

**BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

Hearing Date: August 22, 2017

**Subject Matter of Proposed Regulations:
Application Processing and Registrant Advertising**

Section(s) Affected: Amend Sections 1805.1 and 1811 of Division 18 of Title 16 of the California Code of Regulations.

Background and Identification of the Problem:

The Board of Behavioral Sciences (Board) licenses and regulates marriage and family therapists (LMFTs), educational psychologists (LEPs), clinical social workers (LCSWs), and professional clinical counselors (LPCCs), and registers individuals gaining the required supervised experience toward licensure (Marriage and Family Therapist (MFT) Interns, Professional Clinical Counselor (PCC) Interns and Associate Clinical Social Workers (ASWs)).

Processing Time Frames

Current regulations set forth the Board's maximum application processing time frames, the "actual" processing times based on the prior two years, and the maximum time after receipt of a complete application to issue or deny a license in accordance with the "Permit Reform Act of 1981".

Updates to this regulation are necessary for a number of reasons:

- The "Permit Reform Act of 1981" (Government Code sections 15374-15378), was enacted by Statutes of 1981, Chapter 1087 and became operative January 1, 1983. It required agencies, including the Board, to create a system of specific deadlines and procedures designed to ensure timely and efficient handling of applications. The Act was repealed by the legislature per Assembly Bill (AB) 1757 (Chapter 229, Statutes of 2003).
- The chart's list of application types under the "Programs" column is outdated.
- The maximum processing times listed are no longer in line with goals set by management for shorter time frames, which have been consistently met over the past 18 months.
- The maximum time frames pertaining to issuance or denial of a license are not

useful, as the time frames are distorted by applicants who have a criminal conviction or other history that requires an enforcement review.

- The “actual” processing times listed are frequently out of date due to staff workload. Even if the Board were able to update this regulation every two years, the time frames could never reflect the “past two years” due to the length of the rulemaking process, which takes a minimum of one year from the date the Board votes to approve language and initiate the rulemaking process, to approval by the Office of Administrative Law. The time frames would always be outdated by at least one year.

Advertising

The Board’s existing regulations specify the minimum information which must be included in advertisements, and mandates the specific titles that a licensee or registrant must use in advertisements.

Effective January 1, 2018, a statutory change revises the existing registration titles, “Marriage and Family Therapist Intern” and “Professional Clinical Counselor Intern”. These titles will be replaced by “Associate Marriage and Family Therapist” and “Associate Professional Clinical Counselor” (Senate Bill 1478, Chapter 489, Statutes of 2016).

This regulatory proposal would implement the new statute by adding the use of “Registered Associate Marriage and Family Therapist” or “Registered Associate Professional Clinical Counselor” to the list of acceptable titles when advertising, and implements a sunset date of December 31, 2018 for the continued use of the old titles.

In addition, there is an inconsistency in current regulations pertaining to the existing registration type titled, “Associate Clinical Social Worker” (ASW). This title is not changing. However, this proposal would make the advertising regulations pertaining to ASWs consistent with requirements for other registrant types. The amendment would prohibit the abbreviation “ASW” from being used in an advertisement unless the title “Registered Associate Clinical Social Worker” appears in the advertisement.

Specific Changes: Purpose, Factual Basis/Rationale and Anticipated Benefits:

The changes proposed by this regulatory package are as follows:

A. AMEND SECTION 1805.1 – APPLICATION PROCESSING TIMES

Proposed Changes: The proposed amendments would do the following:

- Update the “Program” column:
 - Add “Associate Professional Clinical Counselor Registration”

- Add “LPCC Application for Licensure”
 - Change “MFT Intern Registration” to “Associate Marriage and Family Therapist Registration”
 - Change MFT “License” to MFT “Application for Licensure”
 - Change “LCSW Associate Registration” to “Associate Clinical Social Worker Registration”
 - Change LCSW “License” to LCSW “Application for Licensure”
 - Change LEP “License” to LEP “Examination Eligibility Application”
 - Delete the “CE Provider Approval” application
 - Add the “Initial License Issuance” application
- Update the column titled, “Maximum time for notifying that application is complete or deficient” to reflect current processing times that have been consistently sustained over the past 18 months, based on business days rather than calendar days.
 - Delete the columns titled, “Maximum time after receipt of a complete application to issue or deny license or registration” and “Actual processing times based on prior two years.”

Purpose/Rationale:

- The repeal of the “Permit Reform Act of 1981” (Government Code sections 15374-15378) per Assembly Bill 1757 (Chapter 229, Statutes of 2003), allows the Board the flexibility to determine the content of this regulation in a manner that is more helpful to applicants.
- The chart’s list of application types under the “Programs” column is outdated and inaccurate as described below:
 - Two license types were added to the Board’s jurisdiction in 2010 – LPCCs, and PCC Interns (aka “Associate PCC”), per SB 788 (Chapter 619, Statutes of 2009).
 - The title “MFT Intern” is being replaced by “Associate MFT,” and the title “PCC Intern” is being replaced by “Associate PCC,” per SB 1478 (Chapter 489, Statutes of 2016).
 - The application types “(MFT or LCSW) License,” are now referred to as “(MFT or LCSW) Application for Licensure”. This change helps to distinguish a “License” application from an “Initial License Issuance” application, which

is being added to the chart. The “Application for Licensure” is for the purpose of submitting qualifications for approval and entry into the final phase of the examination process.

- The “Initial License Issuance” application is for the purpose of requesting issuance of a license once the examinations have been passed and the initial license issuance fee has been paid. This application type is being added to the chart in the interest of providing applicants with information on processing times.
- The application type “LEP License” is now referred to as “LEP Examination Eligibility Application.” This change better reflects the structure of the LEP program, whereby qualifications are reviewed prior to entry into the examination process.
- The “CE Provider Approval” application no longer exists per amendments to the Board’s continuing education regulations (sections 1887 – 1887.15), which took effect January 1, 2015 (Register 2014, No. 38).
- The time frames listed under “Maximum time for notifying that application is complete or deficient” are no longer in line with goals set by management which have been consistently met over the past 18 months.
- The time frames listed under “Maximum time after receipt of a complete application to issue or deny license or registration” are inaccurate. If the Board were to correct them with the actual maximums, the time frames would then be misleading as described below:
 - The time frames do not currently reflect the length of time it takes for applicants to pass the examinations required for license issuance. The Board has very little control over how long it takes an applicant to pass the exams.
 - The time frames do not currently reflect the extended length of time it takes to issue or deny licenses to the small percentage of applicants who have a criminal conviction or other history that requires a review by the Board’s enforcement division. If this information were to be included, it would distort the time frames and be misleading to applicants.
 - Information regarding the “Maximum time after receipt of a complete application to issue or deny license or registration” will continue to be collected and reported to the Board.
- With the repeal of the Permit Reform Act, the Board is no longer required to audit its median, minimum, and maximum times for processing a permit based on the

prior two years, nor must the Board include these time frames in regulation. The existing column titled, “Actual processing times based on prior two years” is frequently out of date due to workload constraints. Even if the Board were able to update this regulation every two years, the time frames could never reflect the “past two years” due to the length of the rulemaking process, which takes a minimum of one year from the date the Board votes to approve language and initiate the rulemaking process, to approval by the Office of Administrative Law. The time frames would always be outdated by at least one year. And, even if somehow this column could be accurately updated, this portion of the regulation does not set forth a standard to which the Board would be held.

Anticipated Benefit: The amendments would result in an up to date and accurate chart that is consistent with current processing times for all application types, thereby making the regulation more relevant and helpful for applicants. By establishing up to date processing times to which the Board can be held accountable, this proposal helps to ensure consumers will have a consistent supply of licensed mental health professionals, and that applicants will have reasonable waiting periods to enter their professional occupation.

B. AMEND SECTION 1811 – ADVERTISING

Proposed Changes: The proposed amendments would:

- Add the use of “Registered Associate Marriage and Family Therapist”, “Registered Associate MFT” and “AMFT” to the list of acceptable titles when advertising.
- Add the use of “Registered Associate Professional Clinical Counselor”, “Registered Associate PCC” and “APCC” to the list of acceptable titles when advertising.
- Set a December 31, 2018 sunset date for use of the former titles of “Marriage and Family Therapist Registered Intern,” “MFT Registered Intern”, “MFTI”, “Professional Clinical Counselor Registered Intern”, “PCC Registered Intern” and “PCCI.”
- Specify that the acronym “ASW” shall not be used in an advertisement unless the title “Registered Associate Clinical Social Worker” appears in the advertisement.

Purpose/Rationale: The Board’s existing regulations specify the minimum information which must be included in advertisements, and mandates the specific titles that a licensee or registrant must use in advertisements. SB 1478 (Chapter

489, Statutes of 2016) changes the titles of registrations issued by the Board effective January 1, 2018. This proposal updates the regulation for consistency with the statute, and allows a one-year phase-in to allow registrants to use up existing supplies of business cards and other advertising material. In addition, the regulation creates consistency in the title that registrants must use in advertising among all of the registration types regulated by the Board.

Anticipated Benefit: This proposal would update the regulations for consistency with statute, provide consistency between regulatory provisions for different registration types, and provide clarity in how the new registration titles can be used in advertisements. It also allows registrants enough time (one year) to use up existing stocks of printed advertising material, thereby providing the opportunity to avoid costs for compliance. It also would benefit consumers by ensuring that clear and accurate titles are used in advertising.

Underlying Data

Repeal of “Permit Reform Act of 1981” (Government Code sections 15374-15378), per Assembly Bill 1757 (Chapter 229, Statutes of 2003).

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would not have a 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 facts:

- The proposed amendments to section 1805.1 pertaining to application processing times do not impose any new requirements on a licensee, registrant, or applicant.
- The proposed amendments to section 1811 pertaining to advertising specify a one-year phase-in to avoid costs to individuals or businesses.
- **Analysis of creation/elimination of jobs:** This proposal will not create or eliminate any jobs within California. Amendments to section 1805.1 do not impose any new requirements on a licensee, registrant, or applicant. The amendment to section 1811(a)(2)(E) imposes a very minor new requirement for ASWs if the individual uses the acronym “ASW” in advertising. Other amendments to section 1811 merely clarify implementation of new statutory requirements, and create consistency between the statutes and regulations.

- **Analysis of creation/elimination of businesses.** This proposal will not create or eliminate any businesses in California for the reasons described above.
- **Analysis of expansion of business:** This proposal will not expand any businesses in California for the reasons described above.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:** This regulatory proposal will benefit the health and welfare of California residents who seek services by ensuring that clear and accurate titles are used in registrant advertising. This proposal will also benefit the Board’s applicants by providing accurate and clear information about application processing times. By establishing up to date processing times, to which the Board can be held accountable, this proposal helps to ensure consumers will have a consistent supply of licensed mental health professionals, and that applicants will have reasonable waiting periods to enter their chosen professional occupation. The proposal will have no effect on worker safety or the State’s environment.

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 will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

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.

Specific Technologies or Equipment

- This regulation does not mandate the use of specific technologies or equipment.
- This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

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 proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternatives considered were as follows:

1. Not adopt the regulations. This alternative was rejected for the following reasons:
 - Not changing section 1805.1 would leave inaccurate and misleading time frames listed in regulation, and would also leave an outdated list of application types in place, which would be confusing and unhelpful to applicants wanting an estimate of how long it might take for the Board to process their application.
 - Not changing section 1811 would leave some inconsistencies between the Board's statutes and regulations. It would be confusing to applicants, registrants and consumers to leave the inconsistencies in place.
2. Adopt the regulations. The Board determined that this alternative is the most feasible because it provides consistency between the statutes and regulations, provides clarity in the titles that can be used in advertising, and provides more useful processing time information to applicants.