

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

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

**Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
October 16, 2012
10:00am-11:00am**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on **October 15, 2012** or must be received by the Board at the hearing.

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

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

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Amend Section 1888 – Disciplinary Guidelines

Section 1888 states that when making a decision on disciplinary actions, the Board shall consider the disciplinary guidelines titled “Board of Behavioral Sciences Disciplinary Guidelines.” This section incorporates these disciplinary guidelines into regulations by reference.

The Board is proposing to amend the “Board of Behavioral Sciences Disciplinary Guidelines” (Rev. August 2012) incorporated by reference by this section.

Policy Statement Overview: Adoption of these proposed amendments will protect the public by further making clarifying changes to the Board’s disciplinary guidelines as well as making other changes needed to streamline and strengthen the disciplinary guidelines.

Proposed Changes to Disciplinary Guidelines

- 1. Update of Penalty Guideline References:** The Disciplinary Guidelines contain penalty guidelines which have several references that are incorrect due to legislative changes. The Board is proposing amendments to correct these errant references.

Policy Statement Overview: Adoption of these proposed amendments will increase openness and transparency in business and government by ensuring the Disciplinary Guidelines contain correct references to statute, therefore ensuring clarity.

- 2. Reimbursement of Probation Program:** The Disciplinary Guidelines contain several optional terms and conditions of probations that may be appropriate in certain disciplinary cases. A respondent's reimbursement to the Board of his or her probation program costs is currently listed in the Disciplinary Guidelines as an optional term and condition of probation. However, it is standard that the Board require a probationer to reimburse the Board for probation costs. Therefore, the Board is proposing an amendment to move this condition to the list of standard terms and conditions of probation, which must appear in all disciplinary decisions.

Policy Statement Overview: Adoption of these proposed amendments will increase openness and transparency in business and government by ensuring the Disciplinary Guidelines clearly classify reimbursement of a probation program as a standard term and condition of probation.

- 3. Optional Term and Condition of Probation: Psychotherapy:** If a respondent is required to participate in psychotherapy as one of the optional terms and conditions of his or her probation, the disciplinary guidelines currently require that within 60 days of the effective date of the Board's decision, the respondent must submit to the Board the name and qualifications of the therapist he or she would like to choose. However, once a respondent is notified of an adopted decision, they have 30 days before the decision becomes effective. From this time, under current regulations, the respondent then has another 60 days to choose a therapist. As a result, respondents are not starting their required psychotherapy for approximately 3 to 4 months.

The Board is proposing an amendment to change the 60 day period to submit a therapist for approval to 15 days. If this change is implemented, a respondent would know 45 days in advance that they must choose a therapist and submit the pertinent information about their chosen therapist to the Board.

Policy Statement Overview: Adoption of this proposed amendment will protect the public by ensuring that licensees and registrants whom the Board deems in need of psychotherapy as a condition to remain practicing receive that psychotherapy in a timely manner.

- 4. Optional Term and Condition of Probation: Rehabilitation Program:** The Board may require a respondent to participate in a rehabilitation program as one of the optional terms and conditions of his or her probation. The Board is recommending an amendment requiring a respondent to ensure that the

rehabilitation program submits to the Board quarterly written reports addressing the respondent's progress in the program.

Although this requirement is currently written in the instructions and the approval letter of the rehabilitation program, the Board is requesting its addition to the Disciplinary Guidelines for further clarity.

Policy Statement Overview: Adoption of these proposed amendments will increase public protection by ensuring that it is clear to all parties that a probationer who is required to enter a rehabilitation program must ensure that that program provides quarterly written progress reports to the Board.

5. **Optional Term and Condition of Probation: Submit to Biological Fluid Testing and Samples:** The Board may require a respondent to abstain from use of alcohol and/or controlled substances and submit to biological fluid testing and samples as one of the optional terms and conditions of probation. The Disciplinary Guidelines currently state if such testing is ordered, it is the respondent's responsibility to ensure the testing agency submits the results to the Board.

Test results are now automatically submitted to the Board by the testing agency. Therefore, the Board is proposing an amendment to delete this requirement.

Policy Statement Overview: Adoption of this proposed amendment will increase openness and transparency in business and government by removing a specified requirement that is no longer necessary.

6. **Optional Term and Condition of Probation: Monitoring of Billing System:** Under current law, if a respondent is required to obtain a billing system monitor as an optional term and condition of probation, he or she is notified of the decision and has 30 days before it becomes effective. Once effective, he or she must obtain a billing system monitor within 30 days.

The Board is proposing an amendment that is more consistent with the Board's requirements for other terms and conditions of probation. A respondent would still be notified of the Board's decision and have 30 days before it becomes effective. Once effective, the respondent would need to submit the name of the billing monitor he or she would like to use for Board approval within 15 days. Once the Board approves a billing monitor, the respondent must obtain the services of the billing monitor within 15 days of the Board's approval.

Policy Statement Overview: Adoption of these proposed amendments will increase openness and transparency in business and government by making the procedural requirements for obtaining a billing monitor more consistent with the procedural requirements for other similar optional terms and conditions of probation.

7. **Tolling of Probation:** The Disciplinary Guidelines contain specific language for standard terms and conditions of probation, which are included in all disciplinary decisions.

Two of the current standard terms and conditions, "Residing or Practicing Out of State" and "Failure to Practice – California Resident," allow a registrant or

licensee to “toll” their probation if they are not practicing. Tolling probation stops the clock on a practitioner’s probation term until they resume practice. The tolled period is then added to the end of the probation and extends the expiration date.

The “Residing or Practicing Out of State” condition includes language which allows the Board to cancel a license or registration after two years if the respondent does not return to California and resume practice.

The “Failure to Practice – California Resident” condition does not delineate a time limit on non-practice, as long as the licensee or registrant is residing in California. Therefore, probationers can continue in their “toll” status indefinitely or until their registration or license expires by operation of law.

Although the current disciplinary guidelines specify that time spent outside the state in an intensive training program is not to be considered non-practice, staff has never encountered a probationer who was in an intensive training program outside California. The current guidelines also state a respondent’s license must not be cancelled if he or she is residing and practicing in another state and is on active probation with the licensing authority of that state. Staff has also never encountered a probationer who was practicing in another state and on active probation with licensing authority in that state.

Board staff is experiencing an increased number of probationers who toll their probation as of the effective date of probation. Currently, there is no safeguard in place to ensure that these probationers are not practicing, other than their notification to the Board. Therefore, the Board is proposing amendments to combine the “Residing or Practicing Out of State” and “Failure to Practice – California Resident,” standard conditions, deleting unnecessary language, and specifying the cancellation of a registration or license which has been tolled for a total of two years regardless of their in-state or out-of-state residency.

Policy Statement Overview: Adoption of this proposed amendment will increase public protection by cancelling a respondent’s license if he or she does not practice for a total of two years, regardless of whether he or she is in-state or out of state. This will help the Board ensure that probationers who are tolling for a long period of time are not practicing without the Board’s knowledge.

8. **License Surrender:** The Board proposes an amendment to the license surrender language in the Disciplinary Guidelines. The language contains requirements a respondent must meet to reinstate a surrendered license, including meeting current educational requirements and passing required examinations.

The Board proposes an amendment that would add gaining experience to the list of requirements that an applicant would need to meet if he or she decided to re-apply for licensure in the future.

Policy Statement Overview: Adoption of this proposed amendment would enhance public protection by clarifying that applicants for re-licensure must meet all experience requirements that are in law at the time they apply for their new license.

- 9. Recommended Language for Disciplinary Orders:** The “Board Policies and Guidelines” section of the Disciplinary Guidelines contains recommended language for applicants and registrants to be used in the first paragraph of disciplinary orders.

The Board is proposing amendments to the “Recommended Language for Registration Applicants” and “Recommended Language for Registrants” to address the granting of other registrations or licenses by the Board, and the applicability of the probation to those other registrations or licenses. The Board also proposes adding “Recommended Language for Licensees” which addresses this same issue.

Policy Statement Overview: Adoption of these proposed amendments will increase public protection by clarifying that if an applicant, registrant, or licensee is granted another license or registration by the Board during probation, the probation also applies to that license or registration.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

This proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

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

The following studies/relevant data were relied upon in making the above determination:

- The proposed regulatory amendments to Section 1888 and the Disciplinary Guidelines would not result in an economic or fiscal impact. The proposal would only make technical and procedural changes to the process used to handle disciplinary cases.

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

Cost Impacts on Representative Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

- The proposal only makes technical and procedural changes to the process used to handle disciplinary cases.

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

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses for the reasons specified above.

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

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

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

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

Reporting Requirements: None

Comparable Federal Regulations: None

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

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be

more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

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

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

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

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

CONTACT PERSON

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

Name: Rosanne Helms
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The backup contact person is:

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WEBSITE ACCESS

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