

DRAFT BOARD MEETING MINUTES

November 18, 2008

The Westin Los Angeles Airport
5400 West Century Blvd
Los Angeles, CA 90045

Members Present

Ian Russ, Chair, MFT Member
Joan Walmsley, Vice Chair, LCSW Member
Elise Froistad, MFT Member
Judy Johnson, LEP Member
D'Karla Leach, Public Member
Renee Lonner, LCSW Member
Karen Roye, Public Member

Staff Present

Paul Riches, Executive Officer
Kim Madsen, Assistant Executive Officer
Tracy Rhine, Legislation Analyst
Sean O'Connor, Outreach Coordinator
Dawn LaFranco, Budget Analyst
Christina Kitamura, Administrative Assistant
Kristy Schieldge, Legal Counsel

Members Absent

Gordonna DiGiorgio, Public Member
Victor Perez, Public Member
Rita Cameron Wedding, Public Member

Guest List

On file

Ian Russ, Board Chair, called them meeting to order at 8:40 a.m. Christina Kitamura called roll, and a quorum was established.

I. Introductions

Dr. Russ began the meeting describing the Department of Consumer Affairs' (DCA) Professionals Achieving Consumer Trust (PACT) Summit that was occurring simultaneous to the board meeting, and which involved training sessions geared for the Board members. The summit also afforded various boards and bureaus within the DCA to meet and learn from each other and to see how each Board functioned. Dr. Russ commended DCA for arranging the event. Dr. Russ introduced Theresa Bello-Jones, Executive Officer of the Board of Vocational Nurse and Psychiatric Technicians, and Patricia Harris, Deputy Director of Board Relations. Audience members introduced themselves.

II. Approval of October 10, 2008 Board Meeting Minutes

Joan Walmsley moved to approve the October 10, 2008 Board meeting minutes. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

III. Discussion of Examination Complaints

Audience member Patrick Thompson presented issues of his concern pertaining to the Board's licensure examination for social workers. Mr. Thompson spoke about his experiences when taking the Licensed Clinical Social Worker (LCSW) Clinical Vignette examination, including the misinformation he reported having received from the staff of the testing vendor, PSI. He referred the Board members to two letters pertaining to his concerns: 1) a letter dated March 3, 2008 and 2) a letter dated July 15, 2008; both of which he stated were relevant to the issues he would be discussing.

Mr. Thompson listed three issues he wanted to discuss: 1) the exam itself. He was pleased to hear the Board had formed an Examination Program Review Committee. His concern was that the Committee did not seem to have met yet or issued any report of its progress. Mr. Thompson noted that a meeting had been scheduled in December 2008; however, reported being concerned that it may not be moving forward quickly enough to have decisions made about the future of the exam when the contract with PSI expires in December 2009. 2) Incorrect information being disseminated by PSI to candidates. This problem has been acknowledged but, again, he did not see any report or other evidence to indicate anything is being done about it. 3) This concern, which has not been raised previously by Mr. Thompson, pertains to technical issues with PSI. It was reported in examination preparation classes that some test sites have not been updated. The computer screens do not show the vignette and the questions on the same page, so it makes it difficult to flip back and forth. Mr. Thompson was encouraged to call and find out if the site they would be using had such screens. He reported spending three weeks on the phone getting the run-around until finally a supervisor was able to find out that the site Mr. Thompson wanted to use had the new computers. Mr. Thompson qualified the concerns about the computer screens as minor, although he indicated that a more serious technical issue came up when he took the exam. At that time, on one of the answer choices, there were only three sections where usually there are four. Mr. Thompson found two blank lines. He informed the proctor and showed the problem to them; the proctor acknowledged there were only three sections with two blank lines in the middle, but since they could offer no solutions and because the test clock was still running, Mr. Thompson felt he had to continue, which created a lot of pressure.

Mr. Thompson reported the proctors assured him they had called about the problem and that what they had seen on the screen was correct and "that's just the way it was." Mr. Thomson later contacted the Board's Exam Unit, and the matter was investigated through PSI. The results of that investigation was that the proctors reversed what had been said previously and now said that there were four answer choices which they pointed out to Mr. Thompson and he acknowledged by replying "ok." Mr. Thompson denied that the events in this matter occurred as the proctors had indicated subsequent to the filing of his complaint. He told the Board members that he understood that there were two different stories being offered about the situation. However, he stated that there is enough pressure going to take such exams that having misinformation being given and having technical difficulties and not having a mechanism for reaching an agreement with the proctors as to what is happening during the exam when the clock is running – there needs to be such a mechanism in place.

Mr. Thompson expressed concern that "the list of things is getting longer," and the window of opportunity to address the problems is getting shorter. He again expressed his personal concern that there did not seem to be any resolution coming out.

Paul Riches addressed Mr. Thompson's concerns regarding the functioning of the Examination Program Review Committee. First, Mr. Riches reported that the plan was to have the Examination Committee begin meeting in July 2008; however, due to budgetary constraints, that meeting had to be delayed. The first Committee meeting is rescheduled for December 8, 2008 and will take place. He explained that the command to the Committee from the Board was much broader than investigating issues around the administration of the exam and the vendor. When and if the Board decides to make changes to the examination those changes can be made irrespective of who is administering the examination at that time. Mr. Riches clarified that the Board was not operating under the presumption that the Examination Program Review Committee would conclude its work by June 2009 and that policy decisions would be made by that time. The Board and Committee were always on a much longer window and will sort out the administration issues once the Board had made its decisions in this area.

Mr. Thompson responded that he knew there was a discussion about looking at the national exam, and that there was an opportunity to work with them to make some changes that could make that a more suitable exam for California, and his understanding was that the timeline was part of what the Committee was facing.

Mr. Riches indicated that those changes were happening independent of the Committee's work. The Board has been in continuous contact with ASWB; they are beginning their occupational analysis where many of the issues raised in the audit could be addressed. The Board will work with ASWB in their timeline as they proceed. That has not been dropped.

Mr. Riches continued that changes to the examination does not occur quickly but rather involves significant discussion and deliberation prior to implementation of such changes. He anticipated that the Examination Program Review Committee would target the end of the 2009/2010 fiscal year to present recommendations to the full Board regarding changes to the existing examination process.

Mr. Thompson asked if there was any possibility that the Board would miss out on the opportunity to get involved in the revisions to the national examination. Mr. Riches responded there was no chance of that happening and stated that ASWB was just beginning the analysis process. ASWB is well aware that the Board wants to work with them and they have a copy of the audit report. ASWB will work with California to get a broader sampling of California practitioners involved in the survey, which is the first step. He qualified that those events will occur over the span of approximately 18 months before ASWB's analysis is complete.

Joan Walmsley asked Mr. Thompson about his expectations of the board exam, and what he hoped to accomplish. Mr. Thompson responded that he had outlined a number of concerns with the examination and the examination process, and he wanted to see solutions. He expressed a willingness to follow through to ensure problems were resolved.

Mr. Thompson was assured he was not thought of as bothersome, and what he has to say is valid. Rather, Ms. Walmsley was looking for clarification. She explained that should the Board begin using the national examination in place of its state constructed examination, the change would apply only to the Standard Written examination; the clinical vignette examination would continue to be utilized by the Board.

Mr. Thompson was asked for clarification regarding the issues he was raising: did he have concerns with the examination itself? When Mr. Thompson responded affirmatively, Ms.

Walmsley encouraged him to write to her about those concerns. Mr. Thompson indicated that he realized a move to the national examination would impact only the written exam portion of the test, but added strongly that he believed there is still work to be done regarding the clinical vignette examination. Mr. Thompson expressed concern that the examination had not been independently tested despite a variance in pass rates from version to version.

Dr. Russ asked him to clarify what he meant by “independently tested.” Mr. Thompson responded that he meant the examination had not been given to an outside or independent group to review the questions and confirm that these are valid exams. He referred to the national exam’s consistent pass rate and compared that to the varying pass rates for the California exam.

Dr. Russ stated that his recollection of the presentations he has attended pertaining to the examination was that there will be variability on exam scores. This was more common or normal than overwhelming consistency which, when speaking about examinations, was looked at suspiciously. No one particular group of candidates was a perfect representation of the candidate pool. There should always be some variability.

Ms. Walmsley and Dr. Russ urged Mr. Thompson to attend and participate in all upcoming Examination Program Review Committee meetings. It was reiterated that the Committee would next meet on December 8, 2008.

Ms. Johnson indicated that when looking at validity and reliability, those were always factors of concern to the Board. She indicated that the national exam has much bigger and greater statistics over a longer period of time. Additionally, there is a unique climate in California, which is why it is not felt that the national examination currently, in the way it’s written, is something that is going to be as reliable and valid based on the population in California.

Ms. Johnson also discussed the fact that budgetary constraints had kept the Board from being able to yet pursue certain goals, such as beginning the work of the Examination Review Committee.

Mr. Thompson responded that he understood about the budgetary constraints and how that was one part of it, but he again stated his concern that there were problems with the current examination administration company, and wants to see how those problems are being resolved.

Mr. Riches noted that whenever there is a testing incident, there is an exchange of information between the Board, the Office of Examination Resources (OER), and the testing vendor, in an effort to determine what happened in terms of resolving the issues with the individual candidate. Mr. Riches indicated it is part of a larger quality improvement effort. The Board through PSI administers over 7,000 exams a year - a very large program to operate and a difficult undertaking. Every time an issue comes up or the Board receives a complaint, there is a collaborative effort involving the Board, OER, and PSI to address the problem. Opportunities to make improvements to the process are constantly being sought. Sometimes the issue involves a breakdown of some sort; sometimes an indication of a broader process that needs to be addressed. That is the work of the Board, of the Exam Unit, OER, and PSI every day. Mr. Riches assured the Board and Mr. Thompson that no complaints are passed over, and that everyone works on a daily basis to make the examination program the best program possible for the Board’s candidates.

Dr. Russ invited additional public comment on the subject. No public comments were made. Dr. Russ thanked Mr. Thompson for coming to the meeting and encouraged him to attend and participate in the Board's open meetings.

Mr. Thompson finished by repeating that, in terms of the technical problems and incorrect information, he had yet to hear a solution to that problem. He added that he had also yet to hear any solution for the kind of problem that he encountered.

Mr. Riches responded that a letter would be forthcoming specifying exactly what happened as a result of the two complaints and issues that were raised.

IV. Chairperson's Report

A. PACT Conference

Dr. Russ noted the Board was in the midst of the DCA PACT Summit. He encouraged the public to participate in the conference, stating his belief there was a lot to learn from the proceedings about how the state goes about protecting consumers. Consumer protection is the Board's role. He reported that in talking with other board members, all agreed that the role is taken very seriously as they all considered consumer protection to be an important and exciting undertaking. Dr. Russ described the various ways in which the Board seeks to serve the community, and indicated they were going to use the opportunity of the conference to meet with other boards to exchange ideas about how they meet their goals.

Dr. Russ spoke about the changing demographics in the state of California. In terms of ethnic representation, culture, language, geography ... the Board is attempting to figure out how to protect consumers from the impact of all of those areas in the state. He expressed that as people who are overseeing the licensing of mental health professionals, the Board sees it as their responsibility to ensure that services are available to people of all different cultures and geographies. He reported having spoken with students at Alliant University the previous evening, and "making a pitch" to students that if they were aware of people from their culture, or knew of a community that they felt needed mental health professionals to be trained so they could return to those communities to serve, the Board would show up. It is an idea to which the Board is dedicated and believes it is a critical piece of consumer protection.

B. Board Support of Senate Bill 823 (Perata)

Dr. Russ reported having written a letter to Senator Don Perata in support of Senate Bill 823. This was part of the Board's understanding of working with the Senator on various measures and bills, and to let him know the Board supported his attempt to recreate the Bureau for Private Postsecondary and Vocational Education. Although the bill did not pass, Dr. Russ wanted to inform the Board of his actions.

C. Upcoming Board and Committee Meetings

Dr. Russ reported that the board meeting scheduled in Eureka in August 2008 was cancelled due to the budget impasse. He indicated that in an effort to schedule meetings throughout the state to allow for more public participation, the Board will meet in San Luis Obispo in February 2009, in the San Jose area in May 2009, and in San Diego in August 2009. Dr. Russ noted that a meeting will be held in November in the Bay Area, though as yet the specific location of that meeting had not been determined.

He also indicated that the Board was looking into the possibility of a meeting in the Big Bear area. He added that whenever the Board goes to outlying areas, connections are made with the mental health institutions in those areas so representatives could attend the meetings and train the board members about the various mental health needs in California.

Dr. Russ noted that meetings of the Board's various committees were also scheduled.

Mr. Riches added that with respect to the LCSW Education Committee and Examination Program Review Committee, a tentative calendar of meeting dates had been established and was being finalized. He anticipated that the committee meeting dates for 2009 would soon be available.

D. Loan Forgiveness Program Update

Dr. Russ reported, explaining what the program is, what it does, and the process of making awards.

Dr. Russ asked anyone who may have ideas about how to ensure that information about those programs was distributed to outlying areas so that people from such areas can apply, please bring those ideas to the Board.

Ben Caldwell, Alliant International University, expressed his appreciation to the Board for its contributions to this program. In terms of distribution of monies and making sure the word is getting out to all who should know about it, he requested that the information be provided to the educational institutions, which he indicated have regular contact with alumni. Mr. Caldwell expressed a certainty that the alumni would appreciate an opportunity to know about and benefit from the program.

Olivia Loewy, American Association for Marriage and Family Therapy (AAMFT) California Chapter, asked if the Board had communicated with the California Mental Health Director's Association to make them aware of the program and engage their assistance in distributing information about the program to the association's membership of county directors.

Ms. Johnson offered to assist in the process by distributing available information to associates in the more remote geographical locations. Several other Board Members joined her in expressing their willingness and commitment to getting the information out there.

Mr. Riches added that information about the program is available on the Board's website.

V. Executive Officer's Report

A. Budget Report

Mr. Riches reported that not only had the budget now been signed, but the board had received an exemption which allowed for full restoration of operations. He indicated that, as a result, the board functions that had been put on hold during the budget impasse could resume.

Information from the 2007/2008 fiscal year was presented. Mr. Riches indicated that again the board had finished the fiscal year with an unexpended reserve of approximately \$350,000, an amount that was a little higher than in recent years. Mr. Riches provided a brief explanation regarding the ending balance.

With respect to the 2008/2009 fiscal year budget, Mr. Riches reported having a very good year with respect to budget change proposals. The board was awarded a number of additional positions, including two enforcement analysts to perform field investigations. Mr. Riches noted that heretofore the board has used the DCA Division of Investigation to conduct field investigations. Due to staffing issues, however, the investigations were taking an average of eighteen months to complete. He reported that the two new positions were not sworn peace officers, but rather civil servants who can go out and perform the majority of field investigations as part of the Board's enforcement process. Interviews had been conducted, and he anticipated that employment offers would be made shortly. Mr. Riches estimated that with the hiring of staff to fill the two enforcement positions, the backlog of investigations could be eliminated within one year.

Mr. Riches continued by reporting that an additional position had been obtained for the board's licensing unit. He indicated that in fiscal year 2007/2008 the board's overall application volume increased 15%, with a total increase of 25% during the last four years. Until now, no new staff had been added to the licensing unit. A new licensing technician was hired recently to assist with the processing of applications.

The new budget also included funding for a two-year period from Mental Health Services Act (MHSA). The board was given monies to obtain outside expertise to assist the board in its efforts in terms of aligning the board's licensing programs with the MHSA. A significant amount of the funding for the current year is being used to engage the services of psychometrician Tracy Montez. Dr. Montez will assist the Examination Program Review Committee on a full-time basis, providing her expertise to the Committee throughout the process of evaluating the board's licensure examinations. He added that OER would also be assisting in the Committee.

Mr. Riches stated that a portion of the funding from MHSA will also be used to provide education about the curricular changes being proposed for marriage and family therapy. He stated the Board is asking for a big change in a big system and that it happen fast. Work is currently underway to develop a program for presentation in spring 2009 to provide resources to help the education community work its way through what amount to pretty major demands in the MHSA legislation. It is anticipated that the remainder of the funding from MHSA for fiscal year 2008/2009 will be used toward this effort.

Mr. Riches indicated that the three "wins" experienced with the current budget provided much needed help to the Board, both in the area of key operational needs as well as major strategic policy needs.

Currently under development is the budget for next year. Budget Change Proposals (BCP) have been submitted for approval with responses from the reviewing agencies expected shortly. When the Governor's budget is released in January, the Board will be apprised of the outcomes of those BCPs.

Mr. Riches presented the expenditure report regularly provided at each board meeting. He indicated that the report did not provide a lot of information as it is still early in the

fiscal year. He stated that the report presented at the February 2009 meeting would contain information that would provide a better picture of the Board's expenditures; he indicated that at the present time everything is fine.

Ms. Roye commended Mr. Riches on his report and the information provided. She requested that the report to be submitted in February could contain an organizational chart. Mr. Riches replied affirmatively and also offered to provide a breakdown by component to show how the various board programs are funded and how the monies allotted to each program are spent.

Ms. Roye also asked how the budget is supporting the Board's Strategic Plan. Mr. Riches indicated that Kim Madsen, Assistant Executive Officer, would be presenting a brief update on this subject later in the meeting.

Mr. Riches touched on issues in the Strategic Plan that require additional funding, including the area of complainant satisfaction. He stated that the steps the Board has taken to address the bottleneck in the investigation process also serve to address that issue. He also made note that some of the objectives in the Strategic Plan, such as the outreach program, have been adequately addressed with existing staff.

Ms. Roye asked if Mr. Riches planned to have future discussion around the Strategic Plan so that the Board would have a chance to see where strides have been made or where adjustments are needed.

Mr. Riches responded that a management meeting had recently been held at which time an issue of discussion was the status of the Strategic Plan. He anticipated being able to present the Board with a picture of how the Strategic Plan is progressing at the February meeting.

Judy Johnson expressed concern that the current economic climate will result in more individuals changing careers and, therefore, more applications will be received by the Board. She indicated the need to be ready for the impact of such changes, and wanted to make sure the Board is prepared in every way possible. She added that, also in light of the economic climate, more people are seeking mental health assistance.

Mr. Riches responded that such changes, and how to absorb and address such changes, were a topic of discussion at the recent management meeting. He then discussed areas, such as school enrollment, in which data was being compiled in an effort to work with the current and coming changes.

B. Operations Report

Mr. Riches presented a quarterly report document that illustrates various aspects of the Board's business processes. The report gives a breakdown of each unit in the Board and explains each unit's processes and workload statistics. He noted that many of the previous limitations in compiling this type of data no longer exist. Staff has been working diligently over the last several months to take advantage of new programs and data collection options to gather information that is valuable in running the office. He anticipated making a report of daily operations a standard part of the Executive Officer's report at future board meetings.

Dr. Russ requested that staff put together a report showing complaints on examinations. Ms. Roye requested an explanation for peaks and valleys in upcoming reports. She also requested an outline of programmatic level of expectation. For enforcement statistics, Ms. Roye requested a breakdown of actionable complaints versus those that do not require action.

The Board adjourned for a break at 10:06 a.m. and reconvened at 10:30 a.m.

D. Personnel Update

Mr. Riches reported the hiring of new staff, including Kim Madsen who rejoined the Board as its Assistant Executive Officer. Ms. Madsen had previously worked for the Board as a program manager. A new licensing technician, Gena Beaver, had been hired, as well as the position of Enforcement Manager having been filled through the promotion of Pearl Yu, who previously had been serving as an analyst in the Enforcement Unit. A new enforcement analyst, Cynthi Burnett, had been hired to fill the position vacated by Ms. Yu. Additionally, offers would soon be extended to fill the new investigator positions in the Enforcement Unit. Laurie Williams has joined the staff as an analyst in the Administration Unit, and Darlene York was hired as an evaluator in the LCSW program.

E. Mental Health Services Act Coordinator's Report

Mr. Riches presented a report regarding the MHSA Coordinator activities since the May 2008 Board meeting. He reported that the coordinator, Christy Berger, had been working with the Department of Mental Health and other agencies throughout the state on the alignment between MHSA and the Board's licensing programs. The Board and Mr. Riches commended Ms. Berger for her efforts in representing the Board in this arena.

F. Presentation on Licensing Outcomes Statistics

Mr. Riches stated that a major project undertaken by the Board involved obtaining information pertaining to outcomes in the licensing program. Mr. Riches introduced staff member Sean O'Connor as the individual who had headed up this project, and invited Mr. O'Connor to present his report on the licensing process.

Dr. Russ added that he believed the topic warranted a community discussion." He reported having reviewed the information to be presented, and indicated that the Board was not yet sure about the significance of that information or what to do with it. The Board needed and would benefit from assistance from the community to determine the most appropriate use of the data, what is important, what is a problem, what is not a problem, what can be explained easily, etc. He encouraged community participation in that discussion.

Mr. O'Connor began his presentation by referring the Board to a document titled "Tracking the LCSW and MFT Licensing Processes, A Current Snapshot of 2002-2004 Graduates." He explained the August 21, 2008 date of the report by stating it was originally to be presented at an earlier meeting that had to be cancelled.

The report contains information about individuals who earned their Master's Degree from a Board-approved program during the years 2002-2004, and who have gone on to

register either as an Marriage and Family Therapist (MFT) Intern or Associate Clinical Social Worker (ASW). He clarified that the data did not include information about candidates who did not enter the system by becoming registered with the Board after graduation. An attempt was made to obtain data concerning the number of people who have graduated from the various board-approved programs, but the data was hit or miss. While such data could be obtained in the future, Mr. O'Connor indicated that it was not included in the present report.

The population studied by Mr. O'Connor included approximately 3,400 ASWs and nearly 5,500 MFT Interns. He described the reason for examining this data as an opportunity to look at outcomes. The review was an exploratory look at the individuals who graduated during the above-referenced time frame, to see where they are today. The report does not offer any causal reason for why the group studied was where they were at the time of the snap-shot that is the basis for the report.

The report was reviewed section by section. It was determined that a significant portion of the population reviewed had not yet become licensed by the Board. A pie-chart included in the report showed the population could be in one of four places: 1) registered still but not yet having entered the exam process; 2) entered the examination process; 3) become licensed by the Board; or 4) registered at one time but who subsequently fell out of the process. The definition for those who fell out of the process was individuals who registered but who had not renewed in the six-month period prior to the time-frame covered in the report.

Dr. Russ asked for clarification that the data pertained to individuals who were four to six years out of school. Mr. O'Connor acknowledged that was correct. He pointed out trends reflected by the data, such as that only 18% of the ASWs in the study have become licensed, and 31% of the MFT Intern population has received a license. He also noted that at the back of the report the data was broken down by year graduated, for each registration type, with evidence showing that many of the group studied have yet to make it to the examination process.

Upon Board member request, Mr. O'Connor confirmed that the information reflected in the pie charts pertained to registrants versus graduates who had not become registered with the Board after graduation. It suggested that it would be clearer to label the studied groups as registrants instead of graduates, as there was no doubt the pool of graduates who had not applied to the Board was larger than the pool covered in the report.

Dr. Russ asked if it appeared there were many more who graduated who had not become registered. Mr. O'Connor responded that he believed it would differ between the two professions.

Mr. O'Connor pointed out that one similarity between the data presented is the percentage of registrants who have fallen out of the process.

One rather strong trend that was observed is that those who registered early (under a year after graduation) with the Board by far tended to be the individuals who made it through the process and received a license. Data that was offered pertaining to the early registrants revealed that 93% of the ASW population that registered with the Board within one year of graduation went on to become licensed, while 99% of the MFT Intern population who registered early ultimately received an MFT license.

Another trend noted by Mr. O'Connor is that of the individuals studied, a majority who went on to become licensed did so within three to five years of graduation.

Mr. O'Connor pointed out that everyone who becomes licensed takes at least two examinations, a standard written examination and a clinical vignette examination. He stated that it would be impossible for someone to be licensed and have taken only one exam. In reviewing the data, one facet that was reviewed involved the number of attempts made at the test. Mr. O'Connor noted that of the individuals who made it through the entire process and became licensed, the average attempts at the exam was between two and three. He qualified that the average exam attempts was based only on the people who were actually licensed, not those who were only part way through the process.

It was again noted that the study at hand was exploratory in nature, and makes no look at any type of causal inference. Mr. O'Connor indicated that one potential research avenue would be for someone to investigate the reasons why the numbers appear the way they do. He expressed in meeting with educators and administrators he has heard things that have led him to have ideas about what might be independent variables that impact the data being reviewed. Such variables could include geographic location; age of person working through the process; availability of supervision, employment, direct psychotherapy experience, and the "life happens" category and events occur that one might not have taken into consideration when starting down the road toward licensure.

Mr. O'Connor concluded his presentation and entertained questions or discussion from Board members and meeting guests. One question posed by the Board addressed the availability of statistics regarding candidates who are granted accommodations for completion of the testing process. Mr. O'Connor responded that while those numbers have not as yet been reviewed, it was definitely a possibility, and had in fact been brought up previously by Mr. Riches as an area to review. The new reporting tool that is now available to the Board allows for the study of that type of data. Mr. Riches added that this would likely be a key issue to be addressed by the Examination Program Review Committee.

Mr. O'Connor reminded the Board and guests that the report presented at that time was possible due to a new reporting tool now available to the Board, and was the first of many such reports. He believes that the data would be reviewed on a regular, at least yearly, basis and possibly be expanded to include additional pertinent data.

Dr. Russ posed questions to the community, asking if the data is surprising to them and what it means.

Carla Cross, Ventura County Behavioral Health, expressed curiosity about how the data compares to other disciplines or professions. Are the numbers the same or comparable in other professions (attorneys, cosmetologists, etc.) for individuals who get into the exam process and then become licensed? Are the numbers indicative of the nature of the process, and not applicable only to the professions regulated by the Board?

Ben Caldwell, Alliant International University, reported having looked into that end of things when the current discussion first came up. He found data pertaining to social work, education, and psychology seemed to indicate that the attrition rate across the

three professions was fairly even, and lower than in the professions of marriage and family therapy and clinical social work. He expressed that it would be interesting to study why the MFT and LCSW attrition rates were higher.

Mr. O'Connor added that it is not only falling out of the process that bears additional investigation, but also, whether this a question of an acceptable time frame for completion of the process. Is four to six years sufficient? He reported that a large number of the individuals included in the study are still registered with the Board and/or in the exam cycle, and have not yet realized the final goal of licensure. Therefore, another important question is if this an appropriate or acceptable time frame for obtaining a license, and why are people taking as long as they are.

Discussion ensued about the various hurdles that can arise in the context of "life happens" to impact one's goal of obtaining licensure.

Paul Riches spoke about breaks in the population. A small percentage (15 – 20%) are fast track. A question that arises is why is this population so successful. How much is good fortune and how much is a byproduct of the "really directed person" issue?

Mary Reimersma, California Association of Marriage and Family Therapists (CAMFT), asked if the schools conduct surveys of alumni and, if so, if that data could be tied in with the data presented in Mr. O'Connor's report to get a better sense of what might lead to a falling out of the process.

Mr. Caldwell noted that the schools are required as part of the accreditation process to regularly survey graduates to see where they are. He indicated that some of the information collected could be useful to the Board, and offered to work with the Board to see what kind of contribution would be helpful.

A representative from the USC School of Social Work indicated that the recent development of an alumni association afforded the school the possibility of contacting graduates. She noted that although the LCSW alumni had not been surveyed, two of the biggest issues raised by former students are the lack of supervision and number of attempts at the exam.

Dr. Russ asked about the lack of supervision. Is it agencies or private practice that has difficulty obtaining good supervisors, or is it the lack of supervision in general? In response, it was noted that it is primarily agencies that are having difficulty in this area due to issues such as cutbacks, lack of time, and availability. Additionally, graduates have trouble finding outside supervision because there are not a lot of people who are willing or able to provide that service.

Ms. Walmsley spoke about the differences between social workers and marriage and family therapists. She reported that social workers generally obtain employment right out of school, and are able to collect the required hours of experience without much difficulty. Marriage and family therapist graduates, on the other hand, are piecing together several different jobs as they work to gain needed supervision. Ms. Walmsley also noted that some counties do not offer supervision as part of the job, although many graduates go to work for the county. So many individuals are working in environments to gain experience but cannot obtain supervision for that experience. It was noted by an

audience member that this problem does not pertain only to large agencies, but also to smaller community-based organizations.

Ms. Johnson noted that, on the other hand, some counties were paying for their employees to obtain supervision. Ms. Walmsley added that administrative supervision is provided, but supervision from a licensed clinician is neither mandated nor demanded. Board members and audience were surprised with this information.

Heather Halperin, USC School of Social Work, indicated that LA County Mental Health does provide supervision, and has a requirement that an employee become licensed after no more than seven years of employment, or that employment is lost.

Carla Cross, Ventura County Behavioral Health, suggested that one of the issues might be that individuals are hired into positions that do not require licensure, and therefore clinical supervision is not provided. She noted that there are many areas in which social work graduates can become employed that have nothing to do with becoming licensed or being licensed. Those types of agencies are probably not going to be providing supervision because it is not necessarily part of their job duties. She noted that in agencies where becoming licensed and providing licensed services is part of the equation, licensed supervision will be provided. Ms. Cross stated that every time her agency hires an MSW that is unlicensed, it is a given that part of the employer's job is to provide the necessary clinical experience.

Ms. Cross put forth that an issue which could be different between social work and marriage and family therapy candidates is the requirement that there is a limitation on how much supervision can be provided to an associate clinical social worker by someone other than a licensed social worker. She continued that the requirement creates a complication for her agency in terms of taking students and internships as well as hiring. There is no similar restriction for supervision of a marriage and family therapy intern.

Dr. Russ asked if it was that there were graduates who worked for county agencies who were performing unsupervised clinical work and not earning hours of experience, or that those individuals were not performing clinical work because of the lack of supervision. Ms. Walmsley responded that part of it could be how one defines doing clinical work.

Discussion continued about the issue of supervision, and the differences in this and other areas between the LCSW and MFT professions.

Mary Riemersma, CAMFT, pointed out that, by law, individuals working in a governmental setting face a limited length of employment during which licensure must be obtained. This is despite the fact that governmental agencies are exempt from the licensure requirement according to the statutes governing the profession. She indicated the supervision issue is a concern because, by virtue of the fact that an individual is registered, he or she is required to be supervised in order to be compliant with the law. Ms. Riemersma added that another area of consideration is the growing reluctance of people to supervise, due to the fear of risk assumed by being a supervisor, even when doing so on behalf of an agency, whether governmental or private. She questioned what can be done to alleviate that fear. Ms. Riemersma described the issue as huge and one that needs to be addressed in terms of how it can be resolved.

Mr. O'Connor indicated that the lack of supervision issue is interesting. Licensees are needed to provide supervision, but if such supervision cannot be obtained in order to become licensed, the problem snowballs. He qualified his comments as anecdotal, and stated they were based on discussions he has had, with no supporting statistics involved. Mr. Riches added that there are workforce issues that differ in different areas, and research has shown that there are many areas where services are not adequately available. The issue then becomes how to break the self-defeating cycle. He expressed an uncertainty as to how much can be done about the problem globally; however, there could be the opportunity to target more underserved communities in an attempt to alleviate the self-defeating cycle that is resulting in the targeted areas remaining underserved.

Ms. Loewy referred her questions to information previously presented by Mr. O'Connor. She asked if when it was stated that candidates may have taken the exam two to three times, did that number of attempts include taking both the standard written and clinical vignette examinations. Mr. O'Connor clarified that the number was indicative of the total number of tests taken. He provided examples of how a candidate might have to take a total of three tests in order to become licensed. He anticipated that in the future, as more familiarity was gained with the reporting tool used for the current presentation, a report could be generated that outlined the number of attempts made at each part of the test per candidate.

Ms. Loewy then asked about the goal of the Board in conducting the present study. Was the Board attempting to ensure that going through the process was attainable for people interested in licensure? Was the Board evaluating its own process? Is there another goal of wanting to get more people licensed? She expressed an uncertainty about what the ultimate goal is in obtaining the data, and where the Board wanted to go with it.

Dr. Russ responded that during his time as a Board member, the Board has been examining the mental health needs in the state of California, and have determined those needs are not being met. This is due to a variety of factors including geography, economic issues, and culture. He emphasized it is a concern of the Board to have competent, licensed clinicians meeting those needs. He questioned why the individuals who did not complete the process and become licensed failed to do so, and what could be done to respond to this apparent problem.

Mr. Riches expressed the premise that the better one understands the process, the better the decisions will be that are made about that process. He reported that the present Board has been eager and willing to engage in self-examination, and he named several areas in which steps have been taken to complete such evaluation. Although unsure where the data obtained through the Board's studies will lead, Mr. Riches expressed that at a minimum it will help the Board ask and answer questions about what we do and how improvements can be made. Mr. Riches continued that the Board's job is to get safe and minimally competent practitioners in the workforce, and it is always good to ask if the existing process does that.

Dr. Russ expressed the hope that the information would stimulate the educational institutions to develop a program whereby individuals interested in that school could see where graduates are today.

Janlee Wong, National Association of Social Workers (NASW), stated that this research is interesting; however, the research is without purpose, and the Board is looking for a purpose for this research. He added that the proper way to do research is to start with a question that needs an answer.

Mr. Wong also noted that not every MSW wants a license; however, it seems that every MFT wants to get a license, and in terms of intent that is a very big distinction. The two professions cannot be compared by their outcomes. The whole idea of how many years it takes to get a license – longer amount of time is bad and shorter amount of time is good – that idea is an assumption.

Discussion continued with comments from the audience about the information presented, the meaning and/or validity of the data, and how it might be used. It was suggested that for future reports it would be helpful to generate questions about the mission of the Board, and do additional research along those lines. Dr. Russ responded that the purpose of the discussion at hand is to gather input, and that all comments will be considered potential avenues of research to pursue. He noted that the future plan includes focus groups, interviews, and other forums for discussion. In closing, Dr. Russ commended Mr. O'Connor for his efforts and report, and concluded there are many questions to be asked and answered in this evaluation of the existing process.

G. Strategic Plan Update

Kim Madsen, Assistant Executive Officer, presented an update of the Board's Strategic Plan and the steps that have been taken toward meeting the goals of that plan. Ms. Madsen reported that the current objectives of the Strategic Plan are very appropriate to the work of the Board, and significant progress has been made toward meeting those objectives. She added, however, that due to the challenges recently faced by the Board in terms of vacancies and hiring freezes, not as much progress has been made as the Board would have liked. Nonetheless, progress has been made and continues to move in the right direction. Ms. Madsen stated that at the February Board meeting a more detailed report would be provided outlining the progress on specific objectives and the timelines associated with those objectives. That report will include suggestions about any changes or adjustments to the plan that may now be appropriate.

VI. Report of the Policy and Advocacy Committee

A. Legislation Update

Mr. Riches reported that Board-sponsored AB 1897, legislation that extended the Board's dealing with schools approved by the Bureau of Private Postsecondary and Vocational Education (BPPVE), was passed and signed by the Governor. As a result, the relationship with those schools is extended through July 1, 2010. The legislation also resolves the issue of acceptance of regional accreditation. Therefore, degrees presented to the Board from schools that are otherwise accredited by a regional accrediting body and operate under BPPVE approval can now be accepted solely on the basis of the regional accreditation, independent of the timeline for bureau approval. Both of the Board's objectives with the legislation were achieved.

Mr. Riches next spoke about SB 1218, regarding proposed changes to the MFT curriculum. The bill easily passed the legislature and was supported through the approval process. Although the legislation was vetoed by the Governor due to the budget impasse,

it will be reintroduced during the next legislative session and will be carried by Senator Perata.

Other legislation of importance to the Board that was vetoed was SB 1779, the annual committee bill from the Senate Committee on Business and Professions, frequently referred to as the Omnibus Bill. This legislation would have made several substantive and non substantive changes to the statutes relating to the Board. In vetoing the legislation, the governor again noted that it was due to the delay in passing the state budget. Mr. Riches stated that the provisions of the legislation which were sponsored by the Board would be reintroduced in similar legislation during the upcoming legislation session.

Mr. Riches indicated that the balance of the report pertained to legislation that had been monitored by the Board, and the outcome of said legislation.

Mr. Riches was asked if any of the items sponsored by the Board, did any have negative repercussions on Board operations. He responded that the clean-up issues included in the Omnibus Bill generally serve to make the Board's job easier. With respect to the legislation pertaining to the MFT educational requirements, passage of the bill will result in some additional work in getting people up to date on those changes, but Mr. Riches felt the increased work would be manageable. Lastly, legislation regarding revisions to the unprofessional conduct statutes was discussed. Mr. Riches explained that staff is currently trying to compile all external unprofessional conduct found in statutes other than the Business and Professions (B&P) Code, and revise the B&P Code to include all unprofessional conduct related to Board licensees in one place.

The Board thanked Mr. Riches and staff for their efforts in the legislative process. Mr. Riches in turn thanked staff member Tracy Rhine for her daily accomplishments with respect to the legislative interests of the Board.

B. Regulation Update

Ms. Rhine referred the Board to the rulemaking update included in their board meeting materials. She reported that progress was being made on the three regulatory proposals previously approved by the Board. She provided the status of each proposal.

Mr. Riches referred the Board to the regulatory proposal relating to psychological services provided in nonpublic schools, put forward by the California State Board of Education. The Board provided a detailed comment letter on that proposal, which resulted in a 15-day Notice prepared by the Department of Education responding to all of the Board's concerns.

Dr. Russ complimented both Ms. Rhine and Kristy Schieldge, Staff Counsel, for their work in this regard.

The Board adjourned for lunch at 11:53 p.m. and reconvened at 2:00 p.m.

C. Recommendation # 1 –To Initiate a Rulemaking to Revise the Disciplinary Guidelines

Ms. Rhine reported that the Disciplinary Guidelines are used by Board staff, administrative law judges, representatives of the Office of the Attorney General, and other attorneys to determine penalties in disciplinary proceedings involving Board licensees. The guidelines

outline minimum and maximum penalties, as well as standard and optional terms and conditions that can be imposed on a respondent if that individual is placed on probation. The guidelines were last revised in 2004. Due to changes that have occurred in both statute and regulations, Board staff began review of the guidelines to see if revisions were warranted. Proposed revisions have been brought before the Policy and Advocacy Committee on two prior occasions, with long discussions ensuing.

One main issue that has come up is accessibility of court-ordered coursework respondents normally have to complete as part of probation. A second access issue discussed before the Committee pertained to accessibility of licensed mental health practitioners for supervised practice or personal psychotherapy, both of which are probationary terms regularly imposed on respondents. When the respondent is located in a rural area, it might be difficult to find a supervisor or personal psychotherapist. Ms. Rhine noted that this issue was first discussed by the Committee at its July meeting, and again at its last meeting in October. The Committee directed staff to change the guidelines to include a preference list so a respondent who is ordered to seek supervision or psychotherapy must first try to fulfill this requirement through face-to-face meeting. If that is not possible, the respondent may then attempt to obtain those services through video-conferencing. The next option, pertaining to supervision, is to obtain a supervisor who licensed in another profession. Absent the availability of the first three options, the last option available to a respondent is to seek supervision or psychotherapy with a clinician with whom a prior business or professional relationship has been established. Ms. Rhine noted that the changes to the disciplinary guidelines have been made as directed by the Committee.

Ms. Rhine moved on to discuss the issue of availability of educational coursework required of probationers. She indicated that an idea discussed by the committee was to have the Board sponsor such courses. This suggestion was made due to probationers reporting difficulty in finding and completing coursework mandated as a term of probation. Although the Committee did not come to a set resolution of the matter, the decision was to change the language so that in the future, should the decision be made to move forward with this idea, the language in the guidelines would allow such action. The language that was inserted indicates that a respondent may take a class from a Board-approved provider.

The Board members were referred to the sections in the Disciplinary Guidelines that reflect the language developed in compliance with the direction of the Committee. Ms. Rhine reviewed the language with the Board. She indicated it was the recommendation of the Committee that the Board direct staff to initiate the rulemaking process.

Dr. Russ provided a brief history of how the need for the changes came about. He indicated there are areas in the state where it is difficult to obtain supervision, because there are small communities where everybody knows each other. He stated that if a respondent from such a location does not have the opportunity to comply with the terms of probation, then the probation is for naught. The Board, therefore, is attempting to find a way to work with probationers who may face such obstacles. He pointed out, however, that the added language clearly states a respondent must have written permission from the Board to pursue other than face-to-face supervision or psychotherapy.

Mr. Wong, NASW, voiced concern about the language that could permit a respondent to be supervised by a clinician with whom the probationer has a prior relationship. He reported being uneasy about boundary violations that might arise, and spoke of a possible "hornet's nest" that may be created by allowing probationers this option.

Dr. Russ responded that this option would not be automatically approved for all probationers. Any request for use of the option would be reviewed by the Board to ensure the specifics of the disciplinary case made it appropriate to allow use of the option.

Mr. Riches underscored that the particulars of each case would be reviewed to determine the appropriate supervision arrangement. He spoke of two areas of behavior that constitute a majority of the Board's disciplinary cases, one being boundary violations. Mr. Riches stated that, with respect to supervision and psychotherapy, a disciplinary case involving boundary violations would be viewed differently than one involving substance abuse issues. He asserted that including the proposed language in the disciplinary guidelines would simply allow the Board an option to consider should the specifics of a case permit.

Elise Froistad suggested that the language pertaining to supervision with an individual with whom a prior business or professional relationship exists could be omitted and replaced with general language allowing the Board to consider such an option.

Ms. Rhine clarified that the language is written to require a probationer to secure a face-to-face relationship. However, if that is impossible, the next choice would be to use video-conferencing, and if that cannot be accomplished then, with the Board's written permission, the next option could be attempted.

Board members continued to discuss the topic. Ms. Roye indicated that when first looking at the supervision problem the Committee recognized the impacted population was very small. She stated, however, that the Committee was taking into consideration the bottom line problem which is the lack of supervision. The Committee wanted all probationers to be able to obtain the needed supervision. She reinforced that supervision is an issue that is closely looked at and decided on a case-by-case basis, and the selected supervisor must be approved by the Board.

Mr. Riches added that these are not commonly available alternatives. He stated that in order for the option to even be considered, it would depend on many factors including the circumstances leading to the request to use the option, and the nature of the prior relationship. He reported the priority of the probation is that it be meaningful and protective. By the same token, it is intended to be rehabilitative. Therefore, the Board should avoid imposing probationary conditions that fundamentally cannot be met, whenever possible.

It was suggested that a possible resolution to the problem would be to change the phrasing to allow the Board to approve a supervisor with whom a prior business or professional relationship exists. Kristy Schieldge, Staff Counsel, stated that existing language requires that a probationer submit a supervisor for prior Board approval.

Dr. Russ asked if the suggested language was deleted, would the Board still have authorization to approve a supervisor with whom the probationer has a prior relationship. Mr. Riches responded that existing guidelines strictly prohibit use of such a supervisor. Therefore, without a modification to the guidelines, the Board could not take such action.

Discussion continued about possible revisions to this language. Ms. Walmsley again visited the issue regarding probationers in rural areas and the difficulties that could be

encountered in finding a supervisor or personal psychotherapist. Dr. Russ asked for input from representatives of the professional organizations. Ms. Riemersma, CAMFT, noted that her organization's Ethics Committee suffers the same dilemma, and it ultimately is left to the Committee's discretion to accept or reject. She added her trust that the Board would make the appropriate decision in such a case.

Mr. Wong commented that he does not believe NASW would ever allow such a relationship, based on the premise that making such allowances sends the wrong message to licensees. He noted that, from an ethical standpoint, such a relationship should be never okay.

Ms. Roye asked Mr. Riches what happens if the Board sets probation for an individual and that probationer cannot complete the required probation under supervision. Mr. Riches responded that the Board then has two options: 1) modify probationary terms; 2) declare the probationer in violation of the probationary agreement and take steps to revoke the license.

It was suggested that the proposed guidelines be reworked, with the caveat that the Board look at how many years a prior relationship should be severed before a supervisory or therapeutic relationship can be initiated. Would the Board interested in looking at a possible period of time where there is no longer a business relationship in place?

Ms. Schieldge advised that if the Board looks at narrowing the option to a specific timeframe, staff is then being precluded from using their judgment on a case-by-case basis.

Ms. Johnson added that it is important to remember that there are qualifications that have been set for a clinician to be considered a supervisor. She felt it important to understand that if such a relationship occurs, the supervisor is also under scrutiny by the Board.

Ms. Riemersma noted the importance of leaving discretion for the Board to make a decision.

Mr. Wong continued to voice disagreement on the subject, and emphasized the importance of having standardized rules in place and adhering to those standards.

Ms. Riemersma, CAMFT, responded with the reminder that dual relationships are not, in of themselves, illegal or unethical. The key is for therapists to know how to manage those relationships.

Board and audience members added comment on the subject.

Ms. Schieldge asked the direction of the Board. Is the current proposal acceptable or is further clarification required?

Dr. Russ asked if the Board was not able to agree on the acceptability of the proposal, did counsel have ideas for revised wording of the guideline.

Ms. Schieldge indicated it was dependent on whether the Board agreed that there should be a possible waiver of the prohibition against prior business or professional relationships.

Mr. Riches noted that what is in the guidelines is recommended language for decisions and settlements. It is standard language used by the Attorney General's office in drafting settlements or by an Administrative Law Judge in drafting a decision. Mr. Riches emphasized that it is a guideline, not a mandate. He offered as a possible resolution the option that when staff is presented with a probationer's difficulty in fulfilling such a probationary term, the matter can be brought back to the Board for its review, discussion, and possible modification of the terms of probation.

The Board expressed agreement with the proposal.

Kristy Schieldge indicated there may be a problem with modification of the terms of probation due to the existing statutory requirement that a probationer wait one year before petitioning for a change to the terms. Mr. Riches added that a probationer is generally required to submit a supervisor for approval within 90 days from the initiation of probation.

Ms. Schieldge suggested that if the Board is uncomfortable with allowing the waiver under certain circumstances on a case-by-case basis, the third option can be stricken and allow only a video conferencing waiver in and in the field of practice waiver.

Ms. Froistad asked how often the issue comes up that a probationer experiences difficulty in obtaining appropriate supervision or psychotherapy. Mr. Riches responded that he recalled only a few occasions where the problem had been reported.

Mr. Riches noted that statute restricts a probationer from petitioning for modification of the probation terms for one year. He asked counsel if the statute also precluded the Board from making such modification of its own initiative. Ms. Schieldge indicated she did not think the statute imposed such a prohibition on the Board.

Discussion continued.

Karen Roye moved to:

- **Direct staff to take all steps necessary to initiate the rulemaking process to propose these amendments to Section 1888 and the Disciplinary Guidelines, including a change to the proposed language that strikes from optional term for psychotherapy the following language: "Receive counseling with a therapist with whom a prior business or professional relationship exists if respondent's good faith attempts to secure a psychotherapist with no prior business or professional relationship are unsuccessful due to the unavailability of qualified health care professionals in the area."**
- **For number 4 (terms for supervised practice), strike the language in paragraph 3 which states "permitting respondent to secure a supervisor with whom a prior business or professional relationship exists, and set the matter for hearing."**

Elise Froistad seconded. The Board voted unanimously (7-0) to pass the motion.

D. Recommendation # 2 –To Sponsor Legislation Making Technical Changes to Sections 4982, 4982.2, 4989.22, 4992.1,4992.3, 4996.23, 4996.24, 4996.28, and 4996.5 of the Business and Professions Code

Ms. Rhine reported that every year the Board sponsors clean-up language in a legislative omnibus bill. The last such bill, SB 1779, was vetoed. As a result, in addition to the changes previously approved by the Board for inclusion in SB 1779, staff has included seven proposed changes, which she indicated were minor, conforming, but not necessarily non-substantive. She reported that the proposals were reviewed at the last Committee meeting with the Committee recommending to the Board to direct staff to sponsor legislation this year.

The first proposal is to add Business and Professions (B&P) Code Section 4996.24. Ms. Rhine explained that currently, in private practice, MFT interns are limited to two per supervisor. However, there is not a similar limitation on ASWs in private practice. The proposal is to add the same language for LCSWs and ASWs, so that there would be a limit of two ASWs per supervisor.

Dr. Russ opened the issue for discussion.

Mr. Wong, NASW, asked if there was a definition of private practice. Mr. Riches responded that there is not an explicit definition of private practice in the statute.

Robin Emerson, California Society for Clinical Social Work (CSCSW), commented that many supervisors do supervise both ASWs and MFT Interns; therefore, it makes sense to have as much consistency as possible in the statutes pertaining to supervision.

Mr. Wong also asked if the proposed legislation passes, did that then allow a supervisor in private practice to supervise four people, two ASWs and two MFT Interns. Ms. Rhine responded affirmatively. Discussion then centered on the appropriateness of requiring a supervisor to limit the type of supervisees, i.e., 2 ASWs and 2 MFT Interns vs. 3 ASWs and 1 MFT Intern or vice versa.

Mr. Riches explained that the issue is providing a consistent set of rules so supervisors could navigate the process reasonably. A separate discussion could be held about an appropriate limit on the number of supervisees, if that is the Board's choice.

Mr. Wong suggested that the Board consider not using the language specifying two ASWs, but instead stating two supervisees. He further suggested then making parallel changes to the MFT statute.

The Board agreed with the suggestion, and then discussed what an appropriate limit would be.

Carla Cross, Ventura County Behavioral Health, asked why it would be appropriate in an agency setting to supervise several people, but in a private practice setting a limit would be imposed. She also questioned the limit of two supervisees in a private practice.

Charlene Gonzales, LA County Children's Services, voiced concern with assuming that agencies in general have good oversight of supervision. She encouraged the Board not to

make such an assumption. If the Board is going to limit in one area, it would be wise to look at other areas as well.

Ms. Riemersma, CAMFT, provided history about how the existing limitation originated. She noted several reasons, including a desire to limit the possible exploitation of interns, because if a licensee is hiring many interns to work in that practice, the quality of supervision will not be there. She also spoke about the differences in environment between public agencies and private practice, and how those differences impact supervision.

Dr. Russ asked staff to include on a future agenda the investigation of supervision and supervisees in community, non-profit settings, and asked staff to invite representatives from DMH and appropriate agencies to speak with the Board. Ms. Walmsley recommended that representatives from hospitals (non-profit) also be included.

Dr. Russ asked the Board if four supervisees is a good number that doesn't have the potential of being a mill, that there could be proper supervision, or do we want to leave it at two.

After brief discussion, the Board agreed to keep it at two.

Judy Johnson moved to direct staff to sponsor legislation consistent with the attached statutory changes. For the proposed addition of Section 4996.24, direct staff to prepare language for proposed legislation to limit supervision to two supervisees and submit the proposal to the Executive Officer for approval and submission as a sponsor. Joan Walmsley seconded. The Board voted unanimously (7-0) to pass the motion.

Ms. Rhine reported on amending BPC Section 4996.28. Currently an ASW or MFT Intern may renew a registration no more than five times, after which a new registration would be required as needed. MFT Interns may not practice in a private practice setting under subsequent registrations. There is not currently the same stipulation for ASWs. The recommendation is to amend B&P Code Section 4996.28 to prohibit ASWs from practicing in a private practice setting under subsequent registrations.

There was no discussion on the issue.

Ms. Rhine reported on amending BPC Section 4996.23. She stated that previously a provision was added to the MFT licensing law to prohibit interns from leasing or renting space or in any other way paying for the obligations of their employer. The proposal would add a similar provision to the LCSW licensing law. The recommendation is to add a provision to the B&P Code Section 4996.23 that will prohibit an ASW from leasing or renting space, paying for furnishings, equipment or supplies, or in any other way paying for the obligations of their employers.

There was no discussion on the issue.

Ms. Rhine reported on amending BPC Section 4982.2. She noted that existing law allows licensees to petition for reinstatement or modification of penalty; however, the section fails to apply to registrants. This is a technical change that would allow the same provisions to apply to registrants.

There was no discussion on the issue.

Ms. Rhine reported on amending BPC Section 4982(r) and 4992.3(r). Currently in the unprofessional conduct statute it states that it is unprofessional conduct to engage in conduct in the supervision of a registrant that violates the laws and regulations adopted by the Board. However, the respective unprofessional conduct statutes only make it a violation if the supervision is of a registrant in the same field as the licensee. The recommendation is to amend the unprofessional conduct section of both the MFT and LCSW licensing law to include all supervisees.

There was no discussion on the issue.

Ms. Rhine reported on amending BPC Sections 4992.1 and 4989.22. She indicated that these two statutes do not include provisions incorporated in the MFT licensing law relating to examinations. The proposal would provide consistency and clarity in examination and record retention policy for all licensees. The recommendation was to amend B&P Code Sections 4992.1 and 4989.22 to include the same provisions found in B&P Code Section 4980.50 (c), (d), and (e).

There was no discussion on the issue.

Ms. Rhine reported on amending BPC Section 4996.5. She indicated the proposal would delete an errant reference to “annual renewal,” in that the Board does not have “annual” renewal of license. The recommendation was to delete the reference to “annual” as it relates to renewal fees.

There was no discussion on the issue.

Renee Lonner moved to direct staff to sponsor legislation consistent with the attached statutory changes. Elise Froistad seconded. The Board voted unanimously (7-0) to pass the motion.

E. Recommendation # 3 –To Initiate a Rulemaking to Amend Section 1811 of Title 16 of the California Code of Regulations Regarding Advertising

Ms. Rhine reported that the next three items are all related to advertising, so she would be speaking about them interchangeably. There are currently statutes that direct the Board to promulgate regulations on advertising and restriction on advertising of licensees. Currently there exists regulation, policy and guidelines relating to advertising, and there are inconsistencies in the three rules. Ms. Rhine provided examples of these inconsistencies.

The staff brought the issue before the Board in 2007, with a new proposal presented at the October Board meeting. She indicated that the proposed regulation stands as the base with the policy and guidelines following what the regulations state, so that everything is consistent. She then pointed out the major changes to the regulation. Ms. Rhine then provided information about some of the issues that were brought up previously and the changes staff was directed to make and bring before the Board.

Ms. Schieldge expressed her understanding that a delayed order of adoption could be developed for inclusion in the regulation should the Board choose to delay implementation of the regulatory changes.

Dr. Russ noted that such action would afford the Board the opportunity to apprise the community of the new requirements before the regulation becomes operative.

Ms. Riemersma requested that with regard to licensed marriage and family therapists, use of the initials LMFT or MFT be allowed, as both are commonly used. Also, with respect to educational degrees, she encouraged the Board to include language that states the degree must be relevant to the practice of the profession. She also encouraged requiring registrants to spell out the full title of the registration held.

Dr. Russ asked what would be required to make the suggested changes.

Ms. Schieldge spoke about the courts reaction to attempts by boards or bureaus to restrict any advertising that is true, including listing a degree that is not related to the practice of the license held. She indicated that the Board had previously attempted to regulate in this area, and that regulation was struck permanently by the Court of Appeal.

Mr. Riches indicated that existing law provides that if you advertise in a misleading fashion, you are subject to disciplinary action by the Board. That is an after-the-fact assessment which is made, and is wholly within the current authority of the Board. He added that when language is added to require that a degree be relevant, that is a before-the-fact restraint, which is different. He clarified that it is permissible for the Board to take action against a licensee who is misleading, but it is not permissible for the Board to say in advance that if certain information is inherently misleading if in fact the information is true.

Ms. Schieldge spoke about the issue of allowing use of the acronym LMFT in addition to MFT. She indicated there would be a need to justify the need for the change, and that such argument could be based on the fact that both abbreviations are currently commonly used and accepted.

Discussion continued, following which Dr. Russ entertained a motion on the item.

Joan Walmsley move to direct staff to take all steps necessary to initiate the rulemaking process to propose the amendments to section 1811 as presented in Option A, with the addition of "or LMFT" to proposed section (a)(2)(A), and set the matter for hearing. The Board further directs staff at the time of adoption to order a delayed implementation to January 1, 2010. Judy Johnson seconded. The Board voted unanimously (7-0) to pass the motion.

The Board adjourned for a break at 3:43 p.m. and reconvened at 3:58 p.m.

F. Recommendation # 4 –To Update Advertising Policy and Guidelines as Drafted to be Consistent with Proposed Rulemaking Amending 16CCR Section 1811

Ms. Rhine reported that the policy and guidelines are based on the regulations. The Committee has recommended that the Board to direct staff to modify the policy and guidelines to be consistent with the proposed regulatory changes in Section 1811.

D'Karla Leach moved to direct staff to take all steps necessary to initiate the rulemaking process to propose the amendments listed in Option A to Section 1811 with the addition of "LMFT" to subdivision (a)(2)(A), authorize the Executive Officer to make any non-substantive changes to the text, and set the matter for a hearing. The Board further orders that, at the time of adoption, that the implementation date be delayed to January 1, 2010. Elise Froistad seconded. The Board voted unanimously (7-0) to pass the motion.

G. Recommendation # 5 - To Sponsor Legislation Sections 4980.03, 4980.48, 4982, 4989.49, 4989.54, 4992.2 and 4992.3 of the Business and Professions Code Regarding Advertising

Ms. Rhine reported this change was to clean-up, making the statutes consistent. Two issues were discussed at the Committee meeting. First, B&P Code section 4980.33 was amended to replace reference to "church" buildings or bulletins to "religious" buildings or bulletins. The corresponding statutes pertaining to Licensed Educational Psychologists (LEP) and LCSWs were similarly amended.

The second issue pertained to advertising of services by trainees. Existing regulation, policy and guidelines do not reference trainees. There is not currently a regulatory relationship with trainees. The Committee discussed that trainees do provide services and therefore it would be prudent for the Board to develop consistent advertising guidelines for trainees. Therefore, B&P Code Section 4980.48 was developed to add provisions making the same requirements for trainees as for registrants.

Ms. Rhine concluded by stating it was the recommendation of the Committee that the Board direct staff to sponsor legislation making the applicable statutory changes.

Judy Johnson moved to sponsor legislation to make the recommended regulatory changes. D'Karla Leach seconded. The Board voted unanimously (7-0) to pass the motion.

H. Recommendation # 6 – To Initiate a Rulemaking Implementing Mandatory Continuing Education for Licensed Educational Psychologists

Ms. Rhine reported that in 2007 legislation was signed requiring LEPs to complete thirty-six (36) hours of continuing education every two years. The legislation became effective January 1, 2008. Now the Board must promulgate regulations specifying what the required continuing education needs to include. Ms. Rhine referred the Board members to documents outlining the proposed regulatory changes which add LEP to the continuing education sections of Board regulations.

Two issues came up during committee discussion of this topic. The first issue pertained to specific courses mandated for other licensees. The cited courses included AIDS Awareness, Human Sexuality, Child Abuse Detection, Aging and Long-Term Care, and Law and Ethics, all of which are currently required of MFTs and LCSWs, either pre-licensure or through continuing education. The Committee felt the same requirement was appropriate for LEPs. Ms. Rhine indicated that she had drafted language to include LEPs in the continuing education requirement.

The second issue for discussion was the timeline for implementation of the CE requirement for LEPs. Ms. Rhine stated that the committee had initially considered a

staggered implementation of the requirement; for example, 18 units to be completed by a certain date, with the full 36 units required for completion during the next full two-year renewal period. A similar requirement is currently in place for MFTs and LCSWs. Ms. Rhine expressed uncertainty that existing statute would allow for a staggered implementation of the CE requirement. Therefore, the Board had before them a proposal that the new requirements would not go into effect until January, 2012. LEPs would be required to complete thirty-six hours of continuing education for license renewals after 2012.

Another option before the Board would be to make a requirement similar to that currently made of MFTs and LCSWs, with eighteen units be completed for the first renewal, and thirty-six units required for each renewal thereafter.

The Committee recommended for the Board to direct staff to initiate the rulemaking process with specific CE requirements and delayed implementation.

Ms. Johnson, Licensed Educational Psychologist, commented about the importance of the proposed regulations, which she believes serve to increase the credibility of LEPs as independent practitioners. She was asked by other Board members to comment about the applicability of the proposed CE requirements to LEP practice. Ms. Johnson responded that she believed the required courses were applicable, and noted that although some continuing education is required through the Department of Education in order to maintain a school psychologist credential, the requirement of LEPs was also important in maintaining licensure.

Discussion continued briefly.

Dr. Russ then returned to the issue of implementation of the CE requirement for LEPs. The recommendation before the Board was to require eighteen hours of CE for the first renewal period, and thirty-six hours for each renewal period thereafter. He noted that Ms. Schieldge had advised the Board that existing statute requires licensees to certify completion of 36 hours of CE each renewal period. Therefore, there was the possibility that the regulatory proposal would be returned for modification. Mr. Riches emphasized that should the proposal be returned, the necessary modifications would be made to ensure passage of the regulations.

Ms. Schieldge asked what language the Board was proposing be removed or inserted. Ms. Rhine suggested, as discussed by Committee, the removal of all language referring to implementation of the CE requirement in 2012. It was recommended that language be inserted requiring completion of eighteen hours of CE for renewals occurring January 1, 2010 through December 31, 2010, and 36 hours of CE for all renewals beginning January 1, 2011.

Ms. Schieldge stated that staff would need to go back and draft a new proposal for Board approval. Dr. Russ directed staff to do so and bring it back to next Board meeting.

I. Recommendation # 7 – To Offer California Licensing Examinations at Out-of-State Examination Sites

Mr. Riches reported that the Committee at its last meeting discussed the provision in the existing examination administration contract that allows for use of select testing centers

outside of California for administration of the Board's licensure examinations. Only certain of the test administration company's sites meet the Board's security and design standards. The Committee recommended to the Board that steps be taken to allow for administration of the Board's examinations at the approved sites. If approved, testing at said sites could begin as soon as January 1, 2009.

Brief discussion ensued about the requirements for taking the licensure examination. Mr. Riches emphasized that existing requirements would remain in place, and that the proposal would simply allow for administration of the licensure examinations at out-of-state sites.

Renee Lonner moved that the Board allow administration of its licensing examinations at approved out-of-state locations. D'Karla Leach seconded. The Board voted unanimously (7-0) to pass the motion.

J. Recommendation # 8 – To Sponsor/Support Legislation Requiring All Board Licensees and Registrants to Submit Fingerprints

Mr. Riches reported that the Policy and Advocacy Committee recently had discussed issues relating to completion of fingerprinting and background checks on existing licensees. Currently, anyone who applies to the Board for registration or licensure is required to submit fingerprints and a background report is obtained reflecting most prior convictions. The process also provides the Board with a subsequent arrest report anytime an applicant is arrested following initial submission of the fingerprints. Mr. Riches stated that the requirement for submission of fingerprints became effective in 1992. For those individuals who became licensed prior to that time, which he noted is about half the licensee population or approximately 30,000 licensees, have no fingerprints on file.

Mr. Riches noted that when the need to collect fingerprints from individuals licensed before 1992 was first presented to the committee for discussion, no issues were identified. The Committee directed staff to draft a proposal regarding how to accomplish the task.

Although not considered to be an urgent matter, Board staff has identified the need to move forward with implementation of a program to collect the data. Mr. Riches indicated that the impact of such a program on Board operations would be significant and would roughly treble the workload relating to the current fingerprinting process. He noted that the estimated increase in work related solely to the processing of the background checks, and did not take into consideration any subsequent enforcement actions that might arise as a result. Mr. Riches stated that existing statute allows the Board to require fingerprints from applicants, but the Board has no current legal authority to make a similar requirement of existing licensees, and therefore additional legal authority is necessary to make such a mandate.

Mr. Riches referred Board members to legislation drafted by the DCA in an effort to address the problem. He stated that before the Board was a recommendation to support the department's legislation, and added that should the DCA legislation be unsuccessful, the Board could sponsor similar legislation. He emphasized the importance of moving forward with this matter.

Discussion ensued about related issues, including the statute of limitations. Mr. Riches indicated that of the subsequent arrest reports currently received in one year, only a very

small number result in initiation of administrative action. He reported that the criteria used to evaluate a conviction would include how recently the conviction occurred, the extent of rehabilitation, and if there were any arrests subsequent to the conviction. While he was certain the Board will obtain arrest information that may no longer be actionable due to the statute of limitations, Mr. Riches expressed the opinion that such occurrences would be few.

A member of the audience asked if, due to the statute of limitations, the Board was precluded from pursuing action against individuals who may have lied on the application by failing to disclose a conviction. Mr. Riches responded that the statute of limitations is generic to any accusation. The statute says that the Board cannot file an accusation after certain timelines have expired, with certain exceptions. However, a citation could be issued and would essentially serve to notify the public of the situation. He noted that there is no statute of limitations on the issuance of a citation and fine.

Discussion followed regarding who would make the decision about which cases should result in a citation and fine. Mr. Riches indicated that it was he who signed the citations. He added that these matters are not without due process, with informal and formal appeals available. It was confirmed that the process currently in place pertaining to this matter would be the same process used for evaluation of the previously unfingerprinted licensees.

Mr. Wong, NASW, asked if there were guidelines in place regarding uniform application should the decision be made to take action such as citation and fine. Mr. Riches responded that decisions to issue citations and fines were not made arbitrarily, and that guidelines regarding substantial relationship were followed in all such matters. Mr. Riches added that citations are also subject to judicial review, and that if it is demonstrated in court that the action was not warranted, judicial remedies are available.

The issue was raised about the sharing of information obtained through the fingerprinting process. Mr. Riches noted that there are very tight rules around the sharing of criminal offender information, and reported that the Board is audited regularly about its controls and use of such information. Protections are built-in to ensure that everyone's rights are respected.

The question was asked if the search is for felony convictions in California. Mr. Riches clarified that the subject was any subsequent arrest or conviction in the state only, not nationwide. There is currently no system to obtain that information nationally.

Dr. Russ entertained a motion to support the Department of Consumer Affairs' legislation regarding fingerprinting, or sponsor its own legislation if the DCA legislation is unsuccessful.

Joan Walmsley moved that the Board support the Department of Consumer Affairs' legislation regarding fingerprinting, or sponsor similar legislation should the DCA legislation be unsuccessful. Renee Lonner seconded. The Board voted unanimously (7-0) to pass the motion.

VII. Report of the LCSW Education Committee

Ms. Lonner reported briefly about the meetings of the Committee, which have occurred approximately once a quarter. She noted that the Committee was established in February 2008, and is charged with reviewing the core competencies for LCSWs in the current workplace. The Committee has invited any and all stakeholders to attend the meetings as well as others who can educate Committee members about what the current workplace is. Ms. Lonner named several topics which have been discussed by meeting participants, and indicated that at the next meeting it is anticipated there will be a representative from the military. The next meeting is scheduled December 8, 2008 in San Diego. She stated that the next few meetings will be used to gather information, and was pleased with the attendance and participation at the meetings to date.

Ms. Lonner was asked if ultimately the work of the Committee would result in legislation modifying the educational requirements for LCSWs. She responded that at the present time, the Committee was in a fact-finding mode, trying to identify the core competencies and determine if they need to be codified in some manner.

VIII. Discussion and Possible Action to Accept the Report of the Supervision Workgroup

Mr. Riches reported that the group began with assessing issues around the quality of supervision, and related concerns. The supervision workgroup has since developed a brochure educating potential and current supervisees about how to engage in the relationship with their supervisor. Mr. Riches described the brochure as including practical, hands-on advice supervision. He indicated that feedback from the publication has been positive.

Another issue that has come up is the lack of consensus overall about what supervision should accomplish. What is the process about? What kinds of things should occur? The workgroup has worked to define supervision, and initially developed a draft curriculum for supervisor training. This was not intended as a mandate or requirement, but rather was advice from people who had considered and talked about the issue. After many discussions, the workgroup determined it was the form of presenting said information that was problematic. The information was then restructured into a document outlining the work and findings of the group and listing the point of view of the workgroup regarding supervision. In conclusion, Mr. Riches stated that the Board was being requested to approve the workgroup's report.

Ms. Walmsley noted it was never the intent of the group to impose mandates on the supervisor. Rather, discussion stemmed from complaints received about difficulty passing the licensure examinations. It was determined that a large part of the problem pertained to supervision. Ms. Walmsley noted that the proposed report was only intended to give ideas about what to look for in supervision, and is essentially a worksheet of what a supervisee might look for when seeking quality supervision. The document in no way is intended to impose requirements or mandates.

Robin Emerson, CSCSW, thanked the workgroup for including the professional society as a resource in the report, and commended the group for the excellent resource list that was provided. She then noted three items in the report for which she offered suggested amendments. First, in item II, section D, the first sentence is written in a manner that could be misleading to many supervisors. Ms. Emerson explained that the sentence seems on the surface to conflict with the statute and with the responsibility statement the Board asks supervisors to sign. She expressed an understanding of the intent of the statement, but again expressed that the statement could be misunderstood.

Mr. Riches responded that the workgroup had discussed the issue at length. Although the group was definitely aware that many supervisors in agencies would be serving in both capacities, it was the strong feeling of the workgroup that those capacities be separate.

Board and audience members continued discussion. Several participants suggested that the language be rewritten to be clearer.

Dr. Russ then asked Ms. Emerson about the additional issues she had previously referenced. Ms. Emerson stated concerns with item II, section H, which she indicated seemed to blur the distinction between teaching and supervision. Last, Ms. Emerson referred the Board to item III, section B, and the bulleted list in that section. She expressed the opinion that the list seemed incomplete, and did not include very crucial interpersonal processes that the supervisee must be familiar with and understand, and which are tested on the licensing examination.

Ms. Schieldge suggested taking the document back to rework the introduction, and more clearly specifying that the information were the results and conclusions of the workgroup, not the Board.

Dr. Russ stated that he will work with counsel and the workgroup to work on changes and bring the issue back for discussion at the February Board meeting.

XI. Public Comment for Items Not on the Agenda

No public comments were made.

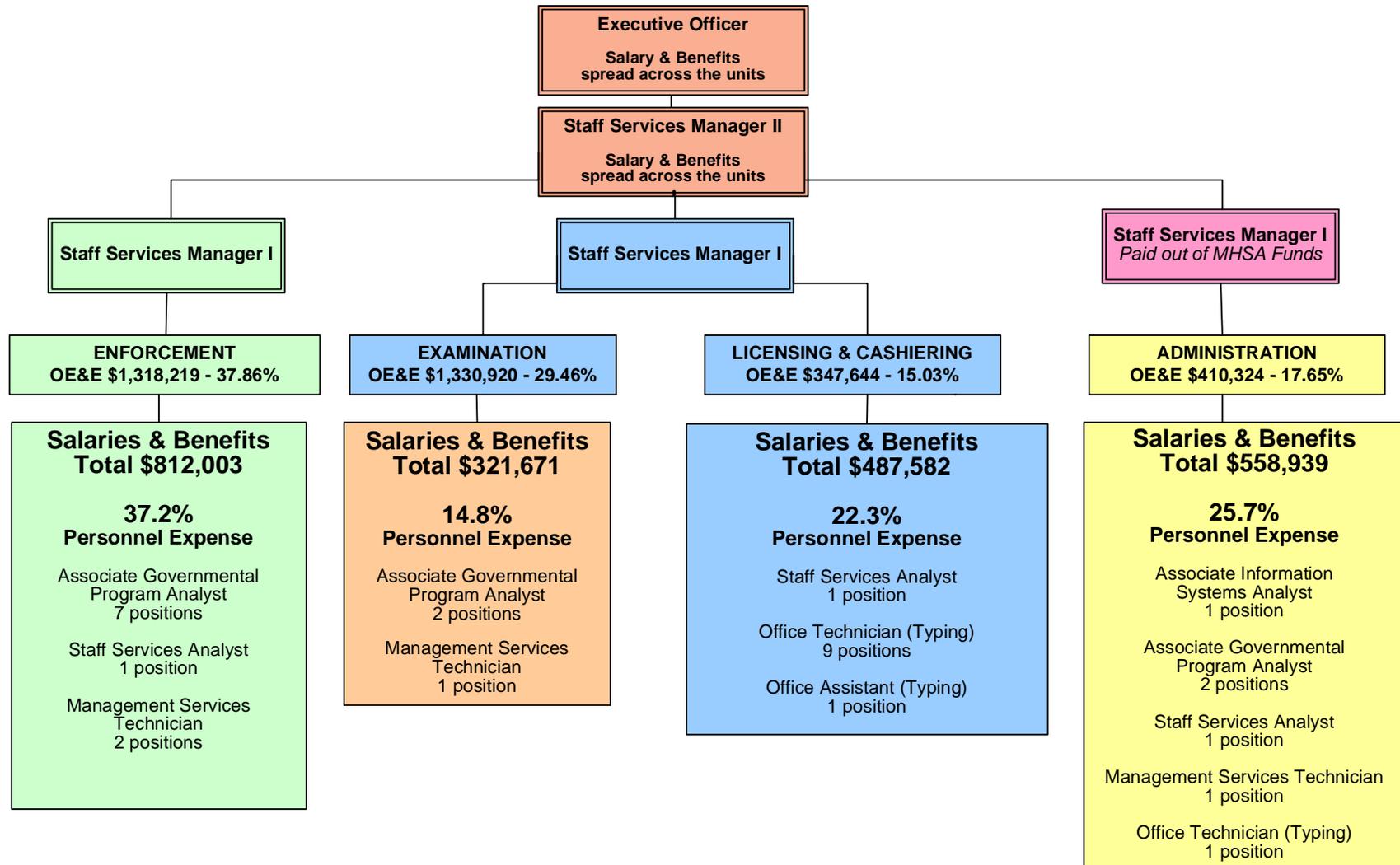
X. Suggestions for Future Agenda Items

No suggestions were made.

The Board adjourned at 5:00 p.m.

Department of Consumer Affairs
BOARD OF BEHAVIORAL SCIENCES
 February 2009 (Current)

February 2009
 FY 2008-09



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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 19, 2009

From: Tracy Rhine
Legislative Analyst

Telephone: (916) 574-7847

Subject: Discussion and Possible Action to Adopt 16 CCR Sections 1815 and 1886.40 Rulemaking

Attached for review and possible action is the final rulemaking package proposing changes to California Code of Regulations Title 16, Sections 188.15 and 1886.40 related to mandatory fingerprint submission for Board licensees.

At its November 18, 2008 meeting the Board passed a motion to direct staff to initiate the rulemaking process.

Recommendation: Upon review and discussion of the attached, staff recommends that the board adopt the final rulemaking package.

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BOARD OF BEHAVIORAL SCIENCES

Order of Adoption

The Board of Behavioral Sciences of the Department of Consumer Affairs hereby amends and adopts regulations in Division 18 of Title 16 of the California Code of Regulations, as follows:

§1815 FINGERPRINT SUBMISSION

(a) All licensees and registrants who have not previously submitted fingerprints as a condition of licensure or registration or for whom an electronic record of the licensee's fingerprints does not exist in the Department of Justice's criminal offender record identification database shall successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice by the licensee's or registrant's renewal date that occurs on or after October 31, 2009, or as directed by the board.

(b) Failure of a licensee or registrant to comply with subdivision (a) is grounds for disciplinary action by the board against the license or registration.

(c) Licensees and registrants shall retain, for at least three years, as evidence of their having complied with subdivision (a) either a receipt showing that he or she has electronically transmitted his or her fingerprint images to the Department of Justice or, for those licensees or registrants who did not use an electronic fingerprinting system, a receipt evidencing that the licensee's or registrant's fingerprints were taken.

(d) Licensees and registrants shall pay, as directed by the Board, the actual cost of compliance with subdivision (a).

(e) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

(f) The board may waive the requirements of this section for licensees or registrants who are actively serving in the United States military. The board may not return a license or registration to active status until the licensee or registrant has complied with subdivision (a).

Note: Authority cited: Sections 4990.16, 4990.18, 4990.20 and 4996.6, Business and Professions Code. Reference: Sections 4982(a), 4989.54(a), 4992.3(a), and 4996.6, Business and Professions Code; and Sections 11105(b)(10), and 11105(e), Penal Code.

§1886.40. AMOUNT OF FINES

(a) For purposes of this section, a "citable offense" is defined as any violation of the statutes and regulations enforced by the Board of Behavioral Sciences, including Chapters 13 and 14 of Division Two of the Business and Professions Code and Title 16, Division 18, California Code of Regulations.

(b) The executive officer of the board may assess fines for citable offenses which shall not exceed two thousand five hundred dollars (\$2,500) for each investigation except as otherwise

provided in this section. The executive officer shall not impose any duplicate fines for the same violation.

(c) The executive officer of the board may assess fines for citable offenses which shall not exceed five thousand (\$5,000) for each investigation if the violation or count includes one or more of the following circumstances:

(1) The cited person has a history of two or more prior citations for similar violations, except for citations withdrawn or dismissed after appeal.

(2) The citation involves multiple violations that demonstrate a willful disregard of the statutes or regulations.

(3) The citation is for a violation or violations involving a minor, elder or dependent adult, or a person with a physical or mental disability as defined in Section 12926 of the Government Code.

(4) The citation involves unlicensed practice.

(5) The citation involves an unlawful or unauthorized breach of confidentiality.

(6) The citation is for failure to submit fingerprints to the Department of Justice as required by the Board.

(d) The executive officer of the board may assess fines which shall not exceed five thousand dollars (\$5,000) for each violation or count if the violation or count involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare.

Note: Authority cited: Sections 125.9, 148, 149, 4980.60, ~~4987~~ and 4990.14, Business and Professions Code. Reference: Sections 123, 125, 125.9, 136, 141, 148, 149, 480, 651, 654.2, 703, 728, 4980, 4980.02, 4980.30, 4980.43, 4980.44, 4980.45, 4980.46, 4980.48, 4982, 4982.25, 4984, ~~4986.10, 4986.50, 4986.70~~, 4987.7, 4987.8, ~~4987.9~~, 4988, 4988.1, ~~4988.5~~, 4992.3, 4992.36, 4996, 4996.5, 4996.7, 4996.8, 4996.9, 4996.16, 4996.18, 4996.19, 4996.20, 4998.2, 4998.3, 4998.4, Business and Professions Code; and Section 15630, Welfare and Institutions Code.

Dated: _____

PAUL RICHES
Executive Officer

§1815 FINGERPRINT SUBMISSION

(a) All licensees and registrants who have not previously submitted fingerprints as a condition of licensure or registration or for whom an electronic record of the licensee's fingerprints does not exist in the Department of Justice's criminal offender record identification database shall successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice by the licensee's or registrant's renewal date that occurs on or after October 31, 2009, or as directed by the board.

(b) Failure of a licensee or registrant to comply with subdivision (a) is grounds for disciplinary action by the board against the license or registration.

(c) Licensees and registrants shall retain, for at least three years, as evidence of their having complied with subdivision (a) either a receipt showing that he or she has electronically transmitted his or her fingerprint images to the Department of Justice or, for those licensees or registrants who did not use an electronic fingerprinting system, a receipt evidencing that the licensee's or registrant's fingerprints were taken.

(d) Licensees and registrants shall pay, as directed by the Board, the actual cost of compliance with subdivision (a).

(e) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

(f) The board may waive the requirements of this section for licensees or registrants who are actively serving in the United States military. The board may not return a license or registration to active status until the licensee or registrant has complied with subdivision (a).

Note: Authority cited: Sections 4990.16, 4990.18, 4990.20 and 4996.6, Business and Professions Code. Reference: Sections 4982(a), 4989.54(a), 4992.3(a), and 4996.6, Business and Professions Code; and Sections 11105(b)(10), and 11105(e), Penal Code.

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(b) The executive officer of the board may assess fines for citable offenses which shall not exceed two thousand five hundred dollars (\$2,500) for each investigation except as otherwise provided in this section. The executive officer shall not impose any duplicate fines for the same violation.

(c) The executive officer of the board may assess fines for citable offenses which shall not exceed five thousand (\$5,000) for each investigation if the violation or count includes one or more of the following circumstances:

(1) The cited person has a history of two or more prior citations for similar violations, except for citations withdrawn or dismissed after appeal.

(2) The citation involves multiple violations that demonstrate a willful disregard of the statutes or regulations.

(3) The citation is for a violation or violations involving a minor, elder or dependent adult, or a person with a physical or mental disability as defined in Section 12926 of the Government Code.

(4) The citation involves unlicensed practice.

(5) The citation involves an unlawful or unauthorized breach of confidentiality.

(6) The citation is for failure to submit fingerprints to the Department of Justice as required by the Board.

(d) The executive officer of the board may assess fines which shall not exceed five thousand dollars (\$5,000) for each violation or count if the violation or count involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare.

Note: Authority cited: Sections 125.9, 148, 149, 4980.60, ~~4987~~ and 4990.14, Business and Professions Code. Reference: Sections 123, 125, 125.9, 136, 141, 148, 149, 480, 651, 654.2, 703, 728, 4980, 4980.02, 4980.30, 4980.43, 4980.44, 4980.45, 4980.46, 4980.48, 4982, 4982.25, 4984, ~~4986.10, 4986.50, 4986.70~~, 4987.7, 4987.8, ~~4987.9~~, 4988, 4988.1, ~~4988.5~~, 4992.3, 4992.36, 4996, 4996.5, 4996.7, 4996.8, 4996.9, 4996.16, 4996.18, 4996.19, 4996.20, 4998.2, 4998.3, 4998.4, Business and Professions Code; and Section 15630, Welfare and Institutions Code.

**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. 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 February 16, 2009 or must be received by the Board of Behavioral Sciences at the hearing.

The Board will hold a public hearing starting at 9:00am on February 18, 2009, at the Spyglass Inn located at 2705 Spyglass Drive, Pismo Beach, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony 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 4990.16, 4990.18, 4990.20 and 4996.6 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4982(a), 4989.54(a), 4992.3(a) and 4996.6 of the Business and Professions Code and Sections 11105(b)(10) and 11105(e) of the Penal Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Board proposes to add Section 1815 and amend Section 1886.40 of Title 16 of the CCR. This proposed rulemaking pertains to the mandatory submission of fingerprints to the Department of Justice (DOJ) for a state and federal level criminal offender record information search and the ability of the Board to bring disciplinary action against a licensee or registrant that fails to comply with the fingerprinting requirements therein.

Business and Professions Code (BPC) Section 144 requires an applicant to furnish to specified agencies, including the Board of Behavioral Sciences (Board), a full set of fingerprints for the purpose of conducting criminal history record checks. Additionally, this section allows the Board to obtain and receive criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI).

On April 1, 1992, the Board began requiring Marriage and Family Therapist, Marriage and Family Therapist Intern, Clinical Social Worker, Associate Clinical Social Worker and Educational Psychologist applicants to submit fingerprint cards for the purpose of conducting criminal history background investigations through DOJ and the FBI. The fingerprinting of applicants allows the Board a mechanism to enhance public protection by conducting a more thorough screening of applicants for possible registration or licensure. All trainees, interns, and registrants were required to submit a fingerprint card and processing fee with their applications. Candidates already in the examination cycle were required to submit fingerprints by set dates

that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board.

This proposed regulation will require all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the DOJ's criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ.

Specifically this regulation would:

- Require all licensees on or after October 31, 2009 who have not previously submitted fingerprints to the DOJ or for whom an electronic record of the submission of the fingerprints does not exist with DOJ, to complete a state and federal level criminal offender record information search conducted through the DOJ before his or her license renewal date. The purpose of this provision is to ensure the board receives criminal background and subsequent conviction information on Board registrants and licensees in order to protect the public from unprofessional practitioners and fully implement the Board's mandate to enforce the unprofessional conduct statutes of Board licensing law (BPC 4982(a), 4989.54(a) and 4992.3(a)).
- Requires a license or registration that has been revoked to not be reinstated until the licensee or registrant has submitted fingerprints for a criminal records search conducted through DOJ. The purpose of this provision is to make certain that all licensees, irrespective of licensure status, meets the fingerprinting requirements set forth in this regulation before resuming practice with the public.
- Exempts from the requirements of this proposed regulation licensees or registrants actively serving in the United States military. The purpose of this provision is to allow those licensees or registrants not in active practice to only meet the requirement before returning to active practice with the public.
- Requires licensees and registrants to retain for at least three years either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ, or for those licensees or registrants who did not use an electronic fingerprinting system, a receipt evidencing that the licensees or registrants fingerprints were taken. The purpose of this provision is to permit the licensee or registrant to demonstrate compliance with the fingerprinting requirement in the event that fingerprint reports are not processed correctly by DOJ.
- Requires licensees and registrants to pay, as directed by the board, the actual cost of compliance with the fingerprinting requirements of this regulation. The purpose of this provision is to make certain that the licensee or registrant pays the full cost of the service provided.
- Allows the Board to take disciplinary action against a licensee or registrant if he or she fails to comply with the fingerprinting requirements set forth in this regulation. The purpose of this provision is to ensure compliance with this new regulation.
- Makes failure to submit fingerprints to DOJ a citable fine and allows the executive officer of the board to assess fines not to exceed five thousand (\$5,000) for each investigation for the violation. The purpose of this provision is to better ensure compliance and

enforceability of this regulation and to further implement the Board's authority under BPC 125.9.

- Deletes obsolete and errant citations in the authority and reference note section following 16 CCR Section 1886.40. The purpose of this change is to update these provisions, which have been re-numbered.

Business and Professions Code section 4990.16 states that the "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 purpose of the proposed regulatory changes is to ensure that the Board holds up its mandate to protect the public in accordance with section 4990.16. In order to protect the public from incompetent, unethical and unprofessional practitioners, it is necessary for the Board to be informed of past and current criminal convictions that are substantially related to the qualifications, functions, or duties of their professional service for which they are licensed. The unprofessional conduct statutes of Board licensing law (BPC 4982(a), 4989.54(a) and 4992.3(a)) allows the board to deny a license or a registration, or suspend or revoke a license of registration for unprofessional conduct, including the conviction of a crime substantially related to the qualifications, functions or duties of a licensee or registrant. Further, under BPC Section 4996.6, upon renewal, a licensee is required to notify the Board whether he or she has been convicted, as defined in BPC Section 490, of a misdemeanor or a felony. However, for those licensed before the implementation of the Board's fingerprint submission requirement in April 1992, the notification of a criminal conviction relies upon the licensee or registrants self disclosure upon renewal. In order to fully implement the unprofessional conduct statutes that requires the Board to discipline a license or registrant that has been convicted of a crime substantially related to the qualifications, functions, or duties of their professional service, the Board must receive all information related to those criminal convictions.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Costs to the Board associated with this proposed regulation for the fiscal year 2009-10 to total \$658,628. Board costs associated with this regulation for fiscal year 2010-11 would total \$633,831 and for fiscal year 2011-12 costs would total \$294,275.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

AND

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

There would be no costs to businesses to comply with this regulation. This proposed regulation would only affect individuals for whom an electronic record of his or her fingerprints does not exist in the DOJ criminal offender record identification database and those licensees and registrants that do not comply with the proposed regulation.

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 current processing fees associated with LiveScan fingerprinting are \$32.00 for DOJ and \$24.00 for FBI, with some Live Scan agencies charging additional fees for “rolling” fingerprints and/or administrative processing. Applicants are responsible to pay all fees associated with the fingerprint process. The board estimates that there are approximately 29,578 licensees that have not been fingerprinted through the DOJ. Additionally, the Board estimates that there are a further 5,000 licensees that have submitted fingerprints with DOJ using rolling fingerprints (Hard cards) before the use of the LiveScan process was widely used. These licensees and registrants would also have to complete a state and federal level criminal offender record information search through DOJ in order to have an electronic record in the DOJ database.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. This proposed regulation would only affect individuals for whom an electronic record of his or her fingerprints does not exist in the DOJ criminal offender record identification database and those licensees and registrants that do not comply with the proposed regulation.

There are approximately 750 vendors statewide who provide fingerprinting services. There should be no initial or ongoing cost impact upon the vendors because they are already equipped to provide the service and the fingerprinting requirement will be staggered and extended over the licensees' renewal periods (biennial cycle).

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.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing provided for in this Notice.

CONTACT PERSON

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

Name: Tracy Rhine
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7847

Fax: 916-574-8625
Email: tracy_rhine@dca.ca.gov

OR

Name: Christy Berger
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7834
Fax: 916-574-8625
Email: christy_berger@dca.ca.gov

AVAILABILITY OF 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 AND AVAILABILITY OF MODIFIED TEXT

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 upon request from the Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

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 above (or by accessing the Web site listed below).

WEBSITE ACCESS

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

BOARD OF BEHAVIORAL SCIENCES INITIAL STATEMENT OF REASONS

Hearing Date: February 19, 2009

Subject Matter of Proposed Regulations: Fingerprint Submission.

Section(s) Affected: Adopt Section 1815 and Amend Section 1886.40 in Division 18 of Title 16 of the California Code of Regulations.

Specific Purpose of each adoption, amendment, or repeal:

Business and Professions Code (BPC) Section 144 requires an applicant to furnish to specified agencies, including the Board of Behavioral Sciences (Board), a full set of fingerprints for the purpose of conducting criminal history record checks. Additionally, this section allows the Board to obtain and receive criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI).

On April 1, 1992, the Board began requiring Marriage and Family Therapist, Marriage and Family Therapist Intern, Clinical Social Worker, Associate Clinical Social Worker and Educational Psychologist applicants to submit fingerprint cards for the purpose of conducting criminal history background investigations through DOJ and the FBI. The fingerprinting of applicants allows the Board a mechanism to enhance public protection by conducting a more thorough screening of applicants for possible registration or licensure. All trainees, interns, and registrants were required to submit a fingerprint card and processing fee with their applications. Candidates already in the examination cycle were required to submit fingerprints by set dates that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board.

Subsequent arrests and/or convictions reports regarding licensees are reported electronically to the Board on individuals fingerprinted with DOJ. Upon receipt of subsequent information, the Board's Enforcement staff follows the same procedures as in the denial process (police and court documents are ordered and the licensee is asked to provide an explanation of the facts and circumstances surrounding the incident). Once all the information is received, the Board's Executive Officer will make a determination of whether the subsequent conviction warrants disciplinary action. The Board evaluates any evidence of rehabilitation as identified in 16 CCR Section 1814. If disciplinary action is warranted, the case will be forwarded to the Office of the Attorney General for filing of an Accusation. The licensee has the right to request an Administrative Hearing.

Business and Professions Code section 4990.16 states that the "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 purpose of the proposed regulatory changes is to ensure that the Board holds up its mandate to protect the public in

accordance with section 4990.16. In order to protect the public from incompetent, unethical and unprofessional practitioners, it is necessary for the Board to be informed of past and current criminal convictions that are substantially related to the qualifications, functions, or duties of their professional service for which they are licensed. The unprofessional conduct statutes of Board licensing law (BPC 4982(a), 4989.54(a) and 4992.3(a)) allows the board to deny a license or a registration, or suspend or revoke a license of registration for unprofessional conduct, including the conviction of a crime substantially related to the qualifications, functions or duties of a licensee or registrant. Further, under BPC Section 4996.6, upon renewal, a licensee is required to notify the Board whether he or she has been convicted, as defined in BPC Section 490, of a misdemeanor or a felony. However, for those licensed before the implementation of the Board's fingerprint submission requirement in April 1992, the notification of a criminal conviction relies upon the licensee or registrants self disclosure upon renewal. In order to fully implement the unprofessional conduct statutes that requires the Board to discipline a license or registrant that has been convicted of a crime substantially related to the qualifications, functions, or duties of their professional service, the Board must receive all information related to those criminal convictions.

Specifically this regulation would:

- Require all licensees on or after October 31, 2009 who have not previously submitted fingerprints to the DOJ or for whom an electronic record of the submission of the fingerprints does not exist with DOJ, to complete a state and federal level criminal offender record information search conducted through the DOJ before his or her license renewal date. The purpose of this provision is to ensure the board receives criminal background and subsequent conviction information on Board registrants and licensees in order to protect the public from unprofessional practitioners and fully implement the Board's mandate to enforce the unprofessional conduct statutes of Board licensing law (BPC 4982(a), 4989.54(a) and 4992.3(a)).
- Requires a license or registration that has been revoked to not be reinstated until the licensee or registrant has submitted fingerprints for a criminal records search conducted through DOJ. The purpose of this provision is to make certain that all licensees, irrespective of licensure status, meets the fingerprinting requirements set forth in this regulation before resuming practice with the public.
- Exempts from the requirements of this proposed regulation licensees or registrants actively serving in the United States military. The purpose of this provision is to allow those licensees or registrants not in active practice to only meet the requirement before returning to active practice with the public.
- Requires licensees and registrants to retain for at least three years either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ, or for those licensees or registrants who did not use an electronic fingerprinting system, a receipt evidencing that the licensees or registrants fingerprints were taken. The purpose of this provision is to permit the licensee or registrant to demonstrate compliance with the fingerprinting requirement in the event that fingerprint reports are not processed correctly by DOJ.

- Requires licensees and registrants to pay, as directed by the board, the actual cost of compliance with the fingerprinting requirements of this regulation. The purpose of this provision is to make certain that the licensee or registrant pays the full cost of the service provided.
- Allows the Board to take disciplinary action against a licensee or registrant if he or she fails to comply with the fingerprinting requirements set forth in this regulation. The purpose of this provision is to ensure compliance with this new regulation.
- Makes failure to submit fingerprints to DOJ a citable fine and allows the executive officer of the board to assess fines not to exceed five thousand (\$5,000) for each investigation for the violation. The purpose of this provision is to better ensure compliance and enforceability of this regulation and to further implement the Board's authority under BPC 125.9.
- Deletes obsolete and errant citations in the authority and reference note section following 16 CCR Section 1886.40. The purpose of this change is to update these provisions, which have been re-numbered.

Factual Basis/Necessity

Sometime after implementing the fingerprint process in 1992, information was received by the Department of Consumer Affairs (DCA) that the FBI questioned the authority given to State agencies to conduct fingerprint checks through the FBI. Legislation was sponsored and in 1997, the California Legislature gave the Board and other entities under the umbrella of the DCA the authority under BPC Section 144, to require a DOJ and FBI criminal history background check on all applicants seeking registration and/or licensure (SB 1346, Chapter 758, Statutes of 1997).

Since 1998, all applicants for registration and licensure must submit a full set of fingerprints as part of the application process. With limited exceptions, all applicants are required to submit their prints via Live Scan. Traditional fingerprint cards (hard cards) are accepted only in those cases where the applicant is located outside of California, or demonstrates a hardship approved by the board.

Although the Board implemented a fingerprinting process in 1992, the fingerprint requirement related to candidates already in the examination cycle by set dates that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board. Legislation creating BPC 144 in 1998 allowed the Board to require applicants to submit fingerprints for the purpose of conducting criminal history records check. Due to the narrow interpretation of the language of BPC 144, the Board has only required applicants for registration and licensure to meet the fingerprint requirement and therefore, those board registrants in the examine cycle before 1992 or individuals licensed with the Board before 1992 have not met the fingerprint requirement set forth in BPC 144. Those licensees and registrants that have not been fingerprinted do not generate a subsequent arrest notification by the DOJ and therefore, the board is not notified, except by licensee and registrant self-disclosure on renewal, of arrests and/or criminal convictions. It is necessary for the board

to have the knowledge of unprofessional conduct, including arrests and criminal convictions, in order to proceed with disciplinary action.

Additionally, this proposed regulation requires those licensees and registrants for whom an electronic record does not exist in the DOJ's criminal offender record identification database, to complete a state and federal level criminal offender record information search conducted through DOJ. This provision is necessary to ensure that the Board is notified in a timely manner of arrests and criminal convictions. LiveScan fingerprinting did not become widely available until 1999, and therefore, those applicants fingerprinted prior to 1999 were most likely fingerprinted using rolled fingerprints on a hard card. These fingerprint records were not entered into the DOJ electronic database. When a notice of arrest is received at DOJ on an individual that is not in the electronic database, the file must be pulled manually and then entered into the electronic database before the arrest is reported to the Board. The process for receiving arrest information from DOJ on individuals that do not have an electronic record takes about six months. This significant delay allows a practitioner to continue practicing without the Board's knowledge of any unprofessional conduct that may be related to the duties, functions and qualifications of the professional license that individual holds.

BPC sections 4982(a), 4989.54(a) and 4992.3(a) allows the board to deny a license or a registration, or suspend or revoke a license of registration for unprofessional conduct, including the conviction of a crime substantially related to the qualifications, functions or duties of a licensee or registrant. Further, under BPC Section 4996.6, upon renewal, a licensee is required to notify the Board whether he or she has been convicted, as defined in BPC Section 490, of a misdemeanor or a felony. However, for those licensed before the implementation of the Board's fingerprint submission requirement in April 1992, the notification of a criminal conviction relies upon the licensee or registrants self disclosure upon renewal. In order to fully implement the unprofessional conduct statutes that require the board to discipline a license or registrant that has been convicted of a crime substantially related to the qualifications, functions, or duties of their professional service, the Board must receive information related to those criminal convictions in a timely manner. This proposed rulemaking is necessary to ensure that all Board licensees and registrants submit fingerprints to DOJ for the purpose of a state and federal criminal records check in order for the Board to implement the unprofessional conduct statutes in place to protect the public from unethical and possibly incompetent practitioners.

Underlying Data

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 businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts or evidence/documents/testimony:

There would be no costs to businesses to comply with this regulation. This proposed regulation would only affect individuals for whom an electronic record of his or her fingerprints does not exist in the DOJ criminal offender record identification database and those licensees and

registrants that do not comply with the proposed regulation.

There are approximately 750 vendors statewide who provide fingerprinting services. There should be no initial or ongoing cost impact upon the vendors because they already equipped to provide the service and the fingerprinting requirement will be staggered and extended over the licensees' renewal periods (biennial cycle).

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

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

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STATEMENT OF SERVICE BY MAIL

I certify that the Board of Behavioral Sciences has complied with the requirements of Government Code Section 11346.4(a)(1) through (4) and that the notice was mailed on December 31, 2008.

DATED: 12/31/08



Tracy Rhine
Regulations Coordinator

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BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS

Hearing Date: February 18, 2009

Section(s) Affected: Title 16, California Code of Regulations Sections 1815 and 1886.40

Updated Information

The Initial Statement of Reasons is included in the file (Tab II). There were no changes to the proposed regulations.

Objections or Recommendations/Responses

No objections were made to this proposal, either in writing or orally, during the comment period.

Small Business Impact: These regulations will not have a significant adverse economic impact on businesses.

Consideration of Alternatives

The Board has determined that no reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Local Mandate

The proposed regulation does not impose any mandate on local agencies or school districts.

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REGULATION HEARING February 18, 2009

Department of Consumer Affairs
Eldorado Room
1625 North Market Blvd.
Sacramento, CA 95834

Staff Present

Paul Riches, Executive Officer
Kim Madsen, Assistant Executive Officer
Tracy Rhine, Legislative Analyst

INTRODUCTION

Tracy Rhine: The purpose of this meeting is to conduct a public hearing of proposed regulations brought forth by the Board of Behavioral Sciences.

Today is Wednesday, February 18, 2009, the time is 9:03 a.m., and this hearing is being conducted in Sacramento, California.

The regulation proposal was filed with the Office of Administrative Law and has been duly noticed. Copies of the proposed regulation have been sent to interested parties.

SUBJECT MATTER OF THE REGULATIONS

Tracy Rhine: This regulation proposal would amend Title 16, California Code of Regulations Section 1888, which will revise the Board's Disciplinary Guidelines.

PROCEDURAL RULES FOR THE HEARING

Tracy Rhine: If any written comments have been received on the proposal, they will be made as part of the permanent record. There are no witnesses present at this time to testify. I will keep the hearing open for 15 minutes for public comment

There were no witnesses in attendance for the proposed regulation. The hearing was closed at 9:20 a.m.



Arnold Schwarzenegger
Governor

State of California
State and Consumer
Services Agency
Department of
Consumer Affairs

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**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME

CONTACT PERSON

TELEPHONE NUMBER

Board of Behavioral Sciences

Tracy Rhine

916-574-7847

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400

NOTICE FILE NUMBER

Mandatory Fingerprint Submission

ECONOMIC IMPACT STATEMENT**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *(include calculations and assumptions in the rulemaking record.)*

1. Check the appropriate box(es) below to indicate whether this regulation:

 a. Impacts businesses and/or employees e. Imposes reporting requirements b. Impacts small businesses f. Imposes prescriptive instead of performance standards c. Impacts jobs or occupations g. Impacts individuals d. Impacts California competitiveness h. None of the above *(Explain below. Complete the Fiscal Impact Statement as appropriate.)*h. (cont.) See Attached

(If any box items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: 0 Describe the types of businesses (Include nonprofits): N/AEnter the number or percentage of total businesses impacted that are small businesses: 03. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: _____

4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas) _____5. Enter the number of jobs created: 0 or eliminated: 0 Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

 Yes No If yes, explain briefly: N/A**B. ESTIMATED COSTS** *(Include calculations and assumptions in the rulemaking record.)*1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ See Attacheda. Initial cost for a small business: \$ 0 Annual ongoing cost: \$ 0 Years: N/Ab. Initial cost for a typical business: \$ 0 Annual ongoing cost: \$ 0 Years: N/Ac. Initial cost for an individual: \$ See Attached Annual ongoing cost: \$ See attached Years: See attachedd. Describe other economic costs that may occur: N/A

ECONOMIC AND FISCAL IMPACT STATEMENT (STD. 399, Rev. 2-98)

- 2. If multiple industries are impacted, enter the share of total costs for each industry: N/A_____
- 3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ N/A
- 4. Will this regulation directly impact housing costs? Yes No
if yes, enter the annual dollar cost per housing unit: \$ _____ and the number of units:
- 5. Are there comparable Federal Regulations? Yes No
Explain the need for State regulation given the existence or absence of Federal regulations:

Enter any additional costs to businesses and/or individuals that may be due to State – Federal differences: \$ ____0_____

C. ESTIMATED BENEFITS *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

- 1. Briefly summarize the benefits that may result from this regulation and who will benefit:

- 2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority
Explain:

- 3. What are the total statewide benefits from this regulation over its lifetime? \$

D. ALTERNATIVES TO THE REGULATION *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

- 1. List alternatives considered and describe them below. If no alternatives were considered, explain why not:
See Attached

- 2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
Regulation: See Attached Benefit: \$ See Attached Cost: \$ See Attached
Alternative 1: See Attached Benefit: \$ See Attached Cost: \$ See Attached
Alternative 2: See Attached Benefit: \$ See Attached Cost: \$ See Attached
Alternative 3: 0 Benefit: \$ 0 Cost: \$ 0

- 3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: N/A
- 4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No
Explain:

ECONOMIC AND FISCAL IMPACT STATEMENT (STD. 399, Rev. 2-98)

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

- 1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?
2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
Alternative 1:
Alternative 2:
3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT

- 1. Additional expenditures of approximately \$ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code.
2. Additional expenditures of approximately \$ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
3. Savings of approximately \$ annually.
4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.
5. No fiscal impact exist because the regulation does not affect any local entity or program.
6 Other:

Mandatory Fingerprint Submission for Board Licensees (Sections 1815 and 1886.40)

Economic Impact Statement

Section A

A.1.

Business and Professions Code (BPC) Section 144 requires an applicant to furnish to specified agencies, including the Board of Behavioral Sciences (Board), a full set of fingerprints for the purpose of conducting criminal history record checks. Additionally, this section allows the Board to obtain and receive criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI).

On April 1, 1992, the Board began requiring Marriage and Family Therapist, Marriage and Family Therapist Intern, Clinical Social Worker, Associate Clinical Social Worker and Educational Psychologist applicants to submit fingerprint cards for the purpose of conducting criminal history background investigations through DOJ and the FBI. The fingerprinting of applicants allows the Board a mechanism to enhance public protection by conducting a more thorough screening of applicants for possible registration or licensure. All trainees, interns, and registrants were required to submit a fingerprint card and processing fee with their applications. Candidates already in the examination cycle were required to submit fingerprints by set dates that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board.

This proposed regulation will require all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the DOJ's criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ.

Impact on Individuals: The current processing fees associated with LiveScan fingerprinting are \$32.00 for DOJ and \$24.00 for FBI, with some Live Scan agencies charging additional fees for "rolling" fingerprints and/or administrative processing. Applicants are responsible to pay all fees associated with the fingerprint process. The board estimates that there are approximately 29,578 licensees that have not been fingerprinted through the DOJ. Additionally, the Board estimates that there are a further 5,000 licensees that have submitted fingerprints with DOJ using rolling fingerprints (Hard cards) before the use of the LiveScan process was widely used. These licensees and registrants would also have to complete a state and federal level criminal offender record information search through DOJ in order to have an electronic record in the DOJ database. In total, the Board estimates that over the two year renewal cycle, beginning October 31, 2009, 34,594 licensees will be required to complete the fingerprinting requirements set forth in this regulation.

Section B

B.1.

There would be no costs to businesses to comply with this regulation.

Board licensees and registrants for whom an electronic record of the licensee's or registrant's fingerprints does not exist with DOJ would have to meet the fingerprinting requirements in this proposed regulation by the date of his or her next biennial renewal on or after October 31, 2009. Therefore, most costs associated with this regulation will occur in fiscal year 2009/10 and 2010/11. Some associated costs will remain in first part of fiscal year 2011/12.

The current processing fees associated with LiveScan fingerprinting are \$32.00 for DOJ and \$24.00 for FBI, with some Live Scan agencies charging additional fees for “rolling” fingerprints and/or administrative processing. The average total cost per individual to meet the requirements set forth in the regulation will be \$56.00. The board estimates that there are approximately 29,578 licensees that have not been fingerprinted through the DOJ. Additionally, the Board estimates that there are a further 5,000 licensees that have submitted fingerprints with DOJ using rolling fingerprints (Hard cards) before the use of the LiveScan process was widely used. These licensees and registrants would also have to complete a state and federal level criminal offender record information search through DOJ in order to have an electronic record in the DOJ database.

Assuming 34, 578 total licensees and registrants must complete fingerprinting with DOJ over two years (by his or her next biennial renewal), that will be a total cost to all individuals affected over the lifetime of this regulation of \$1,936,638.

Section D

D.2.

Regulation: This proposed regulation will require all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the DOJ’s criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ. The cost to individuals subject to the requirements of this regulation is \$56.00. The cost to the Board is \$1,876,000` over three years. Please see section B.1. of the fiscal impact statement and Addendum A and B for detailed information of Board costs.

Alternative #1: Propose legislation to require all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the DOJ’s criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ. It is uncertain if such legislation will be introduced by the Department of Consumer Affairs and due to the urgent nature of this issue, the Board believes it is important to initiate the rulemaking process to ensure that licensees and registrants not fingerprinted are held accountable for unprofessional conduct in a timely manner.

Alternative #2: Do nothing. This is not acceptable, as it does not protect consumers from incompetent and unprofessional practitioners allowed to continue to practice and remain in good standing due to the lack of information about criminal convictions by the Board.

Fiscal Impact Statement

B.1.

This regulation will not require submission of fingerprints by affected licensees until after October 31, 2009, therefore no additional expenditure is needed for the current fiscal year.

The following are assumptions for costs associated with fiscal years 2009/10, 2010/11 and 2011/12. For more detailed information see addendums A & B.

CURRENT FINGERPRINT STATISTICS

YEAR	Average Monthly Notices	Percentage of Increase
2007/08	454	-
2008/09	647	42%

In the fiscal year 07/08, the Board received 5,453 notices from the Department of Justice, an average of 454 per month. For the first three months of the fiscal year 08/09, the Board has received 1,940 notices (647 per month), a 42% increase from the previous year. Currently, the Board has 2 staff members assigned to this workload. One staff member to process the receipt of information (clearances and criminal history) and one staff member to conduct the criminal background investigation. Incorporating the additional volume of notices into the current workload with existing staff is not feasible.

IMPLEMENTATION PROPOSAL

The Board proposes to send notification to all 29,500 licensees of the requirement to submit fingerprints. This notification would be issued once via first class mail. Subsequent notices would be sent via certified mail. To minimize the impact of the large volume of fingerprint results, the notification would be sent out in batches at specific intervals. This would allow for the integration of the workload as opposed to receiving the fingerprint results all at once. Staff would monitor the receipt of the fingerprint submission. Staff will verify compliance with the fingerprint requirement and issue a citation and fine to individuals not in compliance.

Additional Staff and Costs

The Board proposes the addition of the following staff.

- 1 Office Technician, 2 year limited term, to notify the licensees of the fingerprint requirement, monitor for compliance, receive and process the fingerprint results, and initiate cases on CAS. (See attached for operating and equipment costs.)
- 1 Office Technician, 2 year limited term, (See attached for operating and equipment costs.), to notify the licensees of the fingerprint requirement, monitor for compliance, receive and process the fingerprint results, and initiate cases on CAS. (See attached for operating and equipment costs.)
- 0.5 Office Technician, permanent, to notify the licensees of the fingerprint requirement, monitor for compliance, receive and process the fingerprint results, and initiate cases on CAS. This position will be responsible for the ongoing workload that will exist after all licensees are printed. (See attached for operating and equipment costs.)
- 1 Staff Services Analyst/Associate Governmental Program Analyst, 2 year limited term, to conduct the criminal history background investigation and prepare the report, work with the Attorney General on those cases which warrant further disciplinary action, and issue the citation and fine to those licensees not in compliance with the fingerprint requirement. (See attached for operating and equipment costs.)
- 1 Staff Services Analyst/Associate Governmental Program Analyst, permanent full time, to conduct the criminal history background investigation and prepare the report, work with the Attorney General on those cases which warrant further disciplinary action, and issue the citation and fine to those licensees not in compliance with the fingerprint requirement. This position will be responsible for the ongoing workload that

will exist after all licensees are printed. (See attached for operating and equipment costs.)

Attorney General Costs and Impact

Year	Average Convictions	Cost Increase
2008/09	13	-
2009/10	20	\$80,000
2010/11	20	\$80,000
Annual Ongoing	30	\$129,000

Currently the Board refers an average of 13 conviction cases per year to the Attorney General. The Board anticipates that in the short term we would refer approximately 40 (20 per year begin FY 09/10 and ending FY 10/11) additional cases to the Attorney General as a result of printing the remainder of our licensees. In the first year this would increase our Attorney General costs by an estimated \$80,000 and in the second year, \$86,000. In the long term, we project our conviction case referrals to increase to approximately 30 cases. This case load increases our Attorney General costs \$129,000 annually.

Citation and Fine

Activity	BY	BY+1	BY + 2 and ongoing
Non compliance (15% of total population) to be fined	2215	2215	0
Appeal to Cite and Fine (2% of population)	44	44	0
Estimated increase in AG/OAH	264,000	264,000	0

The Board anticipates that approximately 15% (2215 licensees) of the notified licensees will not comply with the fingerprint requirement. As a consequence for non-compliance, the Board plans to issue a citation and fine to these individuals. Assuming 2% of these individuals appeal the citation and fine, the Board anticipates \$264,000 increase in Attorney General and Office of Administrative Hearing cost in both FY 09/10 and FY 10/11. This is not expected to be an ongoing expense.

Probationers

Activity	BY	BY+1	BY + 2 and ongoing
Probationers on probation for conviction	18	24	24
Fail to comply with terms of probation	8%	8%	8%
Estimated increase in AG/OAH		\$20,000	\$20,000

Currently the Board has a total of 38 probationers, 18 of those are on probation as a result of their criminal conviction. 80% of our criminal conviction cases referred to the Attorney General result in probation. The Board anticipates adding approximately 16 cases per year beginning FY 09/10 and ending FY 10/11. Currently 8% of the probationers fail to comply with the terms of probation and the Board moves to revoke the probation and license. We anticipate that this will increase our Attorney General costs by \$20,000 in FY 09/10 and \$20,000 in FY 10/11.

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Board of Behavioral Sciences -- Enforcement Program

Cost Factors	Personnel Years (By Fiscal Year)			Expenditures (By Fiscal Years)			
	2009-10	2010-11	2011-12	2009-10	2010-11	2011-12	
<u>Staffing Needs</u> ¹							
1.0 SSA/AGPA 2 yr LT expires 6-30-11 includes benefits	1	1	0	\$ 66,857	\$ 66,857	\$ 66,857	
1.0 SSA/AGPA FT Permanent includes benefits	1	1	1	\$ 66,857	\$ 66,857	\$ -	
1.0 Office Technician 2 yr LT expires 6-30-11 includes benefits	1	1	0	\$ 51,699	\$ 51,699	\$ 51,699	
1.0 Office Technician FT Permanent includes benefits	1	1	1	\$ 51,699	\$ 51,699	\$ -	
Standard OE&E (includes one time equipment)				\$ 57,516	\$ 26,719	\$ 26,719	
Subtotal				\$ 294,628	\$ 263,831	\$ 145,275	

Board of Behavioral Sciences -- Enforcement Program

Enforcement (Related Workload and Costs)	Number	Avg AG Case Cost	Avg OAH Costs	Total Case Cost	2008-09	Number	Avg AG Case Cost	Avg OAH Costs	Total Case Cost	2009-10	Number	Avg Case Cost	Avg OAH Costs	Total Case Cost	2010-11	Number	Avg Case Cost	Avg OAH Costs	Total Case Cost	2011-12					
Fingerprinting - The Board estimates that 29,500 licensees will be required to submit fingerprints over a 2 year period.																									
New Fingerprint submissions																									
Total # of licensees required to submit fingerprints						14,750					14,750					-									
Total # of fingerprints received annually (3 yr avg) from applicants	5,000					5,000					5,400					5,850									
Criminal History received (rap sheet)																									
Total number rap sheets - new licensees printed						1,475					1,475					-									
Total number rap sheets annually - new applicants	500					500					540					584									
Total number rap sheets annually - licensees printed	198					288					378					468									
Citation and Fine for Non Compliance with FP requirement																									
Estimated percentage (15%)						2,215					2,215					-									
Citation Appeals (assumes 2% will appeal citation and fine)						44	\$ 5,000	\$ 1,000	\$ 264,000		44	\$ 5,000	\$ 1,000	\$ 264,000		-									
Conviction Cases Referred to the Attorney General																									
Current annual average (applicants and printed licensees)	13	\$ 3,000	\$ 1,000	\$ 52,000		13	\$ 3,000	\$ 1,000	\$ 52,000		26	\$ 3,300	\$ 1,000	\$ 111,800		30	\$ 3,300	\$ 1,000	\$ 129,000						
Estimated referral from newly printed licensees						20	\$ 3,000	\$ 1,000	\$ 80,000		20	\$ 3,300	\$ 1,000	\$ 86,000		-									
Probation Monitoring																									
Current total of probationers	38					48					74					90									
Current probationers w/criminal convictions	18					23					34					42									
Estimated increase in probationers (assumes current rate of 80%)						16					16					7									
Number of cases to AG to revoke probation (avg 8%)						5	\$ 3,000	\$ 1,000	\$ 20,000		6	\$ 3,300	\$ 1,000	\$ 25,800		7	\$ 3,300	\$ 1,000	\$ 30,100						
Subtotal				\$ 52,000					\$ 416,000					\$ 487,600					\$ 159,100						
Staff Totals									\$ 294,628					\$ 296,831					\$ 145,275						
TOTAL ENFORCEMENT COSTS									\$ 710,628											\$ 784,431					\$ 304,375

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www.bbs.ca.gov

To: Board Members

Date: February 19, 2009

From: Tracy Rhine
Legislative Analyst

Telephone: (916) 574-7847

Subject: Discussion and Possible Action to Adopt 16 CCR Section 1888 Rulemaking

Attached for review and possible action is the final rulemaking package proposing changes to California Code of Regulations Title 16, Section 1888 related to Board disciplinary guidelines.

At its November 18, 2008 meeting the Board passed a motion to direct staff to initiate the rulemaking process.

Recommendation: Upon review and discussion of the attached, staff recommends that the board adopt the final rulemaking package.

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BOARD OF BEHAVIORAL SCIENCES

Order of Adoption

The Board of Behavioral Sciences of the Department of Consumer Affairs hereby amends and adopts regulations in Division 18 of Title 16 of the California Code of Regulations, as follows:

§1888. DISCIPLINARY GUIDELINES

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall consider the disciplinary guidelines entitled “Board of Behavioral Sciences Disciplinary Guidelines” [Rev. ~~May 21, 2004~~ November 2008] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 4980.60, 4987, and 4990.14, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 4982, 4986.70, and 4992.3, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.

Dated: _____

PAUL RICHES
Executive Officer

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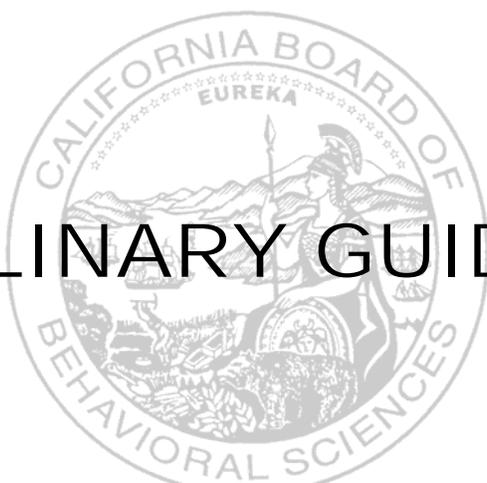
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In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall consider the disciplinary guidelines entitled "Board of Behavioral Sciences Disciplinary Guidelines" [Rev. ~~May 21, 2004~~ November 2008] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

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State of California
Department of Consumer Affairs
Board of Behavioral Sciences

The seal of the California Board of Behavioral Sciences is a circular emblem. It features a central figure, likely a personification of Justice or a similar allegorical figure, holding a scale and a sword. The figure is set against a background of a landscape with mountains and a sun. The words "CALIFORNIA BOARD OF BEHAVIORAL SCIENCES" are inscribed around the perimeter of the seal, and the word "EUREKA" is written in the center above the figure.

DISCIPLINARY GUIDELINES

Revised: ~~May 21, 2004~~ November 2008

INTRODUCTION

The Board of Behavioral Sciences (hereinafter “the Board”) is a consumer protection agency with the primary mission of protecting consumers by establishing and maintaining standards for competent and ethical behavior by the professionals under its jurisdiction. In keeping with its mandate, the Board has adopted the following recommended guidelines for the intended use of those involved in the disciplinary process: Administrative Law Judges, **licensees** respondents and attorneys involved in the discipline process, as well as Board members who review proposed decisions and stipulations and make final decisions.

These guidelines consist of two parts: an identification of the types of violations and range of penalties, for which discipline may be imposed (Penalty Guidelines); and model language for proposed terms and conditions of probation (Model Disciplinary Orders).

The Board expects the penalty imposed to be commensurate with the nature and seriousness of the violation.

These penalty guidelines apply only to the formal disciplinary process and do not apply to other alternatives available to the Board, such as citations and fines. See Business and Professions Code Section 125.9 and Title 16 California Code of Regulations Section 1886.

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PENALTY GUIDELINES

The following is an attempt to provide information regarding violations of **laws statutes and regulations** under the jurisdiction of the Board of Behavioral Sciences and the appropriate range of penalties for each violation. Each penalty listed is followed in parenthesis by a number, which corresponds with a number under the chapter “Model Disciplinary Orders.” Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation; optional conditions not listed as potential minimum terms, should nonetheless be imposed where appropriate. The Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations which take into account unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the Administrative Law Judge hearing the case include an explanation of the deviations or omissions, including all mitigating factors considered by the Administrative Law Judge in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision.

<p><u>Statutes and Regulations</u> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)</p>	<p>Violation Category</p>	<p>Minimum Penalty</p>	<p>Maximum Penalty</p>
<p>MFT: B&P § 4982.26 LCSW: B&P § 4992.33 LEP: B&P § 4986.74 B&P § <u>4989.58</u> GP: B&P § 729</p>	<p>Engaging in Sexual Contact with Client / Former Client</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery. <p><u>The law requires revocation/denial of license or registration.</u></p> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>
<p>MFT: <u>B&P § 4982(aa)(1)</u> LCSW: <u>B&P § 4992.3(x)(1)</u> LEP: <u>B&P § 4989.54(y)(1)</u></p>	<p><u>Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act occurred prior to or after registration or licensure. or Engaging in act described in Section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board.</u></p>	<ul style="list-style-type: none"> • <u>Revocation / Denial of license or registration</u> • <u>Cost recovery.</u> <p><u>The Board considers this reprehensible offense to warrant revocation/denial.</u></p>	<ul style="list-style-type: none"> • <u>Revocation / Denial of license or registration</u> • <u>Cost recovery.</u> <p><u>The Board considers this reprehensible offense to warrant revocation/denial.</u></p>
<p>MFT: B&P § 4982(k), 4982.26 LCSW: B&P § 4992.3(k), 4992.33 CCR § 1881(f) LEP: B&P § 4986.74 CCR § 1858(h) LEP <u>B&P § 4989.58</u> <u>B&P § 4989.54(n)</u> GP: B&P § 480, 726</p>	<p>Sexual Misconduct (Anything other than as defined in B&P Section 729)</p>	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • successful completion the required- <u>Take and pass</u> licensure examinations as a condition precedent to resumption of practice • 7 years probation • Standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to resumption of practice • Supervised practice • Psychotherapy 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery. <p>(See B&P 4982.26, 4986.74, <u>4989.58</u> 4992.33)</p> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>

		<ul style="list-style-type: none"> • Education • Take and pass licensure examination • Reimbursement of probation program <p>And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to biological fluid testing and samples; restricted practice, reimbursement of probation program costs.</p>	
MFT: B&P § 4982(k) LCSW: B&P § 4992.3(k) CCR § 1881(f) LEP: B&P § 4989.54(n) CCR § 1858(h) GP: B&P § 480	Commission of an Act Punishable as a Sexually Related Crime	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • Psychotherapy • 5 years probation; standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to the resumption of practice • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs <p>And if warranted, restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4986.70(c) , 4989.26 , 4986.75 GP: B&P § 480, 820	Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation; standard terms and conditions • Supervised practice • Cost recovery • Reimbursement of probation program costs. <p><u>In addition:</u></p> <ul style="list-style-type: none"> • MENTAL ILLNESS: Psychological/psychiatric evaluation; psychotherapy. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

		<ul style="list-style-type: none"> • PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice • CHEMICAL DEPENDENCY Psychological/psychiatric evaluation; therapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid tests and samples; and if warranted: restricted practice. 	
MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4986.70(e) , 4986.75 4989.54(c) , 4989.56 GP: B&P § 480	Chemical Dependency / Use of Drugs With Client While Performing Services	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation • Standard terms and conditions • Psychological/psychiatric evaluation • Supervised practice • Education • Supervised practice • Education • Rehabilitation program • Abstain from controlled substances • Submit to biological fluid test and samples • Cost recovery • Reimbursement of probation program costs And if warranted, psychotherapy; restricted practice	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(i) LCSW: B&P § 4992.3(i) CCR § 1881(d) LEP: B&P § 4989.54(m) CCR § 1858(d) GP: B&P § 480	Intentionally / Recklessly Causing Physical or Emotional Harm to Client	<ul style="list-style-type: none"> • Revocation stayed • 90-120 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration application • Cost recovery

<p align="center">Statutes and Regulations</p> <p>Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)</p>	<p align="center">Violation Category</p>	<p align="center">Minimum Penalty</p>	<p align="center">Maximum Penalty</p>
<p>MFT: B&P § 4982(d) LCSW: B&P § 4992.3(d) CCR § 1881(m) LEP: B&P § 4989.54(k) GP: B&P § 480</p>	<p>Gross Negligence / Incompetence</p>	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension; 5 years probation • Standard terms and conditions; supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs; <p>And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982 CCR § 1845 LCSW: B&P § 4992.3 CCR § 1881 LEP: B&P § 4986.70, B&P § 4989.54 CCR § 1858 GP: B&P § 125.6 480, 821</p>	<p>General Unprofessional Conduct</p>	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery; reimbursement of probation program <p>And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice, law and ethics course.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

<p align="center">Statutes and Regulations</p> <p>Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)</p>	<p align="center">Violation Category</p>	<p align="center">Minimum Penalty</p>	<p align="center">Maximum Penalty</p>
<p>MFT: B&P § 4980.40(h), 4982(a) LCSW: B&P § 4992.3(a), 4996.2(d), 4996.18(a) LEP: B&P § 4986.20(c), 4986.70(a) B&P § 4989.20(a)(3), 4989.54(a) GP: B&P § 480, 490, 493</p>	<p>Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant</p>	<ul style="list-style-type: none"> • Revocation stayed • 60 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense). <p>CRIMES AGAINST PEOPLE: Add: Psychological/psychiatric evaluation; psychotherapy; restitution; and if warranted: rehabilitation program; restricted practice.</p> <p>DRUGS AND ALCOHOL: Add: Psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; and if warranted: restricted practice.</p> <p>FISCAL AND PROPERTY CRIMES: Add: Restitution, and if warranted: psychotherapy; take and pass licensure exams; rehabilitation program; restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(j) LCSW: B&P § 4992.3(j) CCR § 1881(e) LEP: B&P § 4986.70(f) 4989.54(g) CCR § 1858(e) GP: B&P § 480, 650, 810	Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Law and ethics course • Reimbursement of probation program costs And if warranted. psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4980.02, 4982(l), 4982(s), 4982(t) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(l) 4996.9 CCR § 1881(g), 1881(h) LEP: B&P § 4986.10 , 4989.14 4989.54(r) CCR § 1858(i) , 1858(b) 1858(j) GP: B&P § 480	Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy, take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982.25 LCSW: B&P § 4992.36 LEP: B&P § 4986.70 4989.54(h) , 4989.54(i) GP: B&P § 141, 480	Discipline by Another State or Governmental Agency	<ul style="list-style-type: none"> • Determine the appropriate penalty by comparing the violation under the other state with California law. And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(b) LCSW: B&P § 4992.3(b), B&P § 4992.7 LEP: B&P § 4986.70(b) 4989.54(b) GP: B&P § 480, 498, 499	Securing or Attempting to Secure a License by Fraud	<ul style="list-style-type: none"> • Revocation / Denial of license or registration application; • Cost recovery. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

<p align="center">Statutes and Regulations</p> <p>Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)</p>	<p align="center">Violation Category</p>	<p align="center">Minimum Penalty</p>	<p align="center">Maximum Penalty</p>
MFT: B&P § 4980, 4982(f) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(f), 4996 CCR § 1881(a) LEP: B&P § 4986.50 4989.54(l) CCR § 1858(a), 1858(g) GP: B&P § 480	Misrepresentation of License / Qualifications	<ul style="list-style-type: none"> • Revocation stayed • 60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: take and pass licensure examinations.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982(q) LCSW: B&P § 4992.3(q) - CCR § 1881(l) LEP: CCR § 1858(n) 4989.54(s) GP: B&P § 123, 480, 496	Violates Exam Security / Subversion of Licensing Exam	<ul style="list-style-type: none"> • Revocation stayed • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(g) LCSW: B&P § 4992.3(g), 4992.7 CCR § 1881(b) LEP: CCR § 1858(b), 1858(g) 1858(a) GP: B&P § 119, 480	Impersonating Licensee / Allowing Impersonation	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 5 years probation • Supervised practice • Standard terms and conditions • Psychological/psychiatric evaluation • Psychotherapy • Cost recovery • Reimbursement of probation costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(h) LCSW: B&P § 4992.3(h) CCR § 1881(c) LEP: CCR § 1858(e) B&P § 4989.54 (t) GP: B&P § 125, 480	Aiding and Abetting Unlicensed / Unregistered Activity	<ul style="list-style-type: none"> • Revocation stayed • 30-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(m) LCSW: B&P § 4992.3(m) CCR § 1881(i) LEP: CCR § 1858(k) B&P § 4989.54 (q) GP: B&P § 480	Failure to Maintain Confidentiality	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Take and pass licensure exams • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 728 LCSW: B&P § 728 GP: B&P § 480	Failure to Provide Sexual Misconduct Brochure	<ul style="list-style-type: none"> • Revocation stayed • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(r), 4982(t), 4982(u) CCR § 1833.1, 1845(b) LCSW: B&P § 4992.3(r) LEP: CCR § 1858(j) CCR § 1881(h)	Improper Supervision of Trainee / Intern / Associate / Supervisee	<ul style="list-style-type: none"> • Revocation stayed • 30-90 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(e), 4982(u) LCSW: B&P § 4992.3(e), 4992.3(r) LEP: B&P § 4986.70(e) 4989.54(f) GP: B&P § 480	Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience	<ul style="list-style-type: none"> • Revocation stayed • Registration on probation until exams are passed and license issued • License issued on probation for one year • Rejection of all illegally acquired hours • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(o) LCSW: B&P § 4992.3(o) CCR § 1881(n) LEP: B&P § 4989.54(p) GP: B&P § 650	Pay, Accept, Solicit Fee for Referrals	<ul style="list-style-type: none"> • Revocation stayed • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs • Law and Ethics course 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(n) LCSW: B&P § 4992.3(n) CCR § 1881(j) LEP: CCR § 1858(l) B&P § 4989.54(o)	Failure to Disclose Fees in Advance	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program
MFT: B&P § 4980.46, 4982(p) LCSW: B&P § 4992.3(p) CCR § 1881(k) LEP: B&P § 4986.70(d) CCR § 1858(m) B&P § 4989.54(e) ALL: CCR § 1811 GP: B&P § 480, 651, 17500	False / Misleading / Deceptive / Improper Advertising	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(v) LCSW: B&P § 4992.3(s) LEP: B&P § 4986.70(i) 4989.54(j)	Failure to Keep Records Consistent with Sound Clinical Judgment	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
<u>MFT: B&P § 4982(y)</u> <u>LCSW: B&P § 4992.3(v)</u> <u>LEP: B&P § 4989.54(x)</u>	<u>Willful Violation Of Chapter 1 (Commencing With Section 123100) Of Part 1 Of Division 106 Of The Health And Safety Code</u>	<ul style="list-style-type: none"> • <u>Revocation stayed</u> • <u>1 year probation</u> • <u>Standard terms and conditions</u> • <u>Education</u> • <u>Cost recovery</u> • <u>Reimbursement of probation program costs</u> 	<ul style="list-style-type: none"> • <u>Revocation stayed</u> • <u>30 days actual suspension</u> • <u>1-3 years probation</u> • <u>Standard terms and conditions</u> • <u>Education</u> • <u>Cost recovery</u> • <u>Reimbursement of probation program costs</u>
<u>MFT: B&P § 4982(z)</u> <u>LCSW: B&P § 4992.3(w)</u>	<u>Failure To Comply With Section 2290.5 (Telemedicine)</u>	<ul style="list-style-type: none"> • <u>Revocation stayed</u> • <u>1 year probation</u> • <u>Standard terms and conditions</u> • <u>Education</u> • <u>Cost recovery;</u> • <u>Reimbursement of probation program costs.</u> 	<ul style="list-style-type: none"> • <u>Revocation stayed</u> • <u>30 days actual suspension</u> • <u>1-3 years probation</u> • <u>Standard terms and conditions</u> • <u>Education</u> • <u>Cost recovery</u> • <u>Reimbursement of probation program costs</u>

MODEL DISCIPLINARY ORDERS

Model Disciplinary Orders are divided into two categories. The first category consists of **Optional Terms and Conditions of Probation** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **Standard Terms and Conditions of Probation** which must appear in all Proposed Decisions and proposed stipulated agreements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (1-16) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (17- 32).

OPTIONAL TERMS AND CONDITIONS OF PROBATION

Depending on the nature and circumstances of the case, the optional terms and conditions of probation that may appear are as follows:

1. Actual suspension
2. Psychological / Psychiatric evaluation
3. Psychotherapy
4. Supervised Practice
5. Education
6. Take and Pass licensure examinations
7. Rehabilitation Program
8. Abstain from Controlled Substances/Submit to Biological Fluid Testing and Samples
9. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples
10. Restricted Practice
11. Restitution
12. Reimbursement of Probation Program
13. Physical Evaluation
14. Monitor Billing System
15. Monitor Billing System Audit
16. Law and Ethics Course

1. Actual Suspension

A. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of ____ days.

OR

B. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of ____ days, and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation, to implement any recommendations from that evaluation, and to successfully complete the required licensure examinations as a condition precedent to resumption of practice as outlined in condition # _____ (Take and pass licensure examinations).

2. Psychological / Psychiatric Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a psychological or psychiatric evaluation by such licensed psychologists or psychiatrists as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such evaluator shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a counselor and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the Board. Respondent shall comply with the recommendations of the evaluator.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

(FYI: The Board requires the appointment of evaluators who have appropriate knowledge, training, and experience in the area involved in the violation).

3. **Psychotherapy**

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board. Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, and shall not be the respondent's supervisor. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by respondent.

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, nor shall the psychotherapist be the respondent's supervisor.~~

Respondent may, after receiving the Board's written permission, receive therapy via videoconferencing if respondent's good faith attempts to secure face-to-face counseling are unsuccessful due to the unavailability of qualified mental health care professionals in the area. The Board may require that respondent provide written documentation of his or her good faith attempts to secure counseling via videoconferencing.

Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist submits quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

(FYI: The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation).

4. **Supervised Practice**

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed

supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent.

If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of mental health care professionals in the area, then the Board may consider the following options for satisfying this probationary term:

- (1) Permitting the respondent to receive supervision via videoconferencing; or,
- (2) Permitting respondent to secure a supervisor not in the respondent's field of practice.

The forgoing options shall be considered and exhausted by the Board in the order listed above. The Board may require that respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision, supervision via videoconferencing or to locate a mental health professional that is licensed in the respondent's field of practice.

Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records. Supervision obtained from a probation supervisor shall not be used as experience gained toward licensure.

If the supervisor is no longer available, respondent shall notify the Board within 15 days and shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by respondent. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. The supervisor shall not be the respondent's therapist.

[Optional - Respondent shall not practice until he/she has received notification that the Board has approved respondent's supervisor.]

5. Education

Respondent shall take and successfully complete the equivalency of ____ semester units in each of the following areas _____. All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker or educational psychologist, or through a course approved by the Board. Classroom attendance must be specifically required; ~~workshops are not acceptable.~~ Course content shall be pertinent to the violation and all course work must be completed within _____ one year from the effective date of this Decision.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the violation is related to record keeping, which includes but is not limited to: recordkeeping, documentation, treatment planning, progress notes, security of records, billing, and reporting requirements.)

6. Take and Pass Licensure Examinations

Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

7. Rehabilitation Program

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter a rehabilitation and monitoring program within fifteen (15) days after notification of the board's approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random biological fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the respondent.

8. Abstain from Controlled Substances / Submit to Biological Fluid Testing and Samples

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to respondent's current employer and shall be a violation of probation.

9. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. The respondent is responsible for ensuring that reports are submitted directly by

the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the respondent's current employer and shall be a violation of probation.

10. Restricted Practice

Respondent's practice shall be limited to _____. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

11. Restitution

Within 90 days of the effective date of this decision, respondent shall provide proof to the Board or its designee of restitution in the amount of \$_____ paid to _____.

12. Reimbursement of Probation Program

Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be \$_____ per year/\$_____ per month.

13. Physical Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a physical evaluation by such licensed physicians as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such physician shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a therapist and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the Board. Respondent shall comply with the recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the Board, respondent shall submit to the Board or its designee the name and qualifications of the medical provider, and a treatment plan by the medical provider by which the respondent's physical treatment will be provided.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

14. Monitor Billing System

Within 30 days of the effective date of this decision, respondent shall obtain the services of an independent billing system to monitor and document the dates and times of client visits. Clients are to sign documentation stating the dates and time of services rendered by respondent and no bills are to be issued unless there is a corresponding document signed by the client in support thereof. The billing system service shall submit quarterly written reports concerning respondent's cooperation with this system. The cost of the service shall be borne by respondent.

15. Monitor Billing System Audit

Within 60 days of the effective date of this decision, respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to annually audit respondent's billings for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. The cost of the audits shall be borne by respondent. Failure to pay for the audits in a timely fashion shall constitute a violation of probation.

16. Law and Ethics Course

Respondent shall take and successfully complete the equivalency of two semester units in law and ethics. Course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker or educational psychologist as defined in Sections 4980.40 and 4996.18 of the Business and Professions Codes and Section 1854 of Title 16 of the California Code of Regulations or through a course approved by the Board. Classroom attendance must be specifically required; ~~workshops are not acceptable~~. Within 90 days of the effective date of this Decision, respondent shall submit a plan for prior Board approval for meeting this educational requirement. Said course must be taken and completed within one year from the effective date of this Decision. The costs associated with the law and ethics course shall be paid by the respondent. Units obtained for an approved course in law and ethics shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the licensee fails to keep informed about or comprehend the legal obligations and/or ethical responsibilities applicable to their actions. Examples include violations involving boundary issues, transference/countertransference, breach of confidentiality and reporting requirements.)

STANDARD TERMS AND CONDITIONS OF PROBATION

The sixteen standard terms and conditions generally appearing in every probation case are as follows:

17. Obey All Laws
18. File Quarterly Reports
19. Comply with Probation Program
20. Interviews with the Board
21. Residing or Practicing Out-of-State
22. Failure to Practice- California Resident
23. Change of Place of Employment or Place of Residence
24. Supervision of Unlicensed Persons
25. Notification to Clients
26. Notification to Employer
27. Violation of Probation
28. Maintain Valid License
29. License Surrender
30. Instruction of Coursework Qualifying for Continuing Education
31. Notification to Referral Services
32. Cost Recovery

Specific Language for Standard Terms and Conditions of Probation

(To be included in all Decisions)

17. Obey All Laws

Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation, payments and other orders. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.

18. File Quarterly Reports

Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). Respondent shall state under penalty of perjury whether he/she has been in compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.

19. Comply with Probation Program

Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the program.

20. Interviews with the Board

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

21. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, ~~4986.10~~ [4989.14](#) or 4996.9 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in practice within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

(OPTIONAL)

Any respondent disciplined under Business and Professions Code Sections 141(a), 4982.25, 4992.36 or ~~4986.70~~ [4989.54\(h\)](#), [4989.54\(i\)](#) (another state discipline) may petition for modification or termination of penalty: 1) if the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

22. Failure to Practice- California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30

calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4986.10 or ~~4996.9~~ [4989.14](#) of the Business and Professions Code.

23. Change of Place of Employment or Place of Residence

Respondent shall notify the Board or its designee in writing within 30 days of any change of place of employment or place of residence. The written notice shall include the address, the telephone number and the date of the change.

24. Supervision of Unlicensed Persons

While on probation, respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisory relationship in existence on the effective date of this Decision.

25. Notification to Clients

Respondent shall notify all clients when any term or condition of probation will affect their therapy or the confidentiality of their records, including but not limited to supervised practice, suspension, or client population restriction. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

(FYI: Respondents should seek guidance from Board staff regarding appropriate application of this condition).

26. Notification to Employer

Respondent shall provide each of his or her current or future employers, when performing services that fall within the scope of practice of his or her license, a copy of this Decision and the Statement of Issues or Accusation before commencing employment. Notification to the respondent's current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

27. Violation of Probation

If respondent violates the conditions of his/her probation, the Board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline (revocation/suspension) of respondent 's license [or registration] provided in the decision.

If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, or the Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this decision shall be automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license [or registration] shall be fully restored.

28. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent's license shall be subject to any and all terms of this probation not previously satisfied.

29. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 30 calendar days deliver respondent's license and certificate and if applicable wall certificate to the Board or its designee and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Board for licensure respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

30. Instruction of Coursework Qualifying for Continuing Education

Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

31. Notification to Referral Services

Respondent shall immediately send a copy of this decision to all referral services registered with the Board in which respondent is a participant. While on probation, respondent shall send a copy of this decision to all referral services registered with the Board that respondent seeks to join.

32. Cost Recovery

Respondent shall pay the Board \$_____ as and for the reasonable costs of the investigation and prosecution of Case No. _____. Respondent shall make such payments as follows: [Outline payment schedule.] Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. _____. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation. A period of non-practice by respondent shall not relieve respondent of his or her obligation to reimburse the board for its costs.

Cost recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Enforcement Manager based on good cause shown by the probationer.

BOARD POLICIES AND GUIDELINES

ACCUSATIONS

The Board of Behavioral Sciences (Board) has the authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The Board requests that this fact be included in the pleading and made part of the accusation.

STATEMENT OF ISSUES

The Board will file a Statement of Issues to deny an application of a candidate for the commission of an act, which if committed by a licensee would be cause for license discipline.

STIPULATED SETTLEMENTS

The Board will consider entering into stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to settlement with the Board, he or she may be required to admit to the violations set forth in the Accusation. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.

RECOMMENDED LANGUAGE FOR LICENSE SURRENDERS

"Admission(s) made in the stipulation are made solely for the purpose of resolving the charges in the pending accusation, and may not be used in any other legal proceedings, actions or forms, except as provided in the stipulation.

The admissions made in this stipulation shall have no legal effect in whole or in part if the Board does not adopt the stipulation as its decision and order.

Contingency

This stipulation shall be subject to approval by the Board of Behavioral Sciences. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Behavioral Sciences may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his/her counsel. By signing the stipulation, Respondent understands and agrees that he/she may not withdraw his/her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

Respondent fully understands that when the Board adopts the license surrender of respondent's license, respondent will no longer be permitted to practice as a _____ in California. Respondent further understands that the license surrender of his or her license, upon adoption, shall be considered to be a disciplinary action and shall become a part of respondent 's license history with the Board.

The respondent further agrees that with the adoption by the Board of his or her license surrender,

respondent may not petition the Board for reinstatement of the surrendered license.

~~Should respondent at any time after this surrender ever reapply~~ Respondent may reapply to the Board for licensure three years from the date of surrender, respondent and must meet all current requirements for licensure including, but not limited, to filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

Respondent understands that should he or she ever reapply for licensure as a _____ or should he or she ever apply for any other registration or licensure issued by the Board, or by the Board of Psychology, all of the charges contained in Accusation No. _____ shall be deemed admitted for the purpose of any Statement of Issues or other proceeding seeking to deny such application or reapplication."

RECOMMENDED LANGUAGE FOR REGISTRATION APPLICANTS

IT IS HEREBY ORDERED THAT Respondent _____ be issued a Registration as a _____ . Said Registration shall be revoked. The revocation will be stayed and Respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

RECOMMENDED LANGUAGE FOR REGISTRANTS

IT IS HEREBY ORDERED THAT _____ Registration Number _____ issued to Respondent _____ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

Proposed Decisions

The Board requests that proposed decisions include the following if applicable:

- A. Names and addresses of all parties to the action.
- B. Specific Code section violated with the definition of the code in the Determination of Issues.
- C. Clear description of the acts or omissions that constitute a violation.
- D. Respondent's explanation of the violation in the Findings of fact if he or she is present at the hearing.
- E. Explanation for deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the Order first list the Optional Terms and Conditions (1-16) followed by the Standard Terms and Conditions (17-22) as they may pertain to the particular case. If the respondent fails to appear for his or her scheduled hearing or does not submit a notice of defense, such inaction shall result in a default decision to revoke licensure or deny application.

REINSTATEMENT / REDUCTION OF PENALTY HEARINGS

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Suspensions or Revocations identified in Title 16, California Code of Regulations Section 1814, and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board is not interested in retrying the original revocation or probation case. The Board shall consider, pursuant to Section 1814, the following criteria of rehabilitation:

- (1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
- (2) Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for suspension or revocation under Section 490 of the Code.
- (3) The time that has elapsed since commission of the acts or crimes giving rise to the suspension or revocation.
- (4) Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.
- (7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.
- (8) Evidence, if any, of rehabilitation submitted by the licensee.

In the Petition Decision the Board requires a summary of the offense and the specific codes violated which resulted in the revocation, surrender, or probation of the license.

In petitioning for Reinstatement or Reduction of Penalty under Business and Professions Code Section 4982.2, the petitioner has the burden of demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of marriage and family therapy, clinical social work, or educational psychology within the scope of current law, and accepted standards of practice. In reaching its determination, the Board considers various factors including the following:

- A. The original violations for which action was taken against the petitioner's license;
- B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;
- C. The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;
- D. The petitioner's documented rehabilitative efforts;
- E. Assessment of the petitioner's rehabilitative and corrective efforts;
- F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the Board should deny a request for reinstatement of a revoked license or reduction of penalty

(modification or termination of probation), the Board requests the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such proceeding shall go forth without the petitioner's presence and the Board will issue a decision based on the written evidence and oral presentations submitted.

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**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. 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 February 16, 2009 or must be received by the Board of Behavioral Sciences at the hearing.

The Board will hold a public hearing starting at 9:00am on February 18, 2009, at the Spyglass Inn located at 2705 Spyglass Drive, Pismo Beach, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Information Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony 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 4990.20 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4982, 4989.54, and 4992.3 of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Board proposes to amend Section 1888 of Title 16 of the CCR. This section pertains to the Board's disciplinary guidelines for disciplinary action against a licensee under the Administrative Procedures Act (APA) which are incorporated by reference in this Section.

Specifically, the regulation would incorporate amendments to the Guidelines, as revised November 2008, which are as follows:

Penalty Guidelines

- Replace errant references to BPC sections 4986.10, 4986.20, 4986.50, 4986.70, 4986.71 and 4986.75. SB 1475, Chapter 659, Statutes of 2006 repealed and recast law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections to BPC Sections 4989.14, 4989.20, 4989.26, 4989.54, 4989.56, and 4989.58. The purpose of this proposed change is to make the Guidelines, which are incorporated at 16 CCR Section 1888, consistent with these current statutes.
- Add a reference to BPC section 4992.3(r) in addition to 4989.54(f) to include the violation of unprofessional conduct statutes by a registrant related to the acquisition of experience hours. The purpose of the proposed change is to make the Guidelines consistent with the newly re-numbered Licensed Educational Psychologist and current Licensed Clinical Social Worker unprofessional conduct statutes.

- Delete references to subsections (a)-(e), (g)-(k) and (n) of Section 1858 of Title 16, CCR. An approved regulatory change operative December 30, 2007, repealed these subsections in accordance with changes implemented by SB 1475, Chapter 659, Statutes of 2006. The purpose of this proposed change is to delete these obsolete references and update the Guidelines.
- Add reference to 16 CCR section 1845((b) related to unprofessional conduct. This reference was inadvertently omitted in the current version of the Guidelines. The purpose of this change is to add clarity and consistency by referencing all relevant code sections related to the violation.
- Add reference to BPC sections 4982(aa)(1), 4992.3(x)(1) and 4989.54(y)(1) that were created by SB 797, Chapter 33, Statutes of 2008. The purpose of this change is to make Section 1888 consistent with current statute. These code sections now specify that it is unprofessional conduct for a licensee or registrant to do any of the following:
 - engaging in an act with a minor punishable as a sexually related crime regardless of whether the act occurred prior to or after registration or licensure; and,
 - engaging in an act described in section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in sections 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time registration or license was issued by the board.
- Add references to BPC sections 4982(y), 4992.3(v) and 4989.54(x). SB 1048, Chapter 588, Statutes of 2007 added willful violation of Chapter 1 of part 1 of division 106 of the Health and Safety Code to the unprofessional conduct statutes of Board licensing law. The purpose of this change is to make the Guidelines consistent with current statute.
- Add reference to BPC sections 4982(z) and 4992.3(w). SB 1048, Chapter 588, Statutes of 2007 added failure to comply with telemedicine law (BPC section 2290.5) to the unprofessional conduct statutes for board licensees. The purpose of this change is to make the Guidelines consistent with current statute.
- Makes a conforming change to provide consistency for penalties within the same violation category on page 9 of the guidelines related to fiscal and property crimes.
- Make several non-substantive changes to provide clarity and order to page five of the Guidelines.

Optional Terms and Conditions of Probation

- *(Psychotherapy Terms)* Allow a respondent, with the permission of the Board, to secure mandated personal psychotherapy services via videoconferencing. Currently this section is silent on the method by which services may be received. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult, this regulatory change will allow compliance with a personal psychotherapy order in those rural areas where the respondent may be the only licensed mental health professional.

- *(Psychotherapy Terms)* Allow a respondent, with permission of the Board, to receive mandated supervised practice via videoconferencing or with a supervisor not in the respondent's field of practice. Currently a supervisor providing services pursuant to this section of the Guidelines must be licensed in the same field of practice as the respondent. This section does not currently allow supervision via video conferencing. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult or impossible, this regulatory change will allow a respondent alternatives to meeting the conditions of the order, if approved by the board. This change is necessary to increase compliance in areas where a qualified mental health professional may not be available.
- *(Psychotherapy Terms)* Clarify that supervision obtained from a probation supervisor may not be used as experience gained toward licensure. The purpose of this change is to clarify that supervision gained as a condition of probation may only count towards one supervision requirement, meeting the conditions of the disciplinary order, and may not be counted towards the licensure requirements.
- *(Law and Ethics/Education Terms)* Allow a respondent to take mandated educational courses from an approved educational institution, in addition to accredited institutions or through a course approved by the Board. This is consistent with required coursework for licensure eligibility which allows that education to be gained at a Bureau for Private and Postsecondary Vocational *Education* approved institution that offer qualifying degrees for Board licensees (BPC 4980.40(a)).
- *(Law and Ethics/Education Terms)* Delete the prohibition against attending workshops to meet educational requirements and allow a respondent to receive mandated educational courses through a workshop. The purpose of this change is to allow greater flexibility for respondents that may have difficulty finding access to these types of courses.
- *(Law and Ethics/Education Terms)* Require that mandated coursework must be completed one year from the effective date of the decision. Currently the guidelines allow a date to be determined by the entity making the order. The purpose of this change is to establish a standard timeframe that will enable the Board to more easily enforce the order and thereby ensure better compliance from respondents.
- *(Reimbursement of Probation Program Terms)* Clarify the reimbursement costs to be paid by respondents by adding a reference line to allow the amount to be paid per month to be entered in the order. The purpose of this change is to add clarity for the respondent about the timeframes for compliance with the order and determination by the Board of the reimbursement costs due.

Standard Terms and Conditions of Probation

- Delete obsolete references to BPC 4986.10 and 4986.70 and replace with correct references to 4989.14, 4989.54(h) and 4989.54(i). SB 1475, Chapter 659, Statutes of 2006 repealed and recast the law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections. The purpose of this change is to make this section of the Guidelines consistent with those current statutes.
- *(Cost Recovery Terms)* Specify that a respondent must complete cost recovery payments six month prior to the termination of probation. The purpose of the change is to increase enforceability of cost recovery. Currently the respondent could be released

from probation before the Board becomes aware that the financial requirements of the disciplinary order have not been met. This proposed change is necessary to allow the Board to enforce this provision of a disciplinary order and grant flexibility when necessary to enable the respondent to meet the mandated requirements.

Board Policies and Guidelines

- *(Language for License Surrenders)* The addition of this proposed language would permit the Board to directly discuss a pending stipulation with the staff or advisors to the Board to determine whether to adopt a stipulation proffered by the respondent and the Board's Executive Officer. This language is necessary for the Board to effectively consider a proposed settlement, to permit communications between Board staff and the Board regarding the pending stipulation, and to comply with the requirements of the Administrative Procedure Act governing settlements and permissible communications with the Board (Government Code sections 11415.60 and 11430.30(b)).
- Allow a respondent to reapply to the Board for licensure three years from the date of surrender. Currently the disciplinary guidelines do not specify a waiting period for reapplication, allowing a respondent to reapply immediately. However, current law (BPC 4990.30) specifies that a petition for reinstatement of a license or registration that has been revoked for unprofessional conduct may be filed only after three years. Both revocation and license surrender occur as a result of unprofessional conduct and therefore should have consistent timeframes for subsequent licensure. The purpose of this change is to create a standardized timeframe for reapplication of a surrendered license consistent with reinstatement of a revoked license.
- Add recommended language for registration applicants and registrants that describes the conditions of revocation of registration and subsequent registrations with the Board. This language is necessary to standardize the orders for registrants as no language currently exists in the disciplinary guidelines, without this standardized language, the Board will continue to observe inconsistencies in the form of the orders given to registrants related to revocation and probation.

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 businesses, including the ability of California businesses to compete with businesses in other states.

AND

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

The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the board's laws or regulations and would only affect individuals who are disciplined by the board. Any potential "adverse economic impact" may be avoided simply by complying with the law.

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

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the board's laws or regulations and would only affect individuals who are disciplined by the board. Any potential "adverse economic impact" may be avoided simply by complying with the law.

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.

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

CONTACT PERSON

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

Name: Tracy Rhine
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7847
Fax: 916-574-8625
Email: tracy_rhine@dca.ca.gov

OR

Name: Christy Berger
Address: 1625 North Market Blvd., Suite S200

Sacramento, CA 95834
Telephone: 916-574-7834
Fax: 916-574-8625
Email: christy_berger@dca.ca.gov

AVAILABILITY OF 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 AND AVAILABILITY OF MODIFIED TEXT

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 upon request from the Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

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 Web site listed below).

WEBSITE ACCESS

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

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BOARD OF BEHAVIORAL SCIENCES INITIAL STATEMENT OF REASONS

Hearing Date: Upon Request

Subject Matter of Proposed Regulations: Revision of Disciplinary Guidelines.

Section(s) Affected: Amend Section 1888 in Division 18 of Title 16 of the California Code of Regulations.

Specific Purpose of each adoption, amendment, or repeal:

Business and Professions Code (BPC) Sections 4982, 4989.54, and 4992.3 specify the grounds for which the Board may discipline a Marriage and Family Therapist, Licensed Clinical Social Worker, Licensed Educational Psychologist, Registered Marriage and Family Therapist Intern, and Associate Clinical Social Worker.

Section 1888 in Division 18 of Title 16 of the California Code of Regulations (CCR) requires that the Board to consider the disciplinary guidelines entitled "Board of Behavioral Sciences Disciplinary Guidelines" (Guidelines) in reaching a decision on a disciplinary action under the Administrative Procedure Act.

The purpose of these regulations is to protect the consumer of services of Board licensees by ensuring all Marriage and Family Therapist, Licensed Clinical Social Workers and Licensed Educational Psychologists remain competent in their respective practices and abide by the standards of professional conduct. This regulatory proposal would revise Guidelines in order to do the following: delete outdated code section references; conform the regulation to current law; create greater clarity and consistency within the guidelines; and, allow board discretion and flexibility to better ensure that a respondent has the opportunity to meet the requirements set forth in a disciplinary order related to supervision, psychotherapy and a probationer's access to a qualified mental health professionals.

Specifically, the regulation would incorporate amendments to the Guidelines, as revised November 2008, which are as follows:

Penalty Guidelines

- Replace errant references to BPC sections 4986.10, 4986.20, 4986.50, 4986.70, 4986.71 and 4986.75. SB 1475, Chapter 659, Statutes of 2006 repealed and recast law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections to BPC Sections 4989.14, 4989.20, 4989.26, 4989.54, 4989.56, and 4989.58. The purpose of this proposed change is to make the Guidelines, which are incorporated at 16 CCR Section 1888, consistent with these current statutes.

- Add a reference to BPC section 4992.3(r) in addition to 4989.54(f) to include the violation of unprofessional conduct statutes by a registrant related to the acquisition of experience hours. The purpose of the proposed change is to make the Guidelines consistent with the newly re-numbered Licensed Educational Psychologist and current Licensed Clinical Social Worker unprofessional conduct statutes.
- Delete references to subsections (a)-(e), (g)-(k) and (n) of Section 1858 of Title 16, CCR. An approved regulatory change operative December 30, 2007, repealed these subsections in accordance with changes implemented by SB 1475, Chapter 659, Statutes of 2006. The purpose of this proposed change is to delete these obsolete references and update the Guidelines.
- Add reference to 16 CCR section 1845((b) related to unprofessional conduct. This reference was inadvertently omitted in the current version of the Guidelines. The purpose of this change is to add clarity and consistency by referencing all relevant code sections related to the violation.
- Add reference to BPC sections 4982(aa)(1), 4992.3(x)(1) and 4989.54(y)(1) that were created by SB 797, Chapter 33, Statutes of 2008. The purpose of this change is to make Section 1888 consistent with current statute. These code sections now specify that it is unprofessional conduct for a licensee or registrant to do any of the following:
 - engaging in an act with a minor punishable as a sexually related crime regardless of whether the act occurred prior to or after registration or licensure; and,
 - engaging in an act described in section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in sections 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time registration or license was issued by the board.
- Add references to BPC sections 4982(y), 4992.3(v) and 4989.54(x). SB 1048, Chapter 588, Statutes of 2007 added willful violation of Chapter 1 of part 1 of division 106 of the Health and Safety Code to the unprofessional conduct statutes of Board licensing law. The purpose of this change is to make the Guidelines consistent with current statute.
- Add reference to BPC sections 4982(z) and 4992.3(w). SB 1048, Chapter 588, Statutes of 2007 added failure to comply with telemedicine law (BPC section 2290.5) to the unprofessional conduct statutes for board licensees. The purpose of this change is to make the Guidelines consistent with current statute.
- Makes a conforming change to provide consistency for penalties within the same violation category on page 9 of the guidelines related to fiscal and property crimes.
- Make several non-substantive changes to provide clarity and order to page five of the Guidelines.

Optional Terms and Conditions of Probation

- *(Psychotherapy Terms)* Allow a respondent, with the permission of the Board, to secure mandated personal psychotherapy services via videoconferencing. Currently this section is silent on the method by which services may be received. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult, this regulatory change will allow compliance with a personal psychotherapy order in those rural areas where the respondent may be the only licensed mental health professional.
- *(Psychotherapy Terms)* Allow a respondent, with permission of the Board, to receive mandated supervised practice via videoconferencing or with a supervisor not in the respondent's field of practice. Currently a supervisor providing services pursuant to this section of the Guidelines must be licensed in the same field of practice as the respondent. This section does not currently allow supervision via video conferencing. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult or impossible, this regulatory change will allow a respondent alternatives to meeting the conditions of the order, if approved by the board. This change is necessary to increase compliance in areas where a qualified mental health professional may not be available.
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- *(Law and Ethics/Education Terms)* Allow a respondent to take mandated educational courses from an approved educational institution, in addition to accredited institutions or through a course approved by the Board. This is consistent with required coursework for licensure eligibility which allows that education to be gained at a Bureau for Private and Postsecondary Vocational *Education* approved institution that offer qualifying degrees for Board licensees (BPC 4980.40(a)).
- *(Law and Ethics/Education Terms)* Delete the prohibition against attending workshops to meet educational requirements and allow a respondent to receive mandated educational courses through a workshop. The purpose of this change is to allow greater flexibility for respondents that may have difficulty finding access to these types of courses.
- *(Law and Ethics/Education Terms)* Require that mandated coursework must be completed one year from the effective date of the decision. Currently the guidelines allow a date to be determined by the entity making the order. The purpose of this change is to establish a standard timeframe that will enable the Board to more easily enforce the order and thereby ensure better compliance from respondents.
- *(Reimbursement of Probation Program Terms)* Clarify the reimbursement costs to be paid by respondents by adding a reference line to allow the amount to be paid per month to be entered in the order. The purpose of this change is to add clarity for the

respondent about the timeframes for compliance with the order and determination by the Board of the reimbursement costs due.

Standard Terms and Conditions of Probation

- Delete obsolete references to BPC 4986.10 and 4986.70 and replace with correct references to 4989.14, 4989.54(h) and 4989.54(i). SB 1475, Chapter 659, Statutes of 2006 repealed and recast the law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections. The purpose of this change is to make this section of the Guidelines consistent with those current statutes.
- (*Cost Recovery Terms*) Specify that a respondent must complete cost recovery payments six month prior to the termination of probation. The purpose of the change is to increase enforceability of cost recovery. Currently the respondent could be released from probation before the Board becomes aware that the financial requirements of the disciplinary order have not been met. This proposed change is necessary to allow the Board to enforce this provision of a disciplinary order and grant flexibility when necessary to enable the respondent to meet the mandated requirements.

Board Policies and Guidelines

- (*Language for License Surrenders*) The addition of this proposed language would permit the Board to directly discuss a pending stipulation with the staff or advisors to the Board to determine whether to adopt a stipulation proffered by the respondent and the Board's Executive Officer. This language is necessary for the Board to effectively consider a proposed settlement, to permit communications between Board staff and the Board regarding the pending stipulation, and to comply with the requirements of the Administrative Procedure Act governing settlements and permissible communications with the Board (Government Code sections 11415.60 and 11430.30(b)).
- Allow a respondent to reapply to the Board for licensure three years from the date of surrender. Currently the disciplinary guidelines do not specify a waiting period for reapplication, allowing a respondent to reapply immediately. However, current law (BPC 4990.30) specifies that a petition for reinstatement of a license or registration that has been revoked for unprofessional conduct may be filed only after three years. Both revocation and license surrender occur as a result of unprofessional conduct and therefore should have consistent timeframes for subsequent licensure. The purpose of this change is to create a standardized timeframe for reapplication of a surrendered license consistent with reinstatement of a revoked license.
- Add recommended language for registration applicants and registrants that describes the conditions of revocation of registration and subsequent registrations with the Board. This language is necessary to standardize the orders for registrants as no language currently exists in the disciplinary guidelines, without this standardized language, the Board will continue to observe inconsistencies in the form of the orders given to registrants related to revocation and probation.

Factual Basis/Necessity

BPC 4982, 4989.54, and 4992.3 specify the grounds for which the Board may discipline a

Marriage and Family Therapist, Licensed Clinical Social Worker, Licensed Educational Psychologist, Registered Marriage and Family Therapist Intern, and Associate Clinical Social Worker.

Section 1888 in Division 18 of Title 16 CCR requires that the Board must consider the disciplinary guidelines entitled “Board of Behavioral Sciences Disciplinary Guidelines” in reaching a decision on a disciplinary action under the Administrative Procedure Act.

The Board’s Disciplinary Guidelines are utilized by Board staff, Deputy Attorneys General, Administrative Law Judges and attorneys to assist in determining the penalties in the disciplinary process against Marriage and Family Therapists, Licensed Clinical Social Workers, Licensed Educational Psychologists, Registered Marriage and Family Therapist Interns, and Associate Clinical Social Workers. The Disciplinary Guidelines indicate the minimum and maximum discipline that may be imposed for each violation of the Board’s laws and regulations. The Disciplinary Guidelines also contain standard and optional terms and conditions that may be imposed if the respondent is placed on probation. “Standard” terms and conditions of probation are applied in all settlements where a period of probation is granted. The “optional” terms and conditions of probation are incorporated in the settlement based on the circumstances specific to the case.

Legislation passed since the last revision date of the disciplinary guidelines (May 2004) has amended the underlying code section on which the disciplinary guidelines are based. SB 1475, Chapter 659, Statutes of 2006 repealed and recast law relating to the regulation of Licensed Educational Psychologists and moved the content in those code sections, including provisions outlining unprofessional conduct. Current code references to these obsolete code sections in the disciplinary guidelines make the guidelines inconsistent with current law.

In 2007, SB 1048 (Chapter 588) made a number of technical changes to board licensing law, including recasting and adding two new violations to the Board’s unprofessional conduct statutes.

An urgency measure, SB 797, Chapter 33, Statutes of 2008, specified that unprofessional conduct includes engaging in specified acts with a minor regardless of whether the act occurred prior to or after the time the registration or license was issued by the board, and would apply this provision to acts that occurred prior to the effective date of the bill. SB 797 also specified that, if after the limitations periods have expired, the board discovers a specified alleged act with a minor, and there is independent evidence corroborating the allegation, an accusation shall be filed within 3 years from the date the board discovers that alleged act. Before the passage of this bill the board may have filed a specified accusation against these licensees or registrants within certain limitations periods for, among other things, an alleged act or omission involving a minor that is the basis for disciplinary action. The disciplinary guidelines, as revised May 2004, are inconsistent with current law and therefore the regulatory proposed changes herein are necessary to rectify that inconsistency.

California has a shortage of mental health providers, most acutely in rural counties. This shortage of qualified mental health providers may create access issues for not only consumers but also licensees ordered to receive supervised practice or personal psychotherapy as imposed by a disciplinary action against that licensee. In order to better facilitate the completion

of terms of disciplinary orders, and therefore, rehabilitate the licensee and ensure the protection of the public, this proposed rulemaking allows the Board discretion to permit a respondent to receive supervised practice or personal psychotherapy via videoconferencing and/or with a qualified mental health professional not licensed in the same field as the respondent.

This proposed rulemaking is necessary to delete obsolete references to statute and regulations made necessary by legislative and regulatory changes enacted after the last revision date of the Guidelines. Additionally, the proposed rulemaking will create more clarity and consistency within penalty guidelines by standardizing penalties within the same violation category. Finally, the proposed changes allow flexibility for the respondent in meeting supervised practice and personal psychotherapy requirements, thereby allowing respondents in rural areas to meet the requirements of a disciplinary order. By giving respondents more opportunity to meet the conditions of a disciplinary order, the Board is better able to ensure the practitioners are remediating violations of unprofessional conduct statutes. This provides greater consumer protection by allowing only competent and rehabilitated practitioners to provide services to the public.

Underlying Data

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 businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts or evidence/documents/testimony:

The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the board's laws or regulations and would only affect individuals who are disciplined by the board. Any potential "adverse economic impact" may be avoided simply by complying with the law.

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

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose

for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

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STATEMENT OF SERVICE BY MAIL

I certify that the Board of Behavioral Sciences has complied with the requirements of Government Code Section 11346.4(a)(1) through (4) and that the notice was mailed on December 31, 2008.

DATED: 12/31/08

Tracy Rhine
Tracy Rhine
Regulations Coordinator

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BOARD OF BEHAVIORAL SCIENCES
FINAL STATEMENT OF REASONS

Hearing Date: February 18, 2009

Section(s) Affected: Title 16, California Code of Regulations Section 1888.

Updated Information

The Initial Statement of Reasons is included in the file (Tab II). There were no changes to the proposed regulations.

Objections or Recommendations/Responses

No objections were made to this proposal, either in writing or orally, during the comment period.

Small Business Impact: These regulations will not have a significant adverse economic impact on businesses.

Consideration of Alternatives

The Board has determined that no reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Local Mandate

The proposed regulation does not impose any mandate on local agencies or school districts.

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REGULATION HEARING February 18, 2009

Department of Consumer Affairs
Eldorado Room
1625 North Market Blvd.
Sacramento, CA 95834

Staff Present

Paul Riches, Executive Officer
Kim Madsen, Assistant Executive Officer
Tracy Rhine, Legislative Analyst

INTRODUCTION

Tracy Rhine: The purpose of this meeting is to conduct a public hearing of proposed regulations brought forth by the Board of Behavioral Sciences.

Today is Wednesday, February 18, 2009, the time is 9:05 a.m., and this hearing is being conducted in Sacramento, California.

The regulation proposal was filed with the Office of Administrative Law and has been duly noticed. Copies of the proposed regulation have been sent to interested parties.

SUBJECT MATTER OF THE REGULATIONS

Tracy Rhine: This regulation proposal would amend Title 16, California Code of Regulations Section 1886.40 and adds section 1815, related to mandatory fingerprint submission.

PROCEDURAL RULES FOR THE HEARING

Tracy Rhine: If any written comments have been received on the proposal, they will be made as part of the permanent record. There are no witnesses at this time. I will keep the hearing open for 15 minutes, and at that time, if no one has shown up for the hearing, then we will close it without comment.

There were no witnesses in attendance for the proposed regulation. The hearing was closed at 9:20 a.m.



Arnold Schwarzenegger
Governor

State of California
State and Consumer
Services Agency
Department of
Consumer Affairs

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**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME

CONTACT PERSON

TELEPHONE NUMBER

Board of Behavioral Sciences

Tracy Rhine

916-574-7847

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400

NOTICE FILE NUMBER

Disciplinary Guidelines

ECONOMIC IMPACT STATEMENT**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *(include calculations and assumptions in the rulemaking record.)*

1. Check the appropriate box(es) below to indicate whether this regulation:

 a. Impacts businesses and/or employees e. Imposes reporting requirements b. Impacts small businesses f. Imposes prescriptive instead of performance standards c. Impacts jobs or occupations g. Impacts individuals d. Impacts California competitiveness h. None of the above *(Explain below. Complete the Fiscal Impact Statement as appropriate.)*

h. (cont.) _____

(If any box items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas) _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

 Yes No

If yes, explain briefly: _____

B. ESTIMATED COSTS *(Include calculations and assumptions in the rulemaking record.)*1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ N/A

a. Initial cost for a small business: \$ _____ Annual ongoing cost: \$ _____ Years: _____

b. Initial cost for a typical business: \$ _____ Annual ongoing cost: \$ _____ Years: _____

c. Initial cost for an individual: \$ _____ Annual ongoing cost: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT (STD. 399, Rev. 2-98)

- 2. If multiple industries are impacted, enter the share of total costs for each industry: N/A

- 3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ N/A

- 4. Will this regulation directly impact housing costs? Yes No
if yes, enter the annual dollar cost per housing unit: \$ and the number of units:

- 5. Are there comparable Federal Regulations? Yes No
Explain the need for State regulation given the existence or absence of Federal regulations:

Enter any additional costs to businesses and/or individuals that may be due to State – Federal differences: \$

C. ESTIMATED BENEFITS *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

- 1. Briefly summarize the benefits that may result from this regulation and who will benefit: N/A

- 2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority
Explain:

- 3. What are the total statewide benefits from this regulation over its lifetime? \$ N/A

D. ALTERNATIVES TO THE REGULATION *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

- 1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: N/A

- 2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
Regulation: Benefit: \$ Cost: \$
Alternative 1: Benefit: \$ Cost: \$
Alternative 2: Benefit: \$ Cost: \$
Alternative 3: Benefit: \$ Cost: \$

- 3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

- 4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No
Explain:

ECONOMIC AND FISCAL IMPACT STATEMENT (STD. 399, Rev. 2-98)

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

- 1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?
2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
Alternative 1:
Alternative 2:
3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT

- 1. Additional expenditures of approximately \$ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code.
2. Additional expenditures of approximately \$ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
3. Savings of approximately \$ annually.
4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.
5. No fiscal impact exist because the regulation does not affect any local entity or program.
6 Other:

ECONOMIC AND FISCAL IMPACT STATEMENT (STD. 399, Rev. 2-98)

B. FISCAL EFFECT ON STATE GOVERNMENT

(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)

- 1. Additional expenditures of approximately _____ in the current State Fiscal Year. It is anticipated that State agencies will:
 - a. be able to absorb these additional costs within their existing budgets and resources.
 - b. request an increase in the currently authorized budget level for the _____ Fiscal Year.

- 2. Savings of approximately _____ in the current State Fiscal Year.

- 3. No fiscal impact exists because this regulation does not affect any State agency or program.

- Other: _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS

(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent fiscal years.)

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.

- 2. Savings of approximately \$ _____ in the current State Fiscal Year.

- 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or programs.

- 4. Other _____

SIGNATURE	Title
	Executive Officer
AGENCY SECRETARY ¹	Date
APPROVAL/CONCURRENCE	
DEPARTMENT OF FINANCE ²	Date
APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER

¹ The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

² Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.