are also contradictory opinions that the law does not read this way, and that sodomy and oral copulation are not treated differently from other acts in the code. However, lack of a clear answer leads to confusion about what is reportable and what is not.

Therefore, the author is seeking to make the law consistent by ensuring that all types of voluntary activities are treated equally for purposes of mandated reporting under CANRA.

- 2) **Background.** The Board examined this issue in 2013 when stakeholders expressed concern that consensual oral copulation and sodomy among minors were mandated reports under CANRA, while other types of consensual sexual activity were not.

However, at the same time, staffers at the Legislature contacted the Board to caution that there had been past legal opinions stating that this interpretation of CANRA was incorrect, and that amendments could potentially have ramifications for family planning agencies.

The Board was concerned about a potential legal misinterpretation of CANRA, but at the same time saw this as a valid effort. Therefore, it directed staff to obtain a legal opinion from the DCA legal office.



**3) DCA Legal Opinion.** In its legal opinion (**Attachment A**), DCA found that CANRA does not require a mandated reporter to report incidents of consensual sex between minors of a similar age for any actions described in PC Section 11165.1, unless there is reasonable suspicion of force, exploitation, or other abuse. DCA also found the following, based on past court cases:

- Courts have found that the legislative intent of the reporting law is to leave the distinction between abusive and non-abusive sexual relations to the judgment of professionals who deal with children.
- Review of other legal cases has found that the law does not require reporting of consensual sexual activities between similarly-aged minors for any sexual acts unless there is evidence of abuse.

**4) Board of Psychology Action.** The Board of Psychology sought an opinion from the Attorney General's (AG's) Office on the laws regarding mandated reporting, specifically whether consensual sexual conduct between minors of a like age differs depending upon the type of sexual conduct described by the minor.

The Board of Psychology asked the AG to resolve the following legal questions:

1. The Child Abuse and Neglect Reporting Act (CANRA; Pen. Code, sec. 11164 et seq.) requires "mandated reporters" to report instances of child sexual abuse, assault, and exploitation to specified law enforcement and/or child protection agencies. Does this requirement include the mandatory reporting of voluntary acts of sexual intercourse, oral copulation, or sodomy between minors of a like age?
2. Under CANRA is the activity of mobile device "sexting," between minors of a like age, a form of reportable sexual exploitation?
3. Does CANRA require a mandated reporter to relay third-party reports of downloading, streaming, or otherwise accessing child pornography through electronic or digital media?

The opinion request was sent to the AG by Assemblywoman Garcia in February 2015. However, a related case is currently under review by the California Supreme Court, and the AG's office suspended the opinion until the litigation is concluded. As of this date, the AG opinion has not been issued.

**5) Previous Legislation.** The author has made two past attempts at clarifying this issue:

- AB 1505 (Garcia, 2014) would have specified that consensual acts of sodomy and oral copulation are not acts of sexual assault that must be reported by a mandated reporter, unless it involved either a person over age 21 or a minor under age 16. At its April 2014 meeting, the Policy and Advocacy Committee

recommended that the Board take a “support” position on this bill. However, AB 1505 died before the Board was able to take a position on it.

- AB 832 (Garcia, 2015) was very similar to today’s bill. The Board took a “support if amended” position and asked for an amendment clarifying that only non-abusive sexual conduct would not be reportable. The author subsequently made this amendment, and that requested amendment is also included in today’s bill. AB 832 died on the Assembly floor.

**6) Previous Board Action.** At its meeting on April 5, 2019, the Policy and Advocacy Committee discussed the bill and recommended that the Board consider taking a “support” position. In addition, the Committee directed staff to reach out to the author’s office to discuss the possibility of also clarifying the reportability of filming, “sexting”, or similar use of technology between minors, as it noted there is also a lack of clarity in law regarding those activities.

Staff discussed this concern with the author’s office, and they expressed a willingness to consider including it. They indicated that they would discuss the idea with other members and stakeholders. However, they also noted that the bill, as currently written, was encountering some challenges in the committee process at the legislature. Therefore, it may be better to address this concern separately.

At its May 10, 2019 meeting, the Board took an official position of “support” on this bill.

This is a two-year bill that is still moving. The Board’s 2019 “support” position technically still stands because the bill has not been amended since that time. However, almost a year has passed since the position was taken. Therefore, staff recommends that the Board consider reaffirming its ‘support” position. A current sponsor letter from Equality California is shown in **Attachment A**.

## **7) Support and Opposition.**

### Support:

- Equality California (Sponsor)
- California Board of Behavioral Sciences
- California Board of Psychology
- California Psychological Association
- California Public Defenders Association
- California Association of Marriage and Family Therapists
- National Association of Social Workers

### Opposition

- None at this time.

## 8) History

### 2020

01/28/20 In Senate. Read first time. To Com. on RLS. for assignment.

01/27/20 Read third time. Passed. Ordered to the Senate. (Ayes 47. Noes 19. Page 3895.)

01/23/20 Read second time. Ordered to third reading.

01/23/20 From committee: Do pass. (Ayes 10. Noes 6.) (January 23).

### 2019

04/24/19 In committee: Hearing postponed by committee.

04/10/19 In committee: Set, first hearing. Hearing canceled at the request of author.

04/02/19 From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 2). Re-referred to Com. on APPR.

03/07/19 Referred to Com. on PUB. S.

02/22/19 From printer. May be heard in committee March 24.

02/21/19 Read first time. To print.

## 9) Attachments

**Attachment A:** Sponsor Letter from Equality California dated January 16, 2020

**Attachment B:** DCA Legal Opinion: Evaluation of CANRA Reform Proposal Related to Reporting of Consensual Sex Between Minors

**Attachment C:** Relevant Code Sections: Penal Code Sections 261.5, 286, 287, 288, and 289

**Attachment D:** CAMFT Article: "Reporting Consensual Activity Between Minors: The Confusion Unraveled," by Cathy Atkins, Revised May 2013

**Attachment E:** Santa Clara County Child Abuse Council "Child Abuse Reporting Guidelines for Sexual Activity Between and with Minors"

**Attachment F:** Santa Clara County information sheet for mandated reporters: "Mandated Reporters: When Must you Report Consensual Sexual Activity Involving Minors?"

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**Introduced by Assembly Member Cristina Garcia**

February 21, 2019

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An act to amend Section 11165.1 of the Penal Code, relating to crimes.

**legislative counsel's digest**

AB 1145, as introduced, Cristina Garcia. Child abuse: reportable conduct.

The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Existing law provides that “child abuse or neglect” for these purposes includes “sexual assault,” that includes, among other things, the crimes of sodomy, oral copulation, and sexual penetration.

This bill would provide that “sexual assault” for these purposes does not include voluntary sodomy, oral copulation, or sexual penetration, if there are no indicators of abuse, unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

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

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

1 SECTION 1. Section 11165.1 of the Penal Code is amended  
2 to read:

3 11165.1. As used in this article, “sexual abuse” means sexual  
4 assault or sexual exploitation as defined by the following:

5 (a) “Sexual assault” means conduct in violation of one or more  
6 of the following sections: Section 261 (rape), subdivision (d) of  
7 Section 261.5 (statutory rape), Section 264.1 (rape in concert),  
8 Section 285 (incest), Section 286 (sodomy), Section 287 or former  
9 Section 288a (oral copulation), subdivision (a) or ~~(b)~~, (b) of, or  
10 paragraph (1) of subdivision (c) ~~of~~ of, Section 288 (lewd or  
11 lascivious acts upon a child), Section 289 (sexual penetration), or  
12 Section 647.6 (child molestation). *“Sexual assault” for the*  
13 *purposes of this article does not include voluntary conduct in*  
14 *violation of Section 286, 287, or 289, or former Section 288a, if*  
15 *there are no indicators of abuse, unless the conduct is between a*  
16 *person 21 years of age or older and a minor who is under 16 years*  
17 *of age.*

18 (b) Conduct described as “sexual assault” includes, but is not  
19 limited to, all of the following:

20 (1) Penetration, however slight, of the vagina or anal opening  
21 of one person by the penis of another person, whether or not there  
22 is the emission of semen.

23 (2) Sexual contact between the genitals or anal opening of one  
24 person and the mouth or tongue of another person.

25 (3) Intrusion by one person into the genitals or anal opening of  
26 another person, including the use of an object for this purpose,  
27 except that, it does not include acts performed for a valid medical  
28 purpose.

29 (4) The intentional touching of the genitals or intimate parts,  
30 including the breasts, genital area, groin, inner thighs, and buttocks,  
31 or the clothing covering them, of a child, or of the perpetrator by  
32 a child, for purposes of sexual arousal or gratification, except that  
33 it does not include acts which may reasonably be construed to be  
34 normal caretaker responsibilities; interactions with, or  
35 demonstrations of affection for, the child; or acts performed for a  
36 valid medical purpose.

37 (5) The intentional masturbation of the perpetrator’s genitals in  
38 the presence of a child.

1 (c) “Sexual exploitation” refers to any of the following:

2 (1) Conduct involving matter depicting a minor engaged in  
3 obscene acts in violation of Section 311.2 (preparing, selling, or  
4 distributing obscene matter) or subdivision (a) of Section 311.4  
5 (employment of minor to perform obscene acts).

6 (2) A person who knowingly promotes, aids, or assists, employs,  
7 uses, persuades, induces, or coerces a child, or a person responsible  
8 for a child’s welfare, who knowingly permits or encourages a child  
9 to engage in, or assist others to engage in, prostitution or a live  
10 performance involving obscene sexual conduct, or to either pose  
11 or model alone or with others for purposes of preparing a film,  
12 photograph, negative, slide, drawing, painting, or other pictorial  
13 depiction, involving obscene sexual conduct. For the purpose of  
14 this section, “person responsible for a child’s welfare” means a  
15 parent, guardian, foster parent, or a licensed administrator or  
16 employee of a public or private residential home, residential school,  
17 or other residential institution.

18 (3) A person who depicts a child in, or who knowingly develops,  
19 duplicates, prints, downloads, streams, accesses through any  
20 electronic or digital media, or exchanges, a film, photograph,  
21 videotape, video recording, negative, or slide in which a child is  
22 engaged in an act of obscene sexual conduct, except for those  
23 activities by law enforcement and prosecution agencies and other  
24 persons described in subdivisions (c) and (e) of Section 311.3.

25 (d) “Commercial sexual exploitation” refers to either of the  
26 following:

27 (1) The sexual trafficking of a child, as described in subdivision  
28 (c) of Section 236.1.

29 (2) The provision of food, shelter, or payment to a child in  
30 exchange for the performance of any sexual act described in this  
31 section or subdivision (c) of Section 236.1.

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EQUALITY CALIFORNIA

January 16, 2020

The Honorable Cristina Garcia
Assemblymember, District 58
State Capitol, Room 2013
Sacramento, CA 95814

RE: AB 1145 (Garcia) – SPONSOR

Dear Assemblymember Garcia,

Equality California is pleased to sponsor your AB 1145, which will improve access to and the quality of mental and general health care services for young people by clarifying that people who are mandated by law to report child abuse are not required to report specified, voluntary sexual contact in limited circumstances. AB 1145 will address ambiguity in existing law that has confused mandated reporters for many years, resulting in barriers to physical and mental health care services for young Californians.

For twenty years, Equality California has led the Golden State’s fight for full LGBTQ equality. We bring the voices of LGBTQ people and allies to institutions of power in California and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ people. We advance civil rights and social justice by inspiring, advocating, and mobilizing through an inclusive movement that works tirelessly on behalf of those we serve.

Mandated reporters are required to notify child welfare authorities whenever they know or reasonably suspect that a youth has experienced “sexual assault,” as a form of child abuse and neglect. Under the current language of Penal Code Section 11165.1, “sexual assault” appears to include anal and oral copulation and sexual penetration, regardless of circumstances or age differential between minors. This means that if a 16-year-old discloses to their therapist that they had voluntary oral sex with their 16-year-old partner, the therapist would have to report it. AB 1145 simply seeks to treat all types of voluntary sexual activity the same. It seeks to clarify this code section so that voluntary anal and oral copulation and sexual penetration among youth within a narrow age range, absent of indications of coercion and abuse, are not mandated to be reported. Under current law, non-abusive consensual intercourse for the same age group is not reportable as child abuse.

Treating specific sexual behavior that many young people voluntarily engage in as “child abuse” has a chilling effect on the ability of counselors, teachers, licensed therapists, and other professional mandated reporters to offer support and counseling to their adolescent clients. The current understanding of reporting rules leads to confusion and stress for youth-serving professionals and restricts the availability of care.

In 2013 the Department of Consumer Affairs reported that the Child Abuse and Neglect Reporting Act (CANRA) could be interpreted to mean that voluntary sexual activity, including oral and anal copulation between minors of like age, are not mandatory to be reported. However, there is still ambiguity in the statute that requires legislative clarification. The California Board of Psychology suggests that because of the significant penalties and ramifications of not making a report, and because of the protections given to

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Equality California
3701 Wilshire Blvd, Suite 725
Los Angeles, CA 90010

mandated reporters who do report their reasonable suspicions of child abuse, therapists will most likely err on the side of over-reporting, even when otherwise not necessary. This can lead to mandated reporters terminating relationships with clients, mistrust between patients and providers, and lack of care for LGBTQ patients. For example, a therapist who contacted the National Center for Youth Law several years ago said that he decided to shut down a support group that he was running for LGBTQ youth because he feared that certain disclosures made during therapy would require him to report all group members to law enforcement

LGBTQ youth, who are more likely to engage in the acts covered by this bill, are disproportionately negatively affected by the ambiguity of existing law. Major mental health organizations such as NAMI, the Trevor Project, and the National Foundation for Suicide Prevention have all reported that LGBTQ youth are two to three times more likely to experience mental health conditions and are at much higher risk of suicide than their non-LGBTQ peers. Existing law hinders health care providers, counselors, and therapists from building relationships of trust with LGBTQ young people who are exploring their identities. It discourages youth from disclosing critical health information to their physical and mental health care providers. This limits the ability of providers to engage in prevention counseling and care, for example, with youth who may be at high risk of HIV infection, depression, or suicide. As a leader in equality, California should not have laws on the books that make it more difficult for health and mental health professionals to provide services to high-risk communities.

Currently, mandated reporters are required to submit a child abuse report anytime they reasonably believe that a youth has been the victim of sexual assault or coerced into sexual activity in any way. AB 1145 will *not* change that. AB 1145 will allow mandated reporters and child welfare authorities to focus on youth who are abused or at risk of abuse, update a legal regime that is rooted in discriminatory and outdated beliefs regarding nonprocreative sex, and most importantly will increase access to critical preventative health and mental health care services for all young people.

AB 1145 is a long overdue change that will enable mandated reporters to exercise their informed judgment about which relationships bear indicia of abuse and will move towards parity between the treatment of LGBTQ and non-LGBTQ relationships.

As a byproduct, AB 1145 will also reduce the number of people who may unfairly and irrationally be placed on the sex offender registry, conserving law enforcement resources. Furthermore, unnecessary registration of young LGBTQ people only compounds the societal barriers to housing and employment that LGBTQ people already face.

For these reasons, Equality California is proud to sponsor AB 1145. Thank you for your leadership in advancing this important piece of legislation.

Sincerely,



Rick Zbur  
Executive Director  
Equality California

CC: Members and Committee Staff, Assembly Appropriations Committee

# ATTACHMENT B0



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

1625 North Market Blvd., Suite S-309, Sacramento, CA 95834 P  
(916) 574-8220 F (916) 574- 623 www.dca.ca.gov



## MEMORANDUM

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DATE	April 11, 2013
TO	Kim Madsen Members of the Board of Behavioral Sciences
FROM	DIANNE R. DOBBS Senior Staff Counsel, Legal Affairs
SUBJECT	<b>Evaluation of CAN RA Reform Proposal Related to Reporting of Consensual Sex between Minor</b>

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Following presentation by Benjamin E. Caldwell, PsyD of a proposal to amend portions of the Child Abuse and Neglect Reporting Act ("CAN RA") at the board meeting on February 28, 2013, the board requested a legal opinion on the proposal. The proposal seeks to amend CANRA to remove sodomy and oral copulation from the definition of sexual abuse, assault or exploitation. The purpose of the modification is to address concerns of mandated reporting in situations of consensual acts falling within these definitions when the actors are minors of like age under the law and the actions do not otherwise suggest other indications of abuse or neglect.

### QUESTIONS PRESENTED

- 1.o As written does Penal Code section 11165.1 require practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation?
- 2.o Does the legal interpretation of CANRA warrant support of the proposed amendments?

### SHORT ANSWERS

- 1.o No. Court interpretation of CANRA dating back to 1986, and followed as recently as 2005 confirms that minors under and over age 14 can lawfully engage in consensual sexual activities with minors of a like age, and that not all sexual conduct involving a minor necessarily constitutes a violation of the law. That as such, a mandated reporter is required to report only those conditions and situations where the reporter has reason to know or suspects resulted from sexual conduct between the minor and an older adolescent or an adult and those contacts which resulted from undue influence, coercion, use of force or other indicators of abuse.

2. No. Because practitioners are not required to report any non-abusive consensual sexual activities between minors of like age, amendment of the law is not necessary and should not be supported.

### STATEMENT OF FACTS/BACKGROUND

1. Benjamin Caldwell PhD, ("Dr. Caldwell") Legislative and Advocacy Committee Chair of the American Association of Marriage and Family Therapy – California Division seeks to amend CANRA and is seeking the support of the Board of Behavioral Sciences ("Board").
2. Dr. Caldwell claims that CANRA's inclusion of sodomy and oral copulation in the definition of sexual assault found in Penal Code section 11165.1<sup>1</sup> requires mandated reporters to report all homosexual activities meeting these definitions whether or not the acts are consensual and not otherwise suggestive of abuse.
3. The Senior Legislative Assistant of Assembly member Tom Ammiano believes that Dr. Caldwell and others are misinterpreting CANRA.

### ANALYSIS

CANRA does not require a mandated reporter to report incidents of consensual sex between minors of similar age, as provided in section 261.5, absent reasonable suspicion of force, exploitation or other indications of abuse. The California Court of Appeal decided this issue in its 1988 ruling in *Planned Parenthood v. Van De Kamp*. *Planned Parenthood v. Van De Kamp (1988) 181 Cal.App.3e 245*. In that case, Planned Parenthood sought to enjoin implementation of CANRA following an opinion of the Attorney General which provided that the inclusion of section 288 in the definition of sexual assault found in section 11165.1 (a) meant that all sexual activities between and with minors under age 14 was reportable. *67 Ops. Cal. Atty.Gen. 235 (1984)*.

In nullifying the AG's opinion, the court explored the legislative history and intent of CANRA and held that the legislative intent of the reporting law was to leave the distinction between abusive and non-abusive sexual relations to the judgment of those professionals who deal with children and who are by virtue of their training and experience particularly well suited to such judgment. The court reasoned that while the voluntary sexual conduct among minors under the age of 14 may be ill advised, it is not encompassed by section 288, and that the inclusion of that section in the reporting law does not mandate reporting of such activities. *Id* at 276.

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<sup>1</sup> All further citations are to the Penal Code unless otherwise specified.

After the court's ruling in *Planned Parenthood*, the Legislature amended CANRA and did nothing to nullify or change the effect of the court's decision. As such, the Legislature is deemed to have approved the interpretation because where a statute has been construed by judicial decision and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approved of it. See *People v. Stockton* (1988) 203 Cal.App.3d 225, citing *Wilkoff v. Superior Ct.*

Following *Planned Parenthood* several other Court of Appeal cases adopted the reasoning of the court including *People v. Stockton* later in 1988, and most recently with *People v. Davis* in 2005. All these cases discuss the CANRA reporting requirements in the context of section 288 which relates to lewd and lascivious conduct with minors under 14. Though none of the cases discuss any of the other acts which also constitute sexual assault under section 11165.1(a), the same reasoning applies to those acts in that absent other indications of abuse, the law does not require the reporting of consensual sexual activities between minors of similar age for any of these acts. This interpretation is consistent with the well settled legal principle that statutes are to be construed with reference to the entire system of law of which they are a part, including the various codes, and harmonized wherever possible to achieve a reasonable result. *Cossack v. City of Los Angeles* (1974) 11 Cal.3d 726, 732.

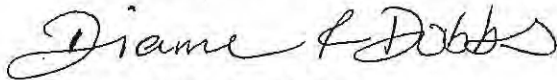
Dr. Caldwell claims that section 11165.1(a) requires mandated reporters to report all minors engaged in sodomy and oral copulation even where the conduct is consensual and is devoid of evidence of abuse is not supported by the law. All conduct enumerated in section 11165.1(a) must be treated the same for purposes of reporting. To interpret the law otherwise would be against the intent of the legislature to leave the distinction between abusive and non-abusive sexual relations to the judgment of the professionals. An interpretation that would require the reporting of all sodomy and oral copulation without reasonable suspicion of abuse would lead to an absurd result. The court in *Planned Parenthood* said it best when it stated, "...statutes must be construed in a reasonable and commonsense manner consistent with their apparent purpose and the legislative intent underlying them, practical rather than technical, and promoting a wise policy rather than mischief or absurdity. Even a statute's literal terms will not be given effect if to do so would yield an unreasonable or mischievous result." *Planned Parenthood* at 245. Therefore, sexual conduct of minors that meet the definition of sodomy and oral copulation must be treated as all other sexual conduct noted in section 11165.1(a) and is only reported if the acts are nonconsensual, abusive or involves minors of disparate ages, conduct between minors and adults, and situations where there is reasonable suspicion of undue influence, coercion, force or other indicators of abuse.

Section 11165.1(b) further outlines limited examples of conduct which qualifies as sexual assault. There is also no evidence that any of the examples in that section would lead to a discriminatory result to justify removal of sodomy or oral copulation from subsection (a).

CONCLUSION

It is our opinion that CANRA does not require mandated reporters to report consensual sex between minors of like age for any of the actions noted in section 11165.1 unless the practitioner reasonably suspects that the conduct resulted from force, undue influence, coercion, or other indicators of abuse. Accordingly, it is not necessary to amend the statute to remove sodomy and oral copulation, as those acts are not treated differently from other acts outlined in the code.

DOREATHEA JOHNSON  
Deputy Director, Legal Affairs



By: DIANNE R. DOBBS  
Senior Staff Counsel  
Legal Affairs

2. No. Because practitioners are not required to report any non-abusive consensual sexual activities between minors of like age, amendment of the law is not necessary and should not be supported.

### STATEMENT OF FACTS/BACKGROUND

1. Benjamin Caldwell PhD, ("Dr. Caldwell") Legislative and Advocacy Committee Chair of the American Association of Marriage and Family Therapy – California Division seeks to amend CANRA and is seeking the support of the Board of Behavioral Sciences ("Board").
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In nullifying the AG's opinion, the court explored the legislative history and intent of CANRA and held that the legislative intent of the reporting law was to leave the distinction between abusive and non-abusive sexual relations to the judgment of those professionals who deal with children and who are by virtue of their training and experience particularly well suited to such judgment. The court reasoned that while the voluntary sexual conduct among minors under the age of 14 may be ill advised, it is not encompassed by section 288, and that the inclusion of that section in the reporting law does not mandate reporting of such activities. Id at 276.

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Following *Planned Parenthood* several other Court of Appeal cases adopted the reasoning of the court including *People v. Stockton* later in 1988, and most recently with *People v. Davis* in 2005. All these cases discuss the CANRA reporting requirements in the context of section 288 which relates to lewd and lascivious conduct with minors under 14. Though none of the cases discuss any of the other acts which also constitute sexual assault under section 11165.1(a), the same reasoning applies to those acts in that absent other indications of abuse, the law does not require the reporting of consensual sexual activities between minors of similar age for any of these acts. This interpretation is consistent with the well settled legal principle that statutes are to be construed with reference to the entire system of law of which they are a part, including the various codes, and harmonized wherever possible to achieve a reasonable result. *Cossack v. City of Los Angeles* (1974) 11 Cal.3d 726, 732.

Dr. Caldwell claims that section 11165.1(a) requires mandated reporters to report all minors engaged in sodomy and oral copulation even where the conduct is consensual and is devoid of evidence of abuse is not supported by the law. All conduct enumerated in section 11165.1(a) must be treated the same for purposes of reporting. To interpret the law otherwise would be against the intent of the legislature to leave the distinction between abusive and non-abusive sexual relations to the judgment of the professionals. An interpretation that would require the reporting of all sodomy and oral copulation without reasonable suspicion of abuse would lead to an absurd result. The court in *Planned Parenthood* said it best when it stated, "...statutes must be construed in a reasonable and commonsense manner consistent with their apparent purpose and the legislative intent underlying them, practical rather than technical, and promoting a wise policy rather than mischief or absurdity. Even a statute's literal terms will not be given effect if to do so would yield an unreasonable or mischievous result." *Planned Parenthood* at 245. Therefore, sexual conduct of minors that meet the definition of sodomy and oral copulation must be treated as all other sexual conduct noted in section 11165.1(a) and is only reported if the acts are nonconsensual, abusive or involves minors of disparate ages, conduct between minors and adults, and situations where there is reasonable suspicion of undue influence, coercion, force or other indicators of abuse.

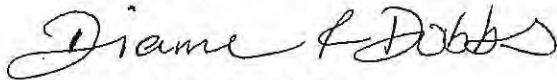
Section 11165.1(b) further outlines limited examples of conduct which qualifies as sexual assault. There is also no evidence that any of the examples in that section would lead to a discriminatory result to justify removal of sodomy or oral copulation from subsection (a).



CONCLUSION

It is our opinion that CANRA does not require mandated reporters to report consensual sex between minors of like age for any of the actions noted in section 11165.1 unless the practitioner reasonably suspects that the conduct resulted from force, undue influence, coercion, or other indicators of abuse. Accordingly, it is not necessary to amend the statute to remove sodomy and oral copulation, as those acts are not treated differently from other acts outlined in the code.

DOREATHEA JOHNSON  
Deputy Director, Legal Affairs



By: DIANNE R. DOBBS  
Senior Staff Counsel  
Legal Affairs

**ATTACHMENT C**  
**RELEVANT CODE SECTIONS**

**Penal Code (PC) §261.5**

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

### **PC §286.**

(a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

## **PC §287**

(a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) (1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of oral copulation upon a person who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of oral copulation upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (A) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (B) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (C) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is under 14 years of age, when the act is accomplished against the

victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(4) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.



(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(Added by renumbering Section 288a by Stats. 2018, Ch. 423, Sec. 49. (SB 1494)  
Effective January 1, 2019.)

## **PC §288**

(a) Except as provided in subdivision (i), a person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) A person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(2) A person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(c) (1) A person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) A person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e) (1) Upon the conviction of a person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an

additional fine not to exceed ten thousand dollars (\$10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

(2) If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) "Dependent person" means a person, regardless of whether the person lives independently, who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes a person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

(i) (1) A person convicted of a violation of subdivision (a) shall be imprisoned in the state prison for life with the possibility of parole if the defendant personally inflicted bodily harm upon the victim.

(2) The penalty provided in this subdivision shall only apply if the fact that the defendant personally inflicted bodily harm upon the victim is pled and proved.

(3) As used in this subdivision, "bodily harm" means any substantial physical injury resulting from the use of force that is more than the force necessary to commit the offense.

(Added by Stats. 2006, Ch. 337, Sec. 9. Effective September 20, 2006.)

## **PC §289**

(a) (1) (A) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of sexual penetration upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight

years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in a county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over 21 years of age who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), “threatening to retaliate” means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, “victim” includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.



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## ATTACHMENT D



# Reporting Consensual Activity Between Minors:

## The Confusion Unraveled

CATHERINE ATKINS, STAFF ATTORNEY  
(Revised May 2013)

Time and time again, there seems to be much confusion with regard to whether an MFT must, or is even permitted to, report consensual sexual activity involving minors. The information below applies only to consensual sexual activity-not incest, date rape or any situation in which the minor did not fully consent to the sexual activity. Involuntary sexual activity involving minors, and incest involving a minor (even when voluntary), is always a mandatory report.

Below is a chart which identifies the various ages of children and consensual sexual activity at issue<sup>1</sup>:

"Child" refers to the person that the mandated child abuse reporter is involved with.	Definitions and Comments	Mandatory Report	Not Mandatory Report
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### A. Child younger than 14 years old

1. Partner is younger than 14 years old and of similar chronological or maturational age. Sexual behavior is voluntary & consensual. There are no indications of intimidation, coercion, bribery or other indications of an exploitive relationship.	See, <i>Planned Parenthood Affiliates of California v. John K. Van De Kamp</i> (1986) 181 Cal. App. 3d 245 (1986); See also, <i>In re Jerry M.</i> 59 Cal. App. 4th 289.		X
2. Partner is younger than 14 years old, but there is disparity in chronological or maturational age or indications of intimidation, coercion or bribery or other indications of an exploitive relationship.		X	

<i>"Child" refers to the person that the mandated child abuse reporter is involved with.</i>	<b>Definitions and Comments</b>	<b>Mandatory Report</b>	<b>Not Mandatory Report</b>
3. Partner is 14 years or older.		X	
4. Lewd & Lascivious acts committed by a partner of any age.	The perpetrator has the intent of "Arousing, appealing to or gratifying the lust, passions, or sexual desires of the perpetrator or the child". This behavior is generally of an exploitative nature; for instance, "flashing" a minor-exposing one's genitals to a minor.	X	
5. Partner is alleged spouse and over 14 years of age.	The appropriate authority will determine the legality of the marriage.	X	

**B. Child 14 or 15 years old**

1. Partner is less than 14		X	
2. Unlawful Sexual Intercourse with a partner older than 14 and less than 21 years of age & there is no indication of abuse or evidence of an exploitive relationship.			X
3. Unlawful Sexual Intercourse with a partner older than 21 years of age.		X	

<i>"Child" refers to the person that the mandated child abuse reporter is involved with.</i>	<b>Definitions and Comments</b>	<b>Mandatory Report</b>	<b>Not Mandatory Report</b>
4. Lewd & Lascivious acts committed by a partner more than 10 years older than the child.	The perpetrator has the intent of "Arousing, appealing to or gratifying the lust, passions, or gratifying the lust, passions, or sexual desires of the perpetrator or the child". This behavior is generally of an exploitative nature; for instance, 'flashing' a minor-exposing one's genitals to a minor.	X	
5. Partner is alleged spouse and over 21 years of age.	The appropriate authority will determine the legality of the marriage.	X	

### **C. Child 16 or 17 years old**

1. Partner is less than 14		X	
2. Unlawful Sexual Intercourse with a partner older than 14 & there is no indication of an exploitive relationship.			X
3. Unlawful Sexual Intercourse with a partner older than 14 & there is evidence of an exploitive relationship.		X	
4. Partner is alleged spouse and there is evidence of an exploitive relationship.	The appropriate authority will determine the legality of the marriage.	X	

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## D. Oral Copulation and Sodomy of Child under the age of 18

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Historically most county agencies and professional associations stated that under Penal Code section 11165.1, all sodomy, oral copulation, penetration of a genital or anal opening by a foreign object, even if consensual, with a partner of any age, was a mandatory report.

However, on April 11, 2013, the Board of Behavioral Sciences (BBS) released an evaluation of the Child Abuse and Neglect Reporting Act (CANRA), specifically answering the question: "Did Penal Code 11165.1 require practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation?"

Counsel to the BBS stated, in summary, that court interpretations throughout the years confirmed that minors can lawfully engage in consensual sex with other minors *of like age*, without the necessity of a mandatory report. Counsel further stated that while the cases cited in her analysis did not directly discuss oral copulation and sodomy between minors, the same reasoning applied and as such, practitioners were not required to report all conduct by minors that fell under the definition of sodomy and oral copulation.

So what does this mean? When a provider learns of consensual, non-abusive sexual activity between two minors, the provider would:

1. Utilize the chart above to determine if the ages are "of like ages."
2. If there is a mandatory report, based on the ages above, for intercourse, certainly there would be a mandatory report for oral copulation or sodomy.
3. However, if there is no mandatory report, based on the ages above, according to the BBS, there would be no mandatory report necessary in the case of oral copulation or sodomy either.
4. Forced, coerced, and/or non-consensual sexual activity is always a mandatory report.

**NOTE: It is important to note that the recent BBS evaluation is the BBS' interpretation of law. While the BBS evaluation would be a good evidentiary resource in defense of a provider who is challenged in court for not making a mandatory report for consensual oral copulation or sodomy, the laws regarding mandatory reporting have not changed. Since state law regarding reporting of consensual oral copulation and sodomy has not changed and this exact issue has not been examined by the courts, the conservative approach, in order to gain immunity from suit under CANRA, would be to continue to report those types of consensual acts between minors.**

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*This information is intended to provide guidelines for addressing difficult legal dilemmas. It is not intended to address every situation that could potentially arise, nor is it intended to be a substitute for independent legal advice or consultation. When using such information as a guide, be aware that laws, regulations and technical standards change over time, and thus one should verify and update any references or information contained herein. ©*

### REFERENCES

- 1 This chart was adapted from the Child Abuse Council of Santa Clara County found at [www.cacsc.org](http://www.cacsc.org).



*Catherine L. Atkins, JD, is a Staff Attorney and the Deputy Executive Director at CAMFT. Cathy is available to answer members' questions regarding legal, ethical, and licensure issues.*

# ATTACHMENT E

[return to Reporting table of contents](#)

## Child Abuse Reporting Guidelines for Sexual Activity Between and with Minors

### Santa Clara County Child Abuse Council

This is a guide for mandated reporters and the information contained in this document is designed to assist those mandated by California Child Abuse Reporting Laws to determine their reporting responsibilities. It is not intended to be and should not be considered legal advice. In the event there are questions regarding reporting responsibilities in a specific case, the advice of legal counsel should be sought. This guide incorporates changes in the Child Abuse Reporting Law, effective January, 1998. For more detailed information refer to Penal Code Section 11164 & 11165.1 et al.

**I. INVOLUNTARY SEXUAL ACTIVITY** is always reportable.

**II. INCEST**, even if voluntary is always reportable. Incest is a marriage or act of intercourse between parents and children; ancestors and descendants of every degree; brothers and sisters of half and whole blood and uncles and nieces or aunts and nephews. (Family Code, § 2200.)

**III. VOLUNTARY SEXUAL ACTIVITY** may or may not be reportable. Even if the behavior is voluntary, there are circumstances where the behavior is abusive, either by Penal Code definition or because of an exploitive relationship and this behavior must be reported. Review **either** section A, B or C **and** section D. In addition, if there is reasonable suspicion of sexual abuse prior to the consensual activity, the abuse must be reported.

"Child" refers to the person that the mandated child abuse reporter is involved with.	Definitions and Comments	Mandatory Report	Not Mandatory Report
<b>A. Child younger than 14 years old</b>			
1. Partner is younger than 14 years old and of similar chronological or maturational age. Sexual behavior is voluntary &	See, <i>Planned Parenthood Affiliates of California v. John K. Van De Kamp</i> (1986) 181 Cal. App. 3d 245		X

consensual. There are no indications of intimidation, coercion, bribery or other indications of an exploitive relationship.	(1986) & <i>In re Jerry M.</i> 59 Cal. App. 4th 289		
2. Partner is younger than 14 years old, but there is disparity in chronological or maturational age or indications of intimidation, coercion or bribery or other indications of an exploitive relationship.		X	
3. Partner is 14 years or older.		X	
4. Lewd & Lascivious acts committed by a partner of any age.	The perpetrator has the intent of "Arousing, appealing to or gratifying the lust, passions, or sexual desires of the perpetrator or the child".?	X	
5. Partner is alleged spouse and over 14 years of age.	The appropriate authority will determine the legality of the marriage.	X	
<b>B. Child 14 or 15 years old</b>			
1. Partner is less than 14		X	
2. Unlawful Sexual Intercourse with a partner older than 14 and less than 21 years of age & there is no indication of abuse or evidence of an exploitive relationship.			X
3. Unlawful Sexual Intercourse with a partner older than 21 years of age.		X	
4. Lewd & Lascivious acts	The perpetrator has the	X	

committed by a partner more than 10 years older than the child.	intent of "Arousing, appealing to or gratifying the lust, passions, or gratifying the lust, passions, or sexual desires of the perpetrator or the child".		
5. Partner is alleged spouse and over 21 years of age.	The appropriate authority will determine the legality of the marriage.	X	
<b>C. Child 16 or 17 years old</b>			
1. Partner is less than 14		X	
2. Unlawful Sexual Intercourse with a partner older than 14 & there is no indication of an exploitive relationship.			X
3. Unlawful Sexual Intercourse with a partner older than 14 & there is evidence of an exploitive relationship.		X	
4. Partner is alleged spouse and there is evidence of an exploitive relationship.	The appropriate authority will determine the legality of the marriage.	X	
<b>D. Child under the age of 18</b>			
1. Sodomy, oral copulation, penetration of a genital or anal opening by a foreign object, even if consensual, with a partner of any age.		X	

Mandated reports of sexual activity must be reported to either The Department of Family & Children's Services (DFCS) or to the appropriate police jurisdiction. This information will then be cross-reported to the other agency. Reporting does not necessarily mean that a civil or criminal proceeding will be initiated against the suspected abuser.

Failure to report known or reasonable suspicion of child abuse, including sexual abuse, is a misdemeanor. Mandated reporters are provided immunity from civil or criminal liability as a result of making a mandated report of child abuse.



Child Abuse Council, Interagency Collaboration Committee (3/12/98). Reviewed February 2008..  
Adapted from Orange County Reporting Guidelines

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## ATTACHMENT F

### MANDATED REPORTERS: WHEN MUST YOU REPORT *CONSENSUAL* SEXUAL ACTIVITY INVOLVING MINORS?

The question of whether the Child Abuse and Neglect Reporting Act (CANRA) (Penal Code §§ 11165 - 11174) requires designated professionals to report consensual sexual activity involving minors remains a "hopelessly blurred" area of the law. On the one hand, *Planned Parenthood v. Van de Kamp* (1986) 181 Cal.App.3d 245 holds that laws which require the reporting of voluntary, nonabusive sexual behavior between minors of a similar age violate a minor's right to sexual privacy. On the other hand, *People v. Stockton Pregnancy Control Medical Clinic, Inc.* (1988) 203 Cal.App.3d 225, as well as legislative changes in 1997, affirm that certain types of sexual conduct involving minors still must be reported even if consensual. (See AB 327, Stats. 1997, c. 83.) The following guidelines are designed to synthesize conflicting legal authority and provide mandated reporters with reasonable guidance.

- ☞ **Both children are under age 14? No report is required** unless there is disparate age, intimidation, coercion, exploitation or bribery.
- ☞ **One child is under age 14, the other child is age 14 - 17? Yes, a report is required.** Penal Code sections 11165.1(a) and 288(a) afford special protection to children under age 14.
- ☞ **Both children are ages 14 - 17? No report is required**, unless the sexual activity involves incest (see Penal Code § 285, Family Code 2200) or there is evidence of abuse or an exploitative relationship.
- ☞ **The child is age 14 - 17, the other person 18 or older? No report is required**, unless the sexual activity involves one of the following: 1. Incest (see Penal Code § 285, Family Code 2200); 2. Unlawful Sexual Intercourse (also known as "Statutory Rape") involving a person over age 21 with a child age 14 or 15 (see Penal Code § 261.5(d)); and 3. Lewd and Lascivious Acts involving a child age 14 or 15 and a person who is at least ten years older than the child (see Penal Code § 288(c)(1)).

While consensual sexual intercourse between a child (a person under age 18) and an adult (a person age 18 or older) is still a crime and thus subject to prosecution, California law only requires that it be reported if the child is under age 16 and the adult is over age 21. (See Penal Code § 261.5(a).)

**Note:** Sodomy (Penal Code § 286); Oral Copulation (Penal Code § 288a) and Penetration by Foreign Object (Penal Code § 289) (which includes a penetration by a finger) are still listed as reportable offenses under Penal Code § 11165.1, but recent cases such as *People v. Hofsheier* (2006) 37 Cal. 4th 1185 and *Lawrence v. Texas* (2003) 539 U.S. 558 cast doubt on the constitutionality of treating these types of consensual sexual activity different from sexual intercourse.

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## CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

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**BILL NUMBER:** AB 1616                      **VERSION:** AMENDED JANUARY 6, 2020

**AUTHOR:** LOW                                      **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** DEPARTMENT OF CONSUMER AFFAIRS: BOARDS: EXPUNGED CONVICTIONS

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### **Summary:**

This bill would require DCA boards, upon a licensee's or former licensee's request and provision of a certified copy of expungement, to update their websites with notification of the expungement order (if the person is relicensed or reapplies for licensure) or to remove the posting of revocation from the website (if the person's license was revoked, they are no longer licensed, and have not reapplied).

### **Existing Law:**

1. Permits a licensing board under the Department of Consumer Affairs (DCA) to suspend, revoke, or discipline a license on the ground that the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession that they are licensed for. (Business and Professions Code (BPC) §490(a) and (b))
2. Defines a conviction as a plea or verdict of guilty or a conviction following a plea of nolo contendere. A board may act once the time for appeal has elapsed, the judgement of conviction has been affirmed on appeal, or an order granting probation is made suspending imposition of the sentence, irrespective of a subsequent order under Penal Code (PC) §1203.4. (BPC §490(c))
3. Permits a defendant who has fulfilled the conditions of their probation, been discharged prior to the termination of their probation, or for whom a court determines in its discretion that such relief should be granted, and who is not serving a sentence or probation for any offense, or charged with commission of any offense, to withdraw their plea of guilty or nolo contendere and instead enter a plea of not guilty. If the defendant has been convicted after a plea of not guilty, the court shall set aside the guilty verdict. For either type of case, the court must dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense. Certain convictions are not eligible for this,

mainly certain Vehicle Code violations and certain convictions involving sex offenses with minors. (Penal Code (PC) §1203.4)

4. Requires specified state entities, including the Board of Behavioral Sciences (Board), to provide information on the internet regarding the status of every license issued. This information must be provided in accordance with the California Public Records Act (commencing with Section 6250 of the Government Code) and the Information Practices Act of 1977 (commencing with Section 1798 of the Civil Code). (BPC §27)
5. Requires the public information on licensees that must be provided on the Board's website to include information on suspensions and revocations of licensees and other related enforcement action. The information posted may not include personal information such as home telephone number, date of birth, or social security number. (BPC §27)
6. Requires the Medical Board of California to post information on its website about the current status of the license for all current and former licensees. This includes (BPC §2027):
  - Whether or not the licensee is presently in good standing;
  - Active temporary restraining orders or interim suspension orders against the licensee;
  - Current accusations filed by the Attorney General, including ones on appeal.
  - Any final revocations and suspensions taken or the surrender of a license by the licensee in relation to a disciplinary action or investigation;
  - Any felony convictions;
  - Any misdemeanor convictions resulting in a disciplinary action or accusation that is not subsequently withdrawn or dismissed.
7. Requires the Medical Board of California, for any required website postings of a felony or misdemeanor conviction, to post notification of an expungement order and its corresponding date, within six months upon receipt from the licensee of a certified copy of an expungement order granted pursuant to Penal Code §1203.4. (BPC §2027(b)(4) and (5))

**This Bill:**

1. Requires that a DCA board must update their required website posting for a person whose license was revoked because they were convicted of a crime, upon receiving

from them a certified copy of an expungement order pursuant to PC §1203.4 for the underlying offense, as follows (BPC §493.5(a)):

- a. If the person reapplies for licensure or has been relicensed, the board must post notification of the expungement order and its date on the website.
  - b. If the person is not currently licensed and does not reapply for licensure, the board must remove the initial posting on its website that the person's license was revoked.
2. The website posting must be updated within six months of receiving the expungement order, unless prohibited by another law (BPC §493.5(a)).
  3. Requires the person with the expunged conviction to pay the board a fee, as determined by DCA, to cover the costs associated with the above website update. (BPC §493.5(a))

**Comment:**

- 1) **Author's Intent.** The author states the following:

*"[This bill] is designed to reduce employment barriers for people with previous criminal records who have been rehabilitated and whose conviction has been dismissed, or expunged, through the judicial process. Under current law, individuals who have successfully rehabilitated may continue to face stigma and barriers to find employment. Although they are intent on positively contributing to society by finding employment and self-sufficiency, state records may not reflect an expungement that was granted by the courts. [This bill] allows individuals who were formerly licensed through the state of California to appropriately reflect the record of their rehabilitation as granted by the judicial branch, and improve their opportunity to seek meaningful employment."*

- 2) **Medical Board of California.**

The Medical Board of California already has a provision in its statutes that is similar to this proposal. For felony or misdemeanor convictions that are expunged, it is required to, upon receipt of a certified copy of an expungement order, post notification of the expungement order on its website. (BPC §2027)

Medical Board indicates that one staff person handles this workload, and that it is a small portion of that person's duties. Therefore, the fiscal impact of the requirement on their board is minor and absorbable. For Fiscal Year 2019, Medical Board had approximately 150,000 licensed physicians and surgeons.

### 3) Previous Legislation.

- **AB 2138 (Chiu and Low, Chapter 995, Statutes of 2018)** Removes some of the licensing and employment barriers that those with prior criminal convictions or disciplinary actions often encounter, if they can demonstrate rehabilitation. It makes changes to the law regarding when licensing boards can deny, suspend, or revoke a license due to prior convictions or discipline.
- **AB 2396 (Bonta, Chapter 737, Statutes of 2014)** Prohibits DCA boards from denying a license under BPC §480 because the applicant had a conviction, if that conviction had been expunged under Penal Code Sections 1203.4, 1203.4a, or 1203.41.

### 4) Support and Opposition.

#### *Support:*

- None at this time.

#### *Opposition:*

- None at this time.

### 5) History.

#### **2020**

- 01/30/20 In Senate. Read first time. To Com. on RLS. for assignment.
- 01/30/20 Read third time. Passed. Ordered to the Senate. (Ayes 76. Noes 0.)
- 01/23/20 Read second time. Ordered to third reading.
- 01/23/20 From committee: Do pass. (Ayes 18. Noes 0.) (January 23).
- 01/23/20 Coauthors revised.
- 01/23/20 In committee: Set, first hearing. Referred to APPR. suspense file.
- 01/14/20 From committee: Do pass and re-refer to Com. on APPR. (Ayes 18. Noes 0.) (January 14). Re-referred to Com. on APPR.
- 01/13/20 From committee: Be re-referred to Com. on B. & P. Re-referred. (Ayes 12. Noes 0.) (January 13). Re-referred to Com. on B. & P.
- 01/09/20 (pending re-refer to Com. on B. & P.)
- 01/09/20 Assembly Rule 56 suspended. (Page 3769.)
- 01/09/20 Re-referred to Com. on RLS. pursuant to Assembly Rule 96.
- 01/07/20 Re-referred to Com. on INS.
- 01/06/20 From committee chair, with author's amendments: Amend, and re-refer to Com. on INS. Read second time and amended.

#### **2019**

- 04/02/19 Re-referred to Com. on INS.
- 04/01/19 From committee chair, with author's amendments: Amend, and re-refer to Com. on INS. Read second time and amended.
- 03/28/19 Referred to Com. on INS.
- 02/25/19 Read first time.

02/23/19 From printer. May be heard in committee March 25.  
02/22/19 Introduced. To print.



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AMENDED IN ASSEMBLY JANUARY 6, 2020

AMENDED IN ASSEMBLY APRIL 1, 2019

california legislature—2019–20 regular session

**ASSEMBLY BILL**

**No. 1616**

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**Introduced by Assembly Member Low**

February 22, 2019

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An act to ~~amend Section 10295.6 of the Insurance Code, relating to insurance.~~ *add Section 493.5 to the Business and Professions Code, relating to professions and vocations.*

**legislative counsel's digest**

AB 1616, as amended, Low. ~~Accelerated death benefits.~~ *Department of Consumer Affairs: boards: expunged convictions.*

*Existing law establishes the Department of Consumer Affairs, which is composed of various boards, and authorizes a board to suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law, the Medical Practice Act, provides for the licensure and regulation of the practice of medicine by the Medical Board of California and requires the board to post certain historical information on current and former licensees, including felony and certain misdemeanor convictions. Existing law also requires the Medical Board of California, upon receipt of a certified copy of an expungement order from a current or former licensee, to post notification of the expungement order and the date thereof on its internet website.*

*This bill would require a board within the department that has posted on its internet website that a person's license was revoked because the*

person was convicted of a crime to, within 6 months of receiving the expungement order for the underlying offense from the person, post notification of the expungement order and the date thereof on the board's internet website if the person applies for licensure or is relicensed, or remove the initial posting on its internet website that the person's license was revoked if the person is not currently licensed and does not reapply for licensure, as specified. The bill would require a person to pay a fee, to be determined by the department, to the board for the cost of administering the bill's provisions.

~~Existing law regulates classes of insurance, including life insurance, and prescribes certain requirements governing the payment of an accelerated death benefit under a life insurance policy. Existing law authorizes an accelerated death benefit to be added to a life insurance policy to provide for the advance payment of a part of the death proceeds if a qualifying event, including a terminal or chronic illness, occurs. Existing law prohibits an accelerated death benefit from being effective more than 30 days following the effective date of the policy provision, rider, endorsement, or certificate.~~

~~This bill would authorize the effective period of an accelerated death benefit to be extended to not more than 60 days following the effective date of the policy provision, rider, endorsement, or certificate.~~

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

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

- 1 SECTION 1. Section 493.5 is added to the Business and
- 2 Professions Code, to read:
- 3 493.5. (a) A board within the department that has posted on
- 4 its internet website that a person's license was revoked because
- 5 the person was convicted of a crime, upon receiving from the
- 6 person a certified copy of an expungement order granted pursuant
- 7 to Section 1203.4 of the Penal Code for the underlying offense,
- 8 shall, within six months of receiving the expungement order, unless
- 9 it is otherwise prohibited by law, or by other terms or conditions,
- 10 do either of the following:
- 11 (1) If the person reapplies for licensure or has been relicensed,
- 12 post notification of the expungement order and the date thereof
- 13 on its internet website.

1 (2) If the person is not currently licensed and does not reapply  
2 for licensure, remove the initial posting on its internet website that  
3 the person's license was revoked.

4 (b) A person described in subdivision (a) shall pay to the board  
5 a fee in an amount to be determined by the department that does  
6 not exceed the reasonable cost of administering this section. The  
7 fee shall be deposited by the board into the appropriate fund and  
8 shall be available only upon appropriation by the Legislature.

9 (c) For purposes of this section "board" means an entity listed  
10 in Section 101.

11 (d) If any provision in this section conflicts with Section 2027,  
12 Section 2027 shall prevail.

13 SECTION 1. ~~Section 10295.6 of the Insurance Code is~~  
14 ~~amended to read:~~

15 ~~10295.6. (a) If a policyholder or certificate holder requests an~~  
16 ~~acceleration of death benefits, the insurer shall send a statement~~  
17 ~~to the policyholder or certificate holder and irrevocable beneficiary~~  
18 ~~showing any effect that the payment of the accelerated death benefit~~  
19 ~~would have on the policy's cash value, accumulation account,~~  
20 ~~death benefit, premium, policy loans, and policy liens. The~~  
21 ~~statement shall disclose that receipt of accelerated death benefit~~  
22 ~~payments may adversely affect the recipient's eligibility for~~  
23 ~~Medicaid or other government benefits or entitlements. In addition,~~  
24 ~~receipt of an accelerated death benefit payment may be taxable~~  
25 ~~and assistance should be sought from a personal tax adviser. If a~~  
26 ~~previous disclosure statement becomes invalid as a result of an~~  
27 ~~acceleration of the death benefit, the insurer shall send a revised~~  
28 ~~disclosure statement to the policyholder or certificate holder and~~  
29 ~~irrevocable beneficiary.~~

30 ~~(b) The accelerated death benefit shall be effective not more~~  
31 ~~than 60 days following the effective date of the policy provision,~~  
32 ~~rider, endorsement, or certificate.~~

33 ~~(c) If the insurer charges a separate premium for the accelerated~~  
34 ~~death benefit, then the insurer may also offer a waiver of premium~~  
35 ~~benefit as defined in subdivision (a) of Section 10271.1. At the~~  
36 ~~time the waiver of the accelerated death benefit premium benefit~~  
37 ~~is claimed, the insurer shall explain any continuing premium~~  
38 ~~requirement to keep the underlying policy in force.~~

39 ~~(d) An insurer shall not unfairly discriminate among insureds~~  
40 ~~with different qualifying events covered under the policy or among~~

1 insureds with similar qualifying events covered under the policy.  
2 An insurer shall not apply further conditions on the payment of  
3 the accelerated death benefits other than those conditions specified  
4 in the accelerated death benefit.

5 ~~(e) No later than one month after payment of an accelerated~~  
6 ~~death benefit, the insurer shall provide the policyholder or~~  
7 ~~certificate holder with a report of any accelerated death benefits~~  
8 ~~paid out during the prior month, an explanation of any changes to~~  
9 ~~the policy or certificate, death benefits, and cash values on account~~  
10 ~~of the benefits being paid out, and the amount of the remaining~~  
11 ~~benefits that may be accelerated at the end of the prior month. The~~  
12 ~~insurer may use a calendar month or policy or certificate month.~~

13 ~~(f) The conversion benefit available to group certificate holders~~  
14 ~~on termination of employment pursuant to paragraph (2) of~~  
15 ~~subdivision (a) of Section 10209 shall include a benefit comparable~~  
16 ~~to the accelerated death benefit. This requirement may be satisfied~~  
17 ~~by an individual policy or certificate. This requirement, subject to~~  
18 ~~the approval of the commissioner, may be satisfied by arrangement~~  
19 ~~with another insurer to provide the required coverage.~~

20 ~~(g) If payment of an accelerated death benefit results in a pro~~  
21 ~~rata reduction in cash value, the payment may be applied toward~~  
22 ~~repaying a portion of the loan equal to a pro rata portion of any~~  
23 ~~outstanding policy loans if disclosure of the effect of acceleration~~  
24 ~~upon any remaining death benefit, cash value or accumulation~~  
25 ~~account, policy loan, and premium payments, including a statement~~  
26 ~~of the possibility of termination of any remaining death benefit,~~  
27 ~~is provided to the policyholder or certificate holder. The~~  
28 ~~policyholder or certificate holder shall provide written consent~~  
29 ~~authorizing any other arrangement for the repayment of outstanding~~  
30 ~~policy loans.~~

## CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

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**BILL NUMBER:** AB 2028                      **VERSION:** INTRODUCED JANUARY 30, 2020  
**AUTHOR:** AGUIAR-CURRY                      **SPONSOR:** CALIFORNIA NURSES ASSOCIATION  
**RECOMMENDED POSITION:** NONE  
**SUBJECT:** STATE AGENCIES: MEETINGS

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### **Summary:**

Current law establishes the Bagley-Keene Open Meeting Act (Bagley-Keene Act) that state bodies, including the Board of Behavioral Sciences (Board) are subject to. This bill proposes two changes to the Bagley-Keene Act:

- A change to require state bodies to post all meeting materials online at least 10 days in advance of a public meeting.
- A change to allow the public to comment on any agenda item of a state body's meeting, regardless of whether the item had already been considered, and public comment allowed, at a committee meeting of the state body.

### **Existing Law:**

1. Establishes the Bagley-Keene Open Meeting Act. It requires the proceedings of public agencies be conducted openly so that the public may remain informed. (Government Code (GC) §11120)
2. Defines "state body" as including state boards, commissions or similar multimember bodies of the state created by statute or required by law to conduct official meetings. It also includes committees that exercise authority of a state body delegated to it by that state body. (GC §11121)
3. Requires a state body to provide a meeting notice to anyone who requests it in writing, and also to post the notice on the internet at least 10 days in advance of a meeting. The notice must contain a specific agenda for the meeting, along with a brief description of the items of business to be transacted or discussed in either open or closed session. (GC §11125)
4. Provides that agendas of public meetings and other writings distributed to the majority of members of a state body in connection with a matter discussed at its public meeting are disclosable public records, unless otherwise exempt by law from public disclosure. (GC §11125.1(a))

5. Provides that writings that are public records that are distributed to members of the state body pertaining to an agenda item prior to or during a meeting must be made available for public inspection at the meeting (if prepared by the state body or one of its members), or after the meeting (if prepared by some other person). (GC §11125.1(b))
6. Under certain circumstances, permits a state body to take action on items of business not on the posted agenda, including if the state body determines by a two-thirds vote that there is a need to take immediate action and that the need for action came to the state body's attention after the agenda being posted. Notice must be made to all national press wire services. (GC §11125.3(a)(2))
7. Permits a state body to call a special meeting in certain defined circumstances when compliance with the 10-day notice would impose a substantial hardship on the state body or when immediate action is required to protect the public interest. Allowable circumstances include, but are not limited to, to consider pending litigation, to consider proposed legislation, to consider a legal opinion, and to consider license examinations and applications. Notice must be made to all national press wire services. At the commencement of the meeting the body must establish by a 2/3 vote that the delay caused by providing a 10-day notice would have caused a substantial hardship or that immediate action is required to protect the public interest. (GC §11125.4)
8. Requires the state body to provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. However, public comment can be disallowed if the agenda item has already been considered by a committee of members of the state body at a public meeting where members of the public could address the committee on the item (unless the item has substantially changed since the committee heard the item). (GC §11125.7).

**This Bill:**

1. Requires that, except for closed session meetings, the required meeting notice posted 10 days in advance of a meeting must also include all writings or materials provided to members of the state body that are connected to a matter to be discussed or considered at the meeting. These materials must be posted on the internet at least 10 days in advance of the meeting and provided to any person who requests the meeting notice in writing. (GC §11125(c)(1) and (2))
2. Permits the state body to distribute or discuss writings or materials related to agenda items only if it has complied with this requirement. (GC §11125(c)(3))
3. Deletes the subdivision of statute permitting a state body to disallow the public to comment on an agenda item if the agenda item has already been considered by a committee composed only of members of the state body at a public meeting where the public could address the committee on the item. (GC §11125.7(a))

## **Comment:**

### **1) Author's Intent.**

The author's office is seeking to close loopholes in the Bagley-Keene Act. They note that although agendas must be posted publicly 10-days in advance of a meeting, there is not a similar requirement for supporting documents. In the bill's fact sheet, they state the following:

*"Documents distributed to members of a state body in relation to a meeting or agenda topic are part of the public record, and are therefore public documents. The goals of public disclosure in Bagley-Keene clearly support the requirement that relevant background information that influences board members on their actions be provided publically in advance of a meeting."*

### **2) Impact on Board Operations.**

#### **a) Meeting Material Provision**

Most of the Board's meeting materials can be prepared and posted 10 days in advance of a meeting. However, this bill could have a chilling effect on the Board's ability to take positions on legislation.

In a typical year, the Board's staff analyzes between 15 and 20 bills that are identified as affecting Board operations, public protection, and/or its licensees and registrants. These analyses are presented to the Board, which then discusses these bills and determines if there is a need to weigh in, either by taking an official position or by providing technical assistance to the author.

The legislative process moves fast, particularly in the months of March through June, when the Legislature's policy committees are in full swing and bills are continuously being amended to reflect stakeholder feedback and meet policy committee deadlines. During this time, it is very common for several bills which are on the Board's agenda to be amended during the 10-day timeframe between when the agenda is posted and when the Board meets. When this happens, staff must update the bill analysis as well as the bill version being included in the meeting materials for the discussion to remain relevant. If meeting materials can no longer be updated if there are bill amendments, then the Board cannot discuss and consider the most recent available information, and its voice in the legislative process is silenced.

As cited in Items 6 and 7 of the "Existing Law" section above, the Bagley-Keene Act provides state bodies with a process to take action on items not on the posted agenda, if there is an "immediate need" and there is a 2/3 vote in agreement about this, or for a special meeting if compliance with the 10-day requirement would impose a "substantial hardship" or when "immediate action" is required to protect the public interest. However, there is a high threshold to meet these requirements,



including a 2/3 vote and notification of the press on a national level. When coupled with the high costs of calling a special board meeting (for travel, materials, webcasting, staff time etc.), in many cases calling a special meeting would not be feasible.

b) Public Comment Provision

This bill also removes a provision from statute that allows a state body to disallow public comment if the same item has already been considered by a committee of the Board and public comment on the item was allowed. The deletion of this provision would not affect Board operations. The Board always allows public comment on all agenda items regardless of those items being discussed and publicly commented on at a previous committee meeting.

**3) Suggested Amendment.**

An amendment clearly allowing an exception to the 10-day posting requirements for legislative amendments and corresponding bill analyses would allow the Board to continue to have a voice in matters that affect its operations and public protection.

**4) Support and Opposition.**

Support:

- California Nurses Association (Sponsor)
- California Labor Federation

Opposition:

- None at this time.

**5) History.**

**2020**

02/14/20	Referred to Com. on G.O.
01/31/20	From printer. May be heard in committee March 1.
01/30/20	Read first time. To print.

**Introduced by Assembly Member Aguiar-Curry**

January 30, 2020

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An act to amend Sections 11125 and 11125.7 of the Government Code, relating to public meetings.

**legislative counsel's digest**

AB 2028, as introduced, Aguiar-Curry. State agencies: meetings.

Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public, and that all persons be permitted to attend any meeting of a state body, except as otherwise provided in that act. Existing law requires the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.

This bill would, except for closed sessions, require that this notice include all writings or materials provided for the noticed meeting to a member of the state body by staff of a state agency, board, or commission, or another member of the state body, that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require these writings and materials to be made available on the internet at least 10 days in advance of the meeting. The bill would provide that a state body may only distribute or discuss these writings or materials at a meeting of the state body if it has complied with these requirements.

Existing law requires that a state body provide an opportunity for members of the public to directly address the body on each agenda item.

Existing law exempts from this requirement, among other things, an agenda item that has already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded an opportunity to address the committee on the item.

This bill would delete this exception, thereby making the requirement to provide an opportunity to address the state body applicable to an agenda item for which the public had an opportunity to address it at a public meeting of a committee of the state body.

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

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

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) The Bagley-Keene Open Meeting Act (Article 9
- 3 (commencing with Section 11120) of Chapter 1 of Part 1 of
- 4 Division 3 of Title 2 of the Government Code) (hereafter
- 5 “Bagley-Keene”) was intended to implement Section 3 of Article
- 6 I of the California Constitution, which states in part, “The people
- 7 have the right of access to information concerning the conduct of
- 8 the people’s business, and, therefore, the meetings of public bodies
- 9 and the writings of public officials and agencies shall be open to
- 10 public scrutiny.”
- 11 (b) Bagley-Keene was written to protect public meetings and
- 12 public notice and to ensure the transparency of actions taken by
- 13 state agencies, boards, and commissions.
- 14 (c) Californians have the right to participate in state body
- 15 deliberations. This includes the public’s ability to comment on all
- 16 agenda items discussed at a meeting of the state body, regardless
- 17 of whether an item has been discussed previously in a committee
- 18 of the state body.
- 19 (d) The purpose of public notice is so that state bodies give the
- 20 public adequate time for review of the substance of a state body
- 21 meeting and for comment.
- 22 (e) Public notice must also include any writings or materials
- 23 provided by a state body’s staff or by a member of the state body
- 24 to other members of the state body for a noticed meeting of the
- 25 body held at least 10 days prior to the meeting.

1 (f) Bagley-Keene affirms these rights by stating in Section 11120  
2 of the Government Code, “The people of this state do not yield  
3 their sovereignty to the agencies which serve them. The people,  
4 in delegating authority, do not give their public servants the right  
5 to decide what is good for the people to know and what is not good  
6 for them to know. The people insist on remaining informed so that  
7 they may retain control over the instruments they have created.”

8 SEC. 2. Section 11125 of the Government Code is amended  
9 to read:

10 11125. (a) The state body shall provide notice of its meeting  
11 to any person who requests that notice in writing. Notice shall be  
12 given and also made available on the ~~Internet~~ *internet* at least 10  
13 days in advance of the meeting, and shall include the name,  
14 address, and telephone number of any person who can provide  
15 further information prior to the meeting, but need not include a  
16 list of witnesses expected to appear at the meeting. The written  
17 notice shall additionally include the address of the ~~Internet site~~  
18 *internet website* where notices required by this article are made  
19 available.

20 (b) The notice of a meeting of a body that is a state body shall  
21 include a specific agenda for the meeting, containing a brief  
22 description of the items of business to be transacted or discussed  
23 in either open or closed session. A brief general description of an  
24 item generally need not exceed 20 words. A description of an item  
25 to be transacted or discussed in closed session shall include a  
26 citation of the specific statutory authority under which a closed  
27 session is being held. No item shall be added to the agenda  
28 subsequent to the provision of this notice, unless otherwise  
29 permitted by this article.

30 (c) (1) *Except as otherwise provided in paragraph (4), any*  
31 *notice provided pursuant to subdivision (a) shall include all*  
32 *writings or materials provided for the noticed meeting to a member*  
33 *of the state body by the staff of a state agency, board, or*  
34 *commission, or another member of the state body, that are in*  
35 *connection with a matter subject to discussion or consideration*  
36 *at the meeting.*

37 (2) *The writings or materials described in paragraph (1) shall*  
38 *be made available on the internet at least 10 days in advance of*  
39 *the meeting, and to any person who requests that notice in writing.*

1 (3) A state body may distribute or discuss writings or materials  
2 described in paragraph (1) at a meeting of the state body only if  
3 it has complied with this subdivision.

4 (4) This subdivision does not apply to writings or materials  
5 prepared for a matter to be discussed in a closed session of the  
6 state body.

7 ~~(e)~~

8 (d) Notice of a meeting of a state body that complies with this  
9 section shall also constitute notice of a meeting of an advisory  
10 body of that state body, provided that the business to be discussed  
11 by the advisory body is covered by the notice of the meeting of  
12 the state body, provided that the specific time and place of the  
13 advisory body’s meeting is announced during the open and public  
14 state body’s meeting, and provided that the advisory body’s  
15 meeting is conducted within a reasonable time of, and nearby, the  
16 meeting of the state body.

17 ~~(d)~~

18 (e) A person may request, and shall be provided, notice pursuant  
19 to subdivision (a) for all meetings of a state body or for a specific  
20 meeting or meetings. In addition, at the state body’s discretion, a  
21 person may request, and may be provided, notice of only those  
22 meetings of a state body at which a particular subject or subjects  
23 specified in the request will be discussed.

24 ~~(e)~~

25 (f) A request for notice of more than one meeting of a state body  
26 shall be subject to the provisions of Section 14911.

27 ~~(f)~~

28 (g) The notice shall be made available in appropriate alternative  
29 formats, as required by Section 202 of the Americans with  
30 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal  
31 rules and regulations adopted in implementation thereof, upon  
32 request by any person with a disability. The notice shall include  
33 information regarding how, to whom, and by when a request for  
34 any disability-related modification or accommodation, including  
35 auxiliary aids or services may be made by a person with a disability  
36 who requires these aids or services in order to participate in the  
37 public meeting.

38 SEC. 3. Section 11125.7 of the Government Code is amended  
39 to read:

1 11125.7. (a) Except as otherwise provided in this section, the  
2 state body shall provide an opportunity for members of the public  
3 to directly address the state body on each agenda item before or  
4 during the state body's discussion or consideration of the item.  
5 ~~This section is not applicable if the agenda item has already been~~  
6 ~~considered by a committee composed exclusively of members of~~  
7 ~~the state body at a public meeting where interested members of~~  
8 ~~the public were afforded the opportunity to address the committee~~  
9 ~~on the item, before or during the committee's consideration of the~~  
10 ~~item, unless the item has been substantially changed since the~~  
11 ~~committee heard the item, as determined by the state body.~~ Every  
12 notice for a special meeting at which action is proposed to be taken  
13 on an item shall provide an opportunity for members of the public  
14 to directly address the state body concerning that item prior to  
15 action on the item. In addition, the notice requirement of Section  
16 11125 shall not preclude the acceptance of testimony at meetings,  
17 other than emergency meetings, from members of the public if no  
18 action is taken by the state body at the same meeting on matters  
19 brought before the body by members of the public.

20 (b) The state body may adopt reasonable regulations to ensure  
21 that the intent of subdivision (a) is carried out, including, but not  
22 limited to, regulations limiting the total amount of time allocated  
23 for public comment on particular issues and for each individual  
24 speaker.

25 (c) (1) Notwithstanding subdivision (b), when a state body  
26 limits time for public comment the state body shall provide at least  
27 twice the allotted time to a member of the public who utilizes a  
28 translator to ensure that non-English speakers receive the same  
29 opportunity to directly address the state body.

30 (2) Paragraph (1) shall not apply if the state body utilizes  
31 simultaneous translation equipment in a manner that allows the  
32 state body to hear the translated public testimony simultaneously.

33 (d) The state body shall not prohibit public criticism of the  
34 policies, programs, or services of the state body, or of the acts or  
35 omissions of the state body. Nothing in this subdivision shall confer  
36 any privilege or protection for expression beyond that otherwise  
37 provided by law.

38 (e) This section is not applicable to ~~closed~~ *any of the following*:

39 (1) *Closed* sessions held pursuant to Section 11126.

40 (f) ~~This section is not applicable to decisions~~

1     (2) *Decisions* regarding proceedings held pursuant to Chapter  
2 5 (commencing with Section 11500), relating to administrative  
3 adjudication, or to the conduct of those proceedings.  
4     ~~(g) This section is not applicable to hearings~~  
5     (3) *Hearings* conducted by the California Victim Compensation  
6 Board pursuant to Sections 13963 and 13963.1.  
7     ~~(h) This section is not applicable to agenda~~  
8     (4) *Agenda* items that involve decisions of the Public Utilities  
9 Commission regarding adjudicatory hearings held pursuant to  
10 Chapter 9 (commencing with Section 1701) of Part 1 of Division  
11 1 of the Public Utilities Code. For all other agenda items, the  
12 commission shall provide members of the public, other than those  
13 who have already participated in the proceedings underlying the  
14 agenda item, an opportunity to directly address the commission  
15 before or during the commission’s consideration of the item.



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:** February 27, 2020

**From:** Rosanne Helms  
Legislative Manager

**Telephone:** (916) 574-7897

**Subject: Legislative Update**

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Board staff is currently pursuing the following legislative proposals:

**1. AB 2363 (Arambula) Practice Setting Definitions**

This bill proposal seeks to eliminate the confusion about where pre-licensees may work by providing specific definitions of private practice, professional corporation, and non-exempt settings. The Board approved this proposal at its November 22, 2019 meeting.

**2. AB 2142 (Medina): Board of Behavioral Sciences: Licensees: Licensing and Examination Fees**

This bill proposal would increase the licensing, registration, and examination fees charged by the Board. The Board has not increased its fees in over 20 years. The proposal was approved by the Board at its November 22, 2019 meeting.

**3. Omnibus Proposal (Senate Business, Professions, and Economic Development Committee) (No Bill Number Assigned at This Time)**

This bill proposal, approved by the Board at its November 22, 2019 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:** Board Members **Date:** February 27, 2020  
**From:** Christy Berger, Regulatory Analyst **Telephone:** (916) 574-7817  
**Subject:** **Status of Board Rulemaking Proposals**

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### **Substantial Relationship & Rehabilitation Criteria (AB 2138 Regulations)**

#### **Status: DCA Final Review Process**

This proposal would result in changes necessary in order to meet the requirements of Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018). This proposal includes modifying the Board's substantial relationship criteria, which helps to evaluate whether a crime or act was substantially related to the profession, as well as criteria to evaluate the rehabilitation of an individual when considering denying, suspending or revoking a license. The proposal was initially approved by the Board at its meeting in February 2019. The Board is being presented with amendments for consideration at its March 2020 meeting, which would result in a 15-day public notice/comment period and final review process. See Attachment B for regulation timeline.

### **Enforcement Process**

#### **Status: On Hold**

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 was submitted to the Department of Consumer Affairs (DCA) to begin the initial review process in July 2017. This regulation package was placed on hold due to the passage of AB 2138 and remains on hold pending passage of the AB 2138 regulations.

## **Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee**

Status: Submitted to OAL for Final Approval

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. See Attachment B for regulation timeline.

## **Supervision-Related Requirements**

Status: Noticed to the Public on February 7, 2020; Public Hearing on March 23, 2020

This proposal would do all of the following:

- 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.
- Address supervision gained outside of California.
- Address documentation when a supervisor is incapacitated or deceased.
- Set forth terms relating to registrant placement by temporary staffing agencies.

The proposal was approved by the Board at its meeting in November 2016 and was held aside while awaiting passage of AB 93 (Chapter 743, Statutes of 2018), the Board's supervision legislation. See Attachment B for regulation timeline.

## **Continuing Education and Additional Training Requirements**

Status: Preparation for Initial Review Process

This proposal would do the following:

- Update content requirements for human sexuality, child abuse assessment and reporting, and alcoholism and other chemical substance dependency courses and create consistency in the required qualifications for course providers.
- Strike the 18-hour CE exception for initial renewal periods.

- Recast CE “exceptions” as “temporary waivers” and modify CE waiver criteria.
- Require licensees who are granted a waiver to complete six hours of CE in law and ethics.
- Update CE waiver forms incorporated by reference for consistency with the proposed updated requirements and for clarity.
- Clarify that a course on law and ethics designed specifically to meet supervisor training requirements cannot be accepted toward meeting the 6-hour law and ethics course required of all licensees each renewal period.
- Specify that a maximum of 18 hours of CE may be met by teaching courses each renewal period, and that the course taught must be for a Board-accepted provider to count.
- Allow a licensee who completes a Board occupational analysis survey to be credited with six hours of CE.
- Repeal outdated regulations pertaining to the Board’s former CE program.
- Clarify that professional associations are the only type of organization that may be recognized by the Board as a CE provider.

This proposal was approved by the Board at its meeting in November 2019.

### **Examination Waiting Periods, Professional Corporations, Accrediting Agencies and Equivalent Degrees**

#### **Status: Preparation for Initial Review Process**

This proposal would update examination waiting periods for consistency with current practice, add Licensed Professional Clinical Counselors to code sections pertaining to ownership, transfer of shares and naming of professional corporations, delete outdated text pertaining to equivalent accrediting agencies for marriage and family therapist applicants, and specify the accrediting agencies that are acceptable for licensed educational psychologist applicant degree programs. This proposal was approved by the Board at its meeting in November 2019.

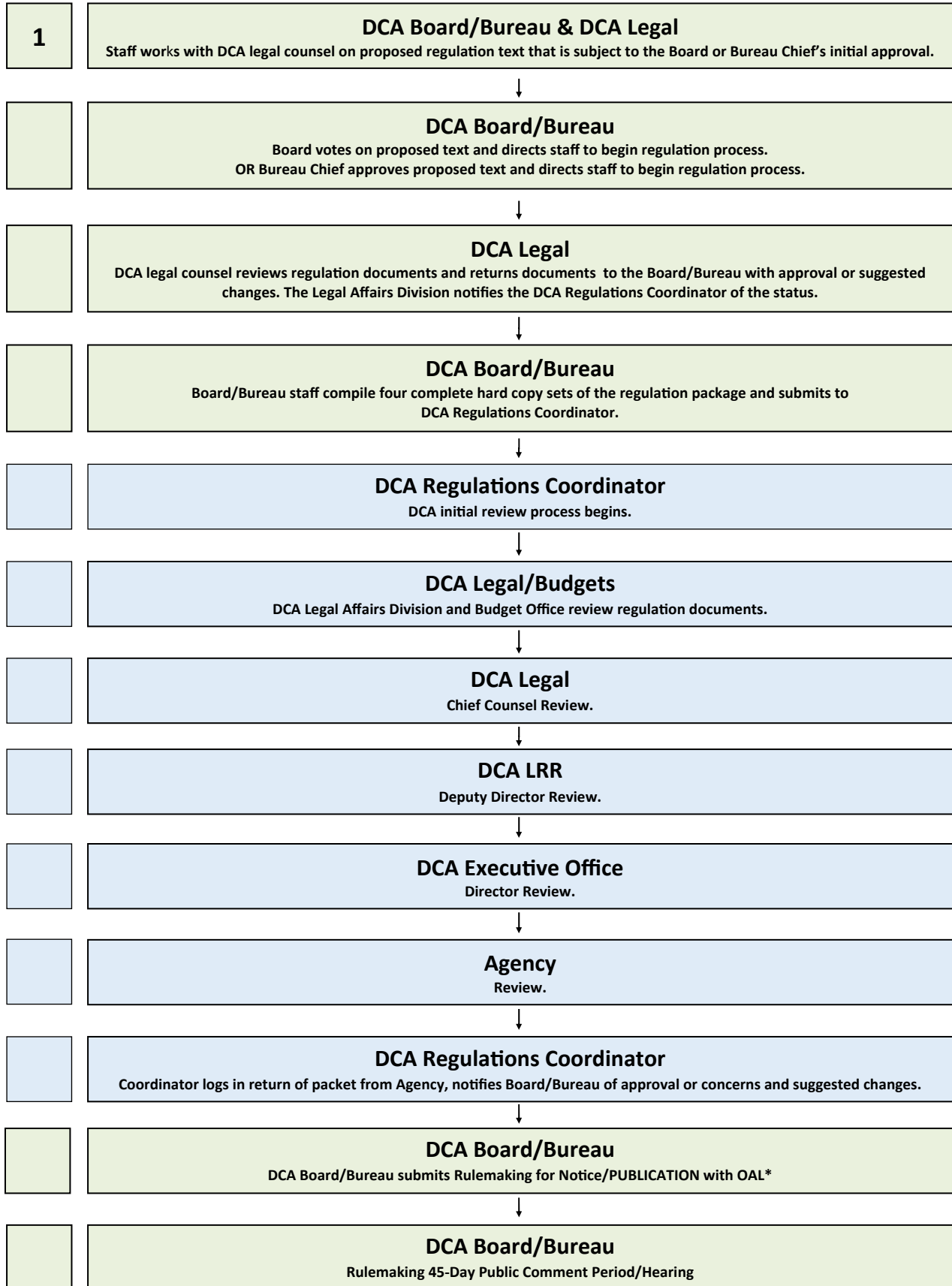
### **Attachments**

**Attachment A:** DCA Regulation Process

**Attachment B:** BBS Regulation Timeline

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**INITIAL PHASE**



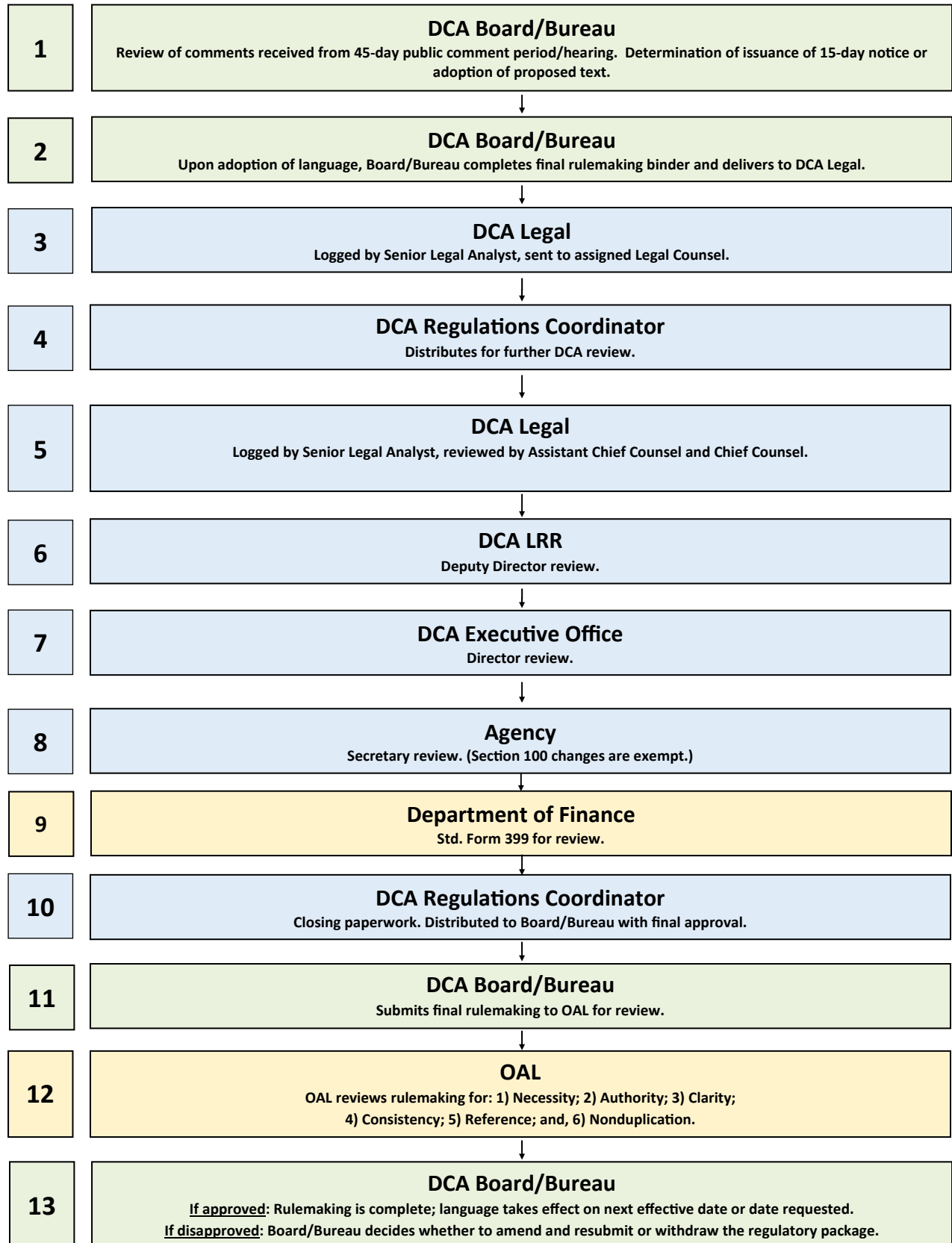
**Legend**

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

**ATTACHMENT B**

**BBS REGULATION TIMELINE**

**FEBRUARY 19, 2020**

Regulation Package Name	Board Approval	Submitted to DCA: Initial Review	Submitted to Agency: Initial Review/Date Agency Approved	Noticed	Public Hearing	Submitted to DCA: Final Review	Approved by Agency: Final Review	Submitted to DOF for Approval	Date Submitted to OAL/ Date OAL Approved
<b>Substantial Relationship &amp; Rehabilitation Criteria (AB 2138 Regs)</b>	3/1/19	4/18/19	6/25/19/ 7/30/19	8/8/19	9/30/19	11/25/19			
<b>Enforcement Update to Disciplinary Guidelines</b>	3/3/17	7/11/17	9/13/18*						
<b>Examination Rescoring; Application Abandonment; APCC Subsequent Registration Fee</b>	11/2/17	4/6/18	9/12/18/ 1/11/19**	2/22/19	4/8/19	4/30/19	6/10/19	6/13/19	Submitted 1/24/2020***
<b>Supervision</b>	11/4/16****	4/18/19	8/8/19/ 10/28/19	2/7/20	3/23/20				

\*This package was held due to the passage of AB 2138 and continues to be on hold pending approval of AB 2138 regulations.

\*\*Returned to Board meeting for Agency-requested changes during this time.

\*\*\*Originally submitted on 7/22/19 and withdrawn for approval of language changes.

\*\*\*\*This package was held pending passage of AB 93.



DCA and Agency Initial Review Process: Following review by the Board's attorney and required document preparation (Notice, Initial Statement of Reasons, Fiscal Impact), the package is submitted to the Department of Consumer Affairs' (DCA) Legal Affairs Office, who routes it for approvals from the budget office, the DCA Executive Office and the State Business, Consumer Services and Housing Agency (Agency). Once approved by Agency, the Board can submit the package to the Office of Administrative Law (OAL) to publicly notice the proposed regulation change. There may be changes requested to documents during this time and the timeline includes processing time for those changes.

Notice and Public Hearing: The public notice initiates the 45-day public comment period and a public hearing. The Board must consider all comments submitted. If any substantive changes to the text of the proposal, the Board must approve the language again, and provide a 15-day public comment period. If no changes are made to the proposal, the package goes 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 (DOF) and OAL 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.