

## AMENDED MEETING NOTICE

**May 21-22, 2009**

Marriott Riverside  
Orangetrest Room  
3400 Market Street  
Riverside, CA 92501

**May 21**  
**12:30 p.m.**

### **FULL BOARD OPEN SESSION** - Call to Order & Establishment of a Quorum

- I. Introductions
- II. Approval of February 26-27, 2009 Board Meeting Minutes
- III. Chairperson's Report
  - A. Upcoming Board and Committee Meetings
  - B. Discussion and Possible Action Regarding Mandatory Fingerprint Submission, Title 16, Sections 1815 and 1886.40 of the California Code of Regulations.
- IV. Petition for Reinstatement of License, Gerold Simon MFC 12383
- V. Petition for Early Termination of Probation, Cherrlynn Hubbard LCS 25055

### **FULL BOARD CLOSED SESSION**

- VI. Pursuant to Government Code section 11126(c)(3) the board will convene in closed session to deliberate on disciplinary matters, including the petition for reinstatement (Gerold Simon MFC 12383), and the petition for early termination of probation (Cherrlynn Hubbard LCS 25055).

**May 22**  
**8:30 a.m.**

### **FULL BOARD OPEN SESSION** - Call to Order & Establishment of a Quorum

- VII. Executive Officer's Report
  - A. Budget Report
  - B. Operations Report
  - C. Personnel Update



VIII. Report of the Policy and Advocacy Committee

- A. Recommendation # 1 – Support AB 244 (Beall)
- B. Recommendation # 2 – Oppose AB 484 (Eng) unless amended
- C. Recommendation # 3 – Oppose AB 612 (Beall)
- D. Recommendation # 4 – Support AB 681 (Hernandez)
- E. Recommendation # 5 – Support AB 1113 (Hernandez)
- F. Recommendation # 6 – Oppose AB 1310(Hernandez) unless amended
- G. Recommendation # 7 – Support SB 43 (Alquist)
- H. Recommendation # 8 – Support SB 296 (Lowenthal)
- I. Recommendation # 9 – Oppose SB 389 (Negrete McLeod) unless amended
- J. Recommendation # 10 – Consider SB 543 (Leno)
- K. Recommendation # 11 – Consider SB 638 (Negrete McLeod)
- L. Recommendation # 12 – Consider SB 707 (DeSaulnier)
- M. Recommendation # 13 – Support SB 788 (Wyland)
- N. Recommendation # 14 – Sponsor Legislation Regarding Supervised Experience Requirements for Marriage and Family Therapists
- O. Legislation Update
- P. Regulation Update

IX. Discussion and Possible Action Regarding Other Pending Legislation Affecting the Board

X. Discussion of Senate Bill 1441 (Chapter 548, Statutes of 2008)

XI. Ethical Decision Making for Regulators

Presentation by DCA Senior Staff Counsel Kristy Schieldge

XII. Public Comment for Items Not on the Agenda

XIII. Suggestions for Future Agenda Items

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

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT [www.bbs.ca.gov](http://www.bbs.ca.gov)

NOTICE: The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Christina Kitamura at the Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834, or by phone at (916) 574-7835, no later than one week prior to the meeting. If you have any questions, contact the Board at (916) 574-7830.

## DRAFT MEETING MINUTES

**February 26, 2009**

Department of General Services  
Ziggurat Auditorium  
707 Third Street  
West Sacramento, CA 95605

### **Members Present**

Ian Russ, Chair, MFT Member  
Joan Walmsley, Vice Chair, LCSW Member  
Gordonna (Donna) DiGiorgio, Public Member  
Elise Froistad, MFT Member  
Renee Lonner, LCSW Member  
Karen Roye, Public Member

### **Members Absent**

D'Karla Leach, Public Member  
Judy Johnson, LEP Member  
Victor Perez, Public Member  
Rita Cameron Wedding, Public Member

### **Guest List**

On file

### **Staff Present**

Paul Riches, Executive Officer  
Kim Madsen, Assistant Executive Officer  
Tracy Rhine, Legislation Analyst  
Sean O'Connor, Outreach Coordinator  
Christina Kitamura, Administrative Analyst  
Kristy Schieldge, Legal Counsel  
Ann Glassmoyer, Investigative Analyst  
Kim DeLong, Investigative Analyst  
Raquel Pena, Enforcement Analyst  
Angie Ramos, Enforcement Technician  
Cynthi Burnett, Enforcement Analyst  
Darlene York, Social Work Evaluator  
Gena Beaver, LEP Evaluator  
Laurie Williams, Personnel Analyst  
Kari O'Connor, Cashier  
Karrmyne Williams, Cashier

## **FULL BOARD OPEN SESSION**

Dr. Ian Russ, Board Chair, called the meeting to order at 8:32 a.m. Christina Kitamura called roll, and a quorum was established.

### **I. Introductions**

Audience members and Board staff introduced themselves. Dr. Russ welcomed the new Board staff members to BBS.

### **II. Approval of November 18, 2008 Board Meeting Minutes**

***Donna DiGiorgio moved to approve the November 18, 2009 Board meeting minutes. Renee Lonner seconded. The Board voted unanimously (6-0) to pass the motion.***

### **III. Approval of December 19, 2008 Board Meeting Minutes**

Ms. Kitamura noted a correction to page one under the heading Staff Present, omitting Sean O'Connor, Outreach Coordinator, as he did not attend the meeting.

***Renee Lonner moved to approve the December 19, 2009 Board meeting minutes as amended. Donna DiGiorgio seconded. The Board voted unanimously (6-0) to pass the motion.***

### **IV. Chairperson's Report**

#### **A. Upcoming Board and Committee Meetings**

Dr. Russ presented the upcoming Board meeting dates, and spoke about the need to rearrange the scheduled meetings that were impacted by the State's closure of offices on the first and third Fridays of the month. Dr. Russ indicated that the next Board Meeting will now be held May 21-22, 2009 in Riverside. Subsequent meetings will be held Saturday, August 29, 2009, and November 12-13, 2009 at locations to be announced.

Dr. Russ explained that the one-day meeting proposed to be held on Saturday, August 29th will focus primarily on the Board's efforts to begin reviewing the current codes of professional ethics and the common understanding of those codes in light of the Mental Health Services Act (MHSA) and a rapidly changing population. Dr. Russ indicated it has been the Board's desire for some time to begin including such discussions in regular Board meetings, but for several reasons this has not yet been possible. The Saturday scheduling is intended to make it easier for practitioners to participate in the meeting, and will also help the Board determine if occasional Saturday meetings might increase public participation.

Mr. Riches indicated that the August meeting was tentatively planned for Northern California, although no location has been finalized at the present time.

Dr. Russ indicated that the last Board meeting for the year is scheduled on November 12-13, 2009, and also referred Board members to the current schedule of upcoming committee meetings.

#### **B. Discussion of Licensed Mental Health Service Provider Loan Repayment Program**

Judy Melson, Program Officer, Health Professions Education Foundation, provided an overview of the services provided by the foundation. She indicated that the group's mission is to improve health care in underserved areas by providing scholarships, loan repayments, and programs to students and graduates willing to provide direct patient care in such areas. She reported that since 1990, more than \$17,000,000 has been awarded to more than 2,400 qualified applicants. Ms. Melson stated that the foundation administers a total of six scholarship programs and seven loan repayment programs. Two of the loan repayment programs are specifically geared toward mental health professionals.

Ms. Melson noted that the program which is probably most familiar to the Board is the Licensed Mental Health Services Provider Education Program, which was implemented in 2007. This particular program is funded entirely by surcharge licensure renewal fees from the Board of Behavioral Sciences and the Board of Psychology. She provided a list of professions, including clinical social workers and marriage and family therapists (MFT),

which are eligible for participation in the program. Ms. Melson stated that applicants are eligible for up to \$15,000 in exchange for a commitment to serve two years in a qualifying facility, those facilities being located in a mental health professional shortage area or being a publicly funded facility; publicly funded mental health facility; or a non-profit, private mental health facility.

Ms. Melson then went on to provide statistical data from the program's last three cycles, describing the program as very competitive. The foundation has awarded a total of \$361,000 to thirty-seven (37) applicants, or slightly over \$9,000 per individual.

Ms. Melson presented data on the status of the licensed mental health budget, program funding, reserves and expenditures, revenue, and interest earned. She indicated that the majority of the expenditures involve loan repayments, with a small amount spent on foundation support costs. She noted that the program's fund balance is expected to decrease over the next four years, and indicated that if that occurs, a budget change proposal will likely be submitted to lower the budget authority.

Ms. Melson announced that there is a new, second source of funding for this program. In collaboration with the Department of Mental Health, the foundation secured \$2.5 million from the MHSA, through the workforce education and training component. The new program is called the Mental Health Loan Assumption Program. The first award cycle will be in Spring 2009. The program is similar to the Licensed Mental Health Services Provider Education Program in that it serves many of the same professionals; the difference is that in addition to serving MFTs, licensed clinical social workers (LCSW) and psychologists it also provides opportunities for psychiatric mental health nurse practitioners and psychiatrists. Similar review and analytical processes will be used in determining which applicants will be awarded funds by the program. She also noted differences between the two programs.

It was announced that the foundation is currently in the recruitment phase of developing an advisory committee for the Mental Health Loan Assumption Program. Ms. Melson indicated that individuals are being sought from mental health organizations, licensure boards or bureaus, consumers and family members, or other individuals who have a stake in the process, to represent the community at-large. She noted that applications for the advisory committee would be reviewed within the next few days, and stated that anyone interested in applying could contact the foundation. Ms. Melson then invited questions and comments from the Board and audience.

Dr. Russ spoke about his experience with the program. He stated it will be a better program if participants are available from the profession.

Geri Esposito, California Society for Clinical Social Work (CSCSW), requested something in writing that she can distribute to secure interest in getting people involved.

Janlee Wong, National Association of Social Workers (NASW), stated that the program gave six awards to associate social workers, not licensed social workers.

Dr. Russ explained the scoring which is based on factors such as cultural and socioeconomic origins, community service, and whether the individual is committed to continue working in underserved areas for at least two years. The awards were granted based on the described scoring system.

Mr. Wong asked about the apparent awarding of funds based in part on ethnic data, which public agencies cannot collect. Dr. Russ explained that the awards have to do with underserved communities, language spoken or understood, and similar type issues.

Mr. Wong then stated that although the program is intended to serve or assist underserved communities, his interpretation of the information presented is that only three (3) awards have been made to rural counties.

Ms. Melson stated that at the present time the program tries to spread it out and look for well-rounded individuals who show a commitment to serving underserved populations across the state, not just rural areas.

Dr. Russ added that Mr. Wong has expressed ideas that need to be included in the processing being discussed. He suggested that a representative from NASW join the committee so that such points of view are presented. Dr. Russ then explained how the determination was made regarding how the awards would be presented, based on the applications received.

Mr. Wong continued by noting that at the beginning of the program, Mary Riemersma, California Association of Marriage and Family Therapists, expressed the hope that the awards would be distributed based on where the funds came from, in terms of license fees. He asked if, given that there is a majority of marriage and family therapists, the majority of the awards should be made to marriage and family therapists versus licensed clinical social workers. Mr. Wong asked if that was a criteria used in scoring the applications. Ms. Riemersma responded that it is not a criteria used in the scoring process, but it is in the law the monies have to be distributed to those who contributed those monies. The intent is to divide the monies equitably to meet the requirement of the law.

## **V. Executive Officer's Report**

### **A. Budget Report/Strategic Plan Update**

Mr. Riches provided the budget report. One of the things the Board has been struggling for quite awhile is to find a mechanism to give Board members the information they receive about the budget and budget situation. This helps the Board members to make the decision they need to make. In the budget update, much credit is given to the Budget Analyst, Dawn LaFranco, who worked long and hard to put the document together. Mr. Riches noted the report takes a different approach in an attempt to give the Board members the context which is more relevant to the decisions they will make in that process. Mr. Riches walked through the pieces of the report and the changes that will be made as appropriate.

Board members and meeting participants discussed various aspects of the status of the budget and related issues, and how Board operations could or would be impacted. A significant portion of this discussion centered on the impact to the Board's enforcement program.

Kim Madsen, Assistant Executive Officer, provided an update regarding the Strategic Plan. She noted that the Board's efforts to adjust to the impact of the state's financial challenges have resulted in a review of the Strategic Plan with an eye toward reprioritizing the goals set out in that plan. Objectives were identified toward which significant progress has been made, and that could realistically be accomplished either within the time frame established

in the plan or by the end of the fiscal year. Ms. Madsen reviewed the objectives which met that criteria, and outlined steps that have been taken toward meeting those goals.

Ms. Madsen then spoke about objectives that could possibly be suspended or set aside but still reasonably accomplished within the established time line. She indicated that several of the objectives in the Strategic Plan met this criterion, and the report provided to the Board members listed those objectives as “active” with notation made regarding the work completed to date for each.

Next, objectives were identified for which the Board is awaiting receipt of additional information or research from an outside source, or action by the Department of Consumer Affairs. Those objectives were given a designation of “inactive.”

Last, three objectives were identified that remain viable but for which an adjustment to the time lines appeared appropriate, given the circumstances.

Ms. Madsen summarized her report by stating that significant progress has been made toward meeting the goals and objectives contained in the Strategic Plan. She indicated that the recommendation is for the Board members to approve the staff suggestions regarding the plan as noted. Ms. Madsen stated that similar updates will continue to be provided at future Board meetings. Another comprehensive review will be conducted at the end of 2009, with a full report scheduled for presentation to the Board at its February 2010 meeting.

Dr. Russ opened the matter for questions and/or comments. A brief discussion followed during which Ms. Madsen answered questions and provided clarification to Board members. Karen Roye suggested that a note be added to the status report regarding Goal 1.3 to clarify that a tool is being developed to assist in the accomplishment of this goal.

***Karen Roye moved to accept the staff recommendations as to the goals and objectives of the Strategic Plan, including changes to Goal 1.3 to clarify that a tool is being developed to measure the goal . Joan Walmsley seconded. The Board voted unanimously (6-0) to pass the motion.***

## **B. Operations Report**

Mr. Riches provided the operations report. He reported that the cashiering unit was struggling with its backlog. After great efforts to address its workload, the cashiering unit is now current. Mr. Riches and the Board gave kudos to cashiers Kari O'Connor and Karrmyne Williams.

The social work program struggled during the period there was a social work evaluator vacancy, which began last year. Staff is now in place and finished with training. The social work desk is reflected in the report as forty-eight (48) days out (to process the application). The evaluation process currently is about two weeks out; however, the furlough days and holidays during the month of February have affected this desk. Mr. Riches anticipates that the backlog will improve once we get past February.

Mr. Riches briefly touched on the performance of the various units within the Board. He also spoke about the customer satisfaction survey and the results received by the Board. He described the tool as invaluable. Mr. Riches further noted that usually the comments received on such surveys are negative; the comments received by the Board tend to be

equally divided between compliments and kudos for the Board, and areas the individual completing the survey believe could be improved upon by the Board. Mr. Riches then invited questions and comments.

Dr. Russ commended staff on their great work and customer service. The Board applauded staff.

The Board adjourned for a break at 10:00 a.m. and reconvened at 10:15 a.m.

#### **B. Personnel Update**

Mr. Riches reported that the personnel update was provided for reference. Ms. Madsen applauded Laurie Williams on her work on all the personnel duties. No comments or questions were made.

#### **D. Examination Statistics**

Mr. Riches reported that the examination statistics were provided for reference. No comments or questions were made.

### **VI. Report of the Policy and Advocacy Committee**

#### **A. Recommendation # 1 – Sponsor Legislation to Allow Video Supervision of Associate Clinical Social Workers and Marriage and Family Therapist Interns**

Ms. DiGiorgio reported that at the last Committee meeting the issue of video supervision was revisited. She spoke briefly about the current supervision requirements and the originally proposed change, which would have allowed a portion of the required supervision (up to 30 hours) to be provided by live video conferencing. Ms. DiGiorgio noted that in December 2008 the Board received a request from the California Mental Health Directors Association, the Mental Health Association of California, the California Council of Community Mental Health Agencies, and the Association of Community Human Service Agencies to increase the allowable number of hours for video supervision to 160. The Committee considered this request at its January 2009 meeting, and is recommending that there be no limit on the amount of supervision that can be obtained by videoconferencing.

Ms. DiGiorgio invited comment on the subject. A short exchange of information occurred.

Dr. Russ stated that this is an opportunity for Board members to step up in leadership, both within the Department of Consumer Affairs as well as the mental health profession. He spoke about how video conferencing is used in other states to provide psychiatric services from major universities, thereby making such services available to individuals in rural areas.

Mr. Riches clarified that the proposal would allow for unlimited video supervision in exempt settings; i.e., government agencies, non-profit agencies, schools, colleges, etc. In those venues there would not be a limit on the amount of video supervision. The proposed change would not apply to hours of experience gained in a private practice setting where face-to-face supervision would be required. Mr. Riches indicated that a large majority of applicants gain experience in private practice settings, and would continue to have the benefit of the one-on-one, face-to-face interaction with the supervisor.

***Renee Lonner moved to sponsor legislation that would allow all supervision in specified settings to be performed by live videoconferencing. Joan Walmsley seconded. The Board voted unanimously (6-0) to pass the motion.***

**B. Recommendation # 2 – Sponsor Legislation To Update Unprofessional Conduct Statutes**

Tracy Rhine noted that activities considered unprofessional conduct by Board licensees and registrants are outlined in six different sections of statute and regulation -- three Business and Professions Code sections and three California Code of Regulations sections. Some of the provisions contain similar language and address similar issues, while some speak about issues not otherwise outlined or addressed. This can cause confusion for consumers, licensees, and other individuals attempting to familiarize themselves with all provisions in the area of unprofessional conduct pertaining to Board licensees and registrants. The Committee discussed this subject at its last meeting.

Ms. Rhine presented Board members with proposed statutory language that would incorporate provisions currently in regulation, in an effort to create consistency and reduce confusion. Ms. Rhine outlined the proposed changes, which would impact Business and Professions Code sections 4989.54 and 4992.3 pertaining to Licensed Educational Psychologists (LEP) and Licensed Clinical Social Workers (LCSW), respectively.

Ms. Rhine stated that a point of discussion among the Committee members was the difference between incompetence and gross negligence. She noted the differences, and then offered two options to incorporate existing regulatory language related to gross negligence into statute.

Kristy Schieldge clarified that incompetence means the individual does not have the capacity to understand the standard, while gross negligence means the individual knows the standard but is not reaching that benchmark. She then reiterated that the information presented by Ms. Rhine was to provide Board members with two options for incorporating into statute the existing regulatory language pertaining to gross negligence, either in conjunction with language pertaining to incompetence or as a separate provision.

Donna DiGiorgio stated that she preferred option A, to incorporate regulatory language related to gross negligence as a separate provision under the unprofessional conduct statute, which she described as succinct in separating out what is gross negligence and what is incompetence.

Elise Froistad directed a question to Ms. Schieldge regarding any benefits to either of the two options. Ms. Schieldge responded that because incompetence and gross negligence are separate basis for charging misconduct, it might be preferable to keep them separate. She noted the importance of highlighting the differences.

Ms. Roye indicated she was supportive of option A.

Ms. Walmsley asked Ms. Schieldge why the proposal did not include a definition of "incompetence." Ms. Schieldge responded that a definition could be added, but it would limit the interpretation going forward. She indicated that incompetence is a legal concept that should be self-explanatory, but acknowledged there has been confusion in the past about incompetence versus gross negligence.

Mr. Riches spoke about the hazards versus the benefits of including a definition of this issue in statute.

Janlee Wong, NASW, stated that it was important to understand that there is a difference between being incompetent and proceeding despite the incompetence, versus being incompetent and not proceeding. He noted that the NASW Code of Ethics contains a section on competency. In summary, that section indicates that when a social worker encounters a client or clients who the clinician does not have the education or training to assist, the social worker should not proceed. No harm has been done to the client. An incompetent act would be for the clinician to know he or she lacks the proper education or training to capably assist the client and proceeds with treatment nonetheless.

Mr. Riches added that the key language is “competence or incompetence in the performance of clinical social work,” with knowing when to make a referral being a competent act.

***Karen Roye moved direct staff to initiate Board sponsored legislation to incorporate regulatory language related to gross negligence as a separate provision under the unprofessional conduct statute (Option A). Donna DiGiorgio seconded. The Board voted unanimously (6-0) to pass the motion.***

***Joan Walmsley moved to direct staff to initial Board sponsored legislation to clean up the unprofessional conduct statute and regulations with the choice of Option A. Elise Froistad seconded. The Board voted unanimously (6-0) to pass the motion.***

### **C. Recommendation # 3 – Initiate a Rulemaking Process to Implement Continuing Education Requirements for Licensed Educational Psychologists**

Ms. Rhine presented information regarding the background of this issue, as well as previous actions taken by the Board toward the initiation of the requirement. She indicated that the information currently before the Board is the proposed regulatory language which would allow for a staggered implementation of the continuing education requirement for Licensed Educational Psychologists (LEP). Ms. Rhine reviewed the proposal with the Board.

Dr. Russ opened the matter for discussion and/or public comment.

Ms. Riemersma, CAMFT, asked for clarification regarding proposed changes to California Code of Regulations section 1887.2, Exceptions from Continuing Education Requirements; specifically, the provision that a licensee requesting exception from the continuing education requirement submit that request at least sixty (60) days prior to the expiration date of the license. Ms. Riemersma asked if the proposed language means that any request not submitted within the designated time frame will result in a denial of the request.

Mr. Riches responded that the changes under review were a compilation of several different proposed changes approved by the Board relating to continuing education, and did not pertain specifically to the Licensed Educational Psychologist component of the current package. No history was readily available to answer Ms. Riemersma’s question, but Ms. Rhine indicated she would research the question and get back with a response.

Ms. Schieldge added clarification that this is a change in Board procedure. Typically, the motion is to set for hearing and once completed, the matter returns before the Board. The

new motion would permit staff to proceed with filing of the rulemaking if no comments are received at the hearing. She emphasized this would be a change from current Board practice.

Dr. Russ took steps to ensure all Board members understood Ms. Schieldge's comments, and that the motion to allow staff to move forward with the rulemaking process absent adverse comment at hearing would be a departure from typical Board procedure.

***Renee Lonner moved to direct staff to take all steps necessary to initiate the formal rulemaking process to adopt proposed amendments to 16 CCR sections 1807, 1807.2, 1810, 1819.1, 1887-1887.14; authorize the Executive Officer to make any non-substantive changes to the rulemaking package; and set the proposed regulations for a hearing. If no adverse comments are received during the 45-day comment period or at the hearing, direct staff to take all steps necessary to complete the rulemaking process and authorize the Executive Officer to adopt the proposed regulatory changes to Sections 1807, 1807.2, 1810, 1819.1, 1887-1887.14, as noticed. Donna DiGiorgio seconded. The Board voted unanimously (6-0) to pass motion.***

#### **D. Legislation Update**

Ms. Rhine stated that the legislation update was provided for reference. She offered a few brief explanations. No public comments were made.

#### **E. Regulation Update**

Ms. Rhine stated that the regulation update was provided for reference. No public comments were made.

### **VII. Discussion and Possible Action to Adopt Title 16, Section 1815 of the California Code of Regulations and to Amend Title 16, Section 1886.40 of the California Code of Regulations Regarding the Submission of Fingerprints**

Ms. Rhine presented the final rulemaking package proposing changes to California Code of Regulations Title 16, Sections 1815 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. Staff recommends that the Board adopt the final rulemaking package.

Dr. Russ emphasized the importance of fingerprinting for BBS licensees. Discussion ensued among Board members regarding implementation of this requirement, the number of individuals who will be impacted by the new regulation, and how those individuals will be notified by the Board of the need to submit fingerprints. He indicated there should be no ambiguity as to whether or not an individual is required to provide information in compliance with the new regulation.

Mr. Riches added that a budget change proposal was approved to allow for four additional staff to implement this program, as well as a significant additional pool of funds for the Attorney General and the Office of Administrative Hearings to handle the disciplinary actions that may result. He noted that this will be a huge endeavor for the Board, and Board members agreed it was an appropriate undertaking.

Mr. Riches added clarification that the requirement will be to submit the fingerprints prior to the date of renewal. He emphasized that this will not be a condition of renewal, and that the Board will renew a license even if the licensee does not submit fingerprints as required.

However, individuals who fail to comply with the new regulation will be subject to citation and fine by the Board. He went on to provide additional information regarding why the task of obtaining fingerprints from licensees not previously fingerprinted was being handled this way.

***Elise Froistad moved to direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law, authorize the Executive Officer to make any non-substantive changes to the proposed regulations, and adopt the proposed regulations at 16 CCR Sections 1815 and 1886.40 as noticed on January 2, 2009. Renee Lonner seconded. The Board voted unanimously (6-0) to pass the motion.***

#### **VIII. Discussion and Possible Action to Amend Title 16, Section 1888 of the California Code of Regulations Regarding Disciplinary Guidelines**

Ms. Rhine presented 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. Staff recommends that the Board adopt the final rulemaking package.

***Joan Walmsley moved to direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law, authorize the Executive Officer to make any non-substantive changes to the proposed regulations, and adopt the proposed regulations at 16 CCR Section 1888 as noticed on January 2, 2009. Donna DiGiorgio seconded. The Board voted unanimously (6-0) to pass the motion.***

#### **IX. Report of the LCSW Education Committee**

Ms. Lonner reported that the LCSW Education Committee was formed in February 2008 and consists of Board members Renee Lonner, Donna DiGiorgio and Joan Walmsley. The group met last on December 8, 2008. At that time, a presentation was made by Council on Social Work Education (CSWE) via teleconference during which it was explained how accreditation standards flow from policy, and that a new curriculum policy statement is due in 2010. Ms. Lonner touched briefly on the contents of the previous similar statement, which was issued in 2001.

Ms. Lonner indicated that the next part of the meeting involved discussion with representatives from all branches of the military. The participants talked about their workplaces, and the basic difference between those settings and the standard clinical social work, mental health type of setting. Other topics of discussion included domestic violence, post-traumatic stress disorder (PTSD), and chemical dependency.

Ms. Lonner stated that the information presented at the December meeting was geared toward helping the Committee understand the type of core competencies that are needed in the various work places currently available.

The next meeting is scheduled in June 2009 in the San Bernardino/Riverside area.

#### **X. Report of the Examination Program Review Committee**

Ms. Froistad reported that the Examination Program Review Committee has met twice; first in December 2008 and again in February 2009. During the initial meeting the purpose and structure of the Committee was outlined. Dr. Tracy Montez of Applied Measurement Services

LLC, was introduced, and provided an overview of the examination development and validation process.

At the February meeting, the Committee and participants focused on the first step of the examination development process with Dr. Montez giving a presentation on the occupational analysis. Ms. Froistad then briefly reviewed the various facets of an occupational analysis, including its purpose and time frames for completion.

Ms. Froistad noted that following the presentation by Dr. Montez, the committee and meeting participants engaged in an exercise during which they were required to develop a task and identify the knowledge required for completion of that task. Ms. Froistad stated she found the exercise helpful in understanding the challenges behind the development of an examination.

The next meeting is March 23, 2009 at the Hilton Irvine. Dr. Russ encouraged schools to send students to these meetings so they may have a better insight into the development of examinations and how questions end up on a test.

#### **XI. Election of Officers**

Dr. Russ reported that he will remain the Board Chair until May 31, 2009. He opened nominations for Chair and Vice Chair.

Ms. Walmsley nominated Renee Lonner for Chair. Ms. Lonner accepted the nomination. No other nominations were made.

***Elise Froistad moved to close nominations. Donna DiGiorgio seconded. The Board voted unanimously (6-0) to pass the motion.***

***Joan Walmsley moved to elect Renee Lonner as Board Chair effective June 1, 2009. Elise Froistad seconded. The Board voted unanimously (6-0) to pass motion.***

Ms. Lonner nominated Elise Froistad for Vice Chair. Ms. Froistad accepted the nomination. No other nominations were made.

***Joan Walmsley moved to close nominations. Donna DiGiorgio seconded. The Board voted unanimously (6-0) to pass the motion.***

***Renee Lonner moved to elect Elise Froistad as Board Chair effective June 1, 2009. Donna DiGiorgio seconded. The Board voted unanimously (6-0) to pass the motion.***

#### **XII. Public Comment for Items Not on the Agenda**

No public comments were made.

#### **XIII. Suggestions for Future Agenda Items**

No suggestions for future agenda items were made.

Dr. Russ closed the open session at 11:11 a.m.

## **FULL BOARD CLOSED SESSION**

### **XIV. Pursuant to Section 11126(a) of the Government Code to Evaluate the Performance of the Board's Executive Officer.**

The Board met in closed session at 11:15 a.m. and adjourned for lunch at 12:30 p.m.

### **XV. Pursuant to Government Code section 11126(c)(3) the Board will convene in closed session to deliberate on disciplinary matters, including a decision after remand (Gary Vincent Ventimiglia, MFC 21132); and, pursuant to Government Code section 11126(e), the Board will convene in closed session to confer with and receive legal advice from counsel (Mary Kay Oliveri v. Board of Behavioral Sciences, Sacramento Superior Court, Case No. 07CS01477).**

The Board reconvened at 1:12 p.m. in closed session and adjourned at approximately 2:30 p.m.

**February 27, 2009**  
Department of General Services  
Ziggurat, Executive Dining Room  
707 Third Street  
West Sacramento, CA 95605

**Members Present**

Ian Russ, Chair, MFT Member  
Joan Walmsley, Vice Chair, LCSW Member  
Gordonna (Donna) DiGiorgio, Public Member  
Elise Froistad, MFT Member  
Renee Lonner, LCSW Member  
Karen Roye, Public Member

**Members Absent**

D'Karla Leach, Public Member  
Judy Johnson, LEP Member  
Victor Perez, Public Member  
Rita Cameron Wedding, Public Member

**Guest List**

On file

**Staff Present**

Paul Riches, Executive Officer  
Kim Madsen, Assistant Executive Officer  
Christina Kitamura, Administrative Analyst  
Kristy Schieldge, Legal Counsel  
Cassandra Kearney, Enforcement Analyst  
Kim DeLong, Investigative Analyst  
Mary Hanifen, Enforcement Analyst  
Raquel Pena, Enforcement Analyst  
Marilyn Schilling, Receptionist  
Nikki Coto, Continuing Education Technician  
Paula Gershon, Program Manager  
Gena Beaver, LEP Evaluator  
Michelle Eernisse, MFT Evaluator  
Angie Ramos, Enforcement Technician  
Cynthi Burnett, Enforcement Analyst  
Ann Glassmoyer, Investigative Analyst

**Administrative Law Judge and Deputy Attorney General**

Catherine Frank, Administrative Law Judge  
Janice K. Lachman, Deputy Attorney General  
Anahita Crawford, Deputy Attorney General

**FULL BOARD OPEN SESSION**

Dr. Ian Russ, Board Chair, called the meeting to order at 9:03 a.m. Christina Kitamura called roll, and a quorum was established.

**XVI. Petition for Reinstatement of Registration, Heather Peterman (IMF 49645)**

The Honorable Judge Catherine Frank opened the hearing at approximately 9:03 a.m. A court reporter was present.

Judge Frank introduced herself, asked the Board members to state their names and indicate if they are professional or public members. Judge Frank gave an overview of the hearing process.

Deputy Attorney General Janice Lachman gave an opening statement. Heather Peterman, Petitioner, gave her opening statement. Questions were presented by Deputy Attorney General Anahita Crawford and Board members.

Ms. Crawford gave a closing statement. Ms. Peterman gave her closing statement. Judge Frank closed the hearing at 10:15 a.m.

The Board adjourned for break at 10:15 a.m. and reconvened at approximately 10:25 a.m.

**XVII. Petition for Early Termination of Probation, Jason Esswein (MFC 41644)**

The Honorable Judge Frank opened the hearing at approximately 10:25 a.m. A court reporter was present.

Deputy Attorney General Anahita Crawford gave an opening statement. Jason Esswein, Petitioner, gave his opening statement. Questions were presented by Deputy Attorney General Anahita Crawford and Board members.

Ms. Crawford gave a closing argument. Mr. Esswein gave his closing statement. Judge Frank closed the hearing at 11:23 a.m.

The Board adjourned for a break at 11:23 a.m. and reconvened in closed session at 11:34 a.m.

**FULL BOARD CLOSED SESSION**

**XVIII. Pursuant to Government Code section 11126(c)(3) the Board will convene in closed session to deliberate on disciplinary matters, including a decision after remand (Gary Vincent Ventimiglia, MFC 21132), the petition for reinstatement (Heather Peterman, IMF 49645), and the petition for early termination of probation (Jason Esswein, MFC 41644).**

Deliberation on disciplinary matters regarding Gary Vincent Ventimiglia was discussed during full board closed session on Thursday, February 26, 2009. No further discussion took place.

The Board deliberated on disciplinary matters regarding Jason Esswein and Heather Peterman.

The Board adjourned at 12:21 p.m.

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Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Board Members

**Date:** May 6, 2009

**From:** Kim Madsen  
Assistant Executive Officer

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

**Subject: Future Meeting Dates**

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Below is the schedule of all Board and Committee meetings through December 2009.

### **Full Board Meetings**

August 29, 2009 – TBA

November 12-13, 2009 – TBA

### **Committee Meetings**

**Policy and Advocacy Committee** [Donna DiGiorgio – Chair, Renee Lonner, Karen Roye, Ian Russ]

July 31, 2009 – Burbank Marriott

October 16, 2009 – TBA

**LCSW Education Committee** [Renee Lonner – Chair, Joan Walmsley]

June 8, 2009 Loma Linda University, San Bernardino

September 14, 2009 – TBA

December 8, 2009 - TBA

**Examination Program Review Committee** [Elise Froistad – Chair, Joan Walmsley]

June 29, 2009 – The Westin Long Beach

October 5, 2009 – Department of Consumer Affairs, Sacramento

November 30, 2009 - TBA

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## BUDGET UPDATE – MAY 21, 2009

### Summary

#### ***2008-2009 Fiscal Year***

As of March 31, 2009, the Board's expenditure report projects that we will have a year-end balance of approximately \$234,000 in FY 2008-09. Please see the enclosed expenditure report for more detail.

Additionally, our current fund condition report reflects 7 months in reserve and \$9 million in outstanding general fund loans.

As reported in the February budget update, Executive Order S-16-08 directs all represented employees and supervisors to be furloughed two days per month, effective February 1, 2009 through June 30, 2010. As of March 6, 2009, the Department of Consumer Affairs (DCA) implemented a "self-directed" furlough program. This allows the employees to choose their furlough day/days. The intent is that staff use their furlough day/days each month. However, should staff choose to accumulate hours, they will have up to 24 months following the end of the furlough program, to take all furlough days off. The hours must be used by July 1, 2012.

On May 4<sup>th</sup>, the bill containing the ratified contract agreement negotiated by SEIU Local 1000 failed passage. The bill (AB 964) failed to obtain the required two thirds majority vote, with a 51-16 vote; with 13 members abstaining. As reported, a spokesman for the Assembly indicated that AB 964 will remain on file and will eventually be brought back for another vote. At this time, it is unclear when this would take place. Employees will continue to adhere to the requirements of the Department's "self-directed" furlough program, until further notice.

Due to the Governor's directed furloughs, the Board's FY 08-09 budget was reduced by a total of \$55,771. The reductions are a combination of the following budgeted line items: employee salaries, salary driven benefits (Retirement, Medicare, etc), and prorata costs (i.e., DOI, Admin, Public Affairs). The Department will provide the Board a line by line breakdown of its reductions in the Final Month 10 budget reporting document produced by DCA's Accounting Office in mid May.

#### ***2009-2010 Fiscal Year***

The Board's 09/10 budget will increase by over \$920,000, from \$6,013,333 in FY 08/09 to \$6,934,000 in FY 09/10.

As previously reported in the February budget report, the Board was approved for an increase of four staff, via the Department's budget change proposal (BCP) for retroactive fingerprinting. The four positions having a start date of October 1, 2009. The Board has decided to proceed with recruitment of these four positions and anticipates having them filled by June 1<sup>st</sup>. The board expects this expense will be approximately \$78,000 (salaries and benefits) and will be absorbed in the 08/09 budget.

The Governor's budget also includes an increase to the Board's Attorney General budget by \$409,556.

## **Workload and Revenue Predictive Model**

### **Background**

Of the BBS' overall licensing population, roughly 94% are individuals either pursuing or holding a license in marriage and family therapy or clinical social work. Attaining a license as either a Marriage and Family Therapist (MFT) or Licensed Clinical Social Worker (LCSW) requires registration with the BBS, the accumulation of at least two years of supervised work experience, and successful completion of two licensing examinations. Understanding the behavior of the population the BBS licenses provides useful information to the agency on two fronts:

1. As a Special Fund agency, understanding the behavior of the BBS' licensing population translates into an understanding of the revenue stream. Depending on where an individual is in the BBS licensing process, that person represents a different level of revenue for the organization. For example, in order to gain the required pre-licensure supervised work experience, an individual must be registered with the BBS, which requires an annual renewal fee of 75 dollars. Basing budget on predicted behavior of a licensing population differs from the conventional practice of applying a flat-line revenue growth to establish a projected fund condition.
2. The ability to predict the behavior of its licensing population means the BBS can predict staff workload. Different applications require different staff resources. For example, the evaluation of a person's application for examination eligibility for the MFT examination takes substantially longer than the processing of a person's application for renewal. The ability to predict significant increases (or decreases) in workload allows for proactive management of the BBS budget.

Considering the identified strategic value in understanding the behavior of its licensing population, the BBS made an investment in developing a predictive model for its MFT and LCSW licensing populations.

### **Methodology**

#### *Identifying Milestones*

The BBS' MFT and LCSW licensing processes include multiple milestones. These milestones include the submission of various applications associated with the licensing process and the renewal of a registration or license. If an average behavior of a cohort of individuals entering the BBS licensing process could be identified, then a model for when incoming cohorts will reach certain milestones can be derived.

#### *How do you determine an average behavior?*

From the point of entry in the licensing pipeline (registration after graduate school) to the point of successful attainment of a license is approximately five to six years for most individuals in the BBS licensing process. One byproduct of such a lengthy period of contact with potential licensees is the creation of a useful longitudinal dataset, effectively tracking an individual through the entire BBS licensing process. The BBS looked at twelve fiscal years worth of data for incoming cohorts from each licensing track.

The analysis of each cohort was conducted using a longitudinal approach. Staff checked the progress of individuals in the dataset against each potential milestone on a year-by-year basis. The year-by-year analysis of each cohort was then compared side-by-side to develop an overall predictive model. For each milestone, a yearly predictor is provided. The yearly predictor is essentially a percentage of the incoming cohort that arrived at the milestone in a given year. For

example, a predictor for the submission of an MFT Examination Eligibility Application of .25 in Year Three means that 25% of the incoming cohort applied for MFT examination eligibility in Year Three. For the purposes of predicting revenue, each submission of this type of application translates into 200 dollars in revenue for the BBS. For the purposes of predicting workload, each application type represents a different commitment of BBS staff resources.

### *Considerations When Applying the Model*

The predictors are averages of behavior over time, so 100% accuracy is impossible. In acknowledgement of this natural flaw, BBS staff conducted some sensitivity analysis of final predicted numbers. For example, if the predictive model gives you a bottom line revenue projection of 5 million dollars, applying a 3% margin of error above and below the final number would give you a window of the final predicted number as opposed to a hard number. For the example of 5 million dollars as a predicted value, a 3% margin of error on either side gives you a bottom line predicted revenue number somewhere between 4.85 and 5.15 million dollars. A similar sensitivity analysis can be conducted on any predicted application volume or workload numbers.

### *Weaknesses of the Model*

The model has several weaknesses:

1. Not all revenue can be tied to predicted behavior. For example, the number of requests for certification of licensure cannot be predicted using the model. However, this error is minimized because the majority of BBS revenue can be predicted using the model.
2. Establishing a clear baseline is difficult using current data. Ideally, a baseline for the most recently completed budget year could be used as a solid starting point for predictions. As an alternative, the model is used to create an implied baseline. In other words, the baseline for the most recently completed budget year is derived from applying the predictors over the last 12 years.
3. A weakness of any predictive model is decreased reliability over time. Predictions made for the short term (1-2 years) will be more reliable than predictions made for the long term (5-7 years).

### Predicted Values Based on Model

#### *Validation of the Model*

The model was tested against actual numbers from the 2007/2008 budget year. In nearly all cases the model predicted values within 10% of the actual number of applications or renewals received. The prediction of total generated revenue came within less than a percent of actual generated revenue for 2007/2008 (See Table 1). Despite the two predicted values that exceed a 10% margin of error, the low margin of error for other critical values and the total generated revenue inspire confidence in the reliability of the tool.

#### *Revenue and Workload Forecasts – Two Scenarios*

BBS staff ran two scenarios through the predictive model. One presumed zero growth over the next five years and another presumed 5% growth annually over the next five years (See Tables 2 and 3). The 5% growth is not unrealistic based on an increase in registration applications received in recent fiscal years and recent trends in school enrollment.

## *Discussion of Results*

A review of the results indicates a growth in both application volume and revenue generated in even the stagnant conservative scenario. This is primarily due to a growth in registration applications in recent years. As this “bubble” makes it through the licensing process, increases in workload at various points will occur.

In a steady 5 percent growth scenario, dramatic increases in both application volume and revenue are expected. If this plausible scenario plays out, the model clearly shows that an expansion of BBS staff will be necessary to meet acceptable application processing times and customer service goals. A comparison of the predicted scenarios against conventional revenue projection revenue is included in Table 4.

## ***Budget Going Forward***

The Board anticipates the Department’s BreEZe (formerly iLicensing) Online Web Application project will be near completion late 2011-early 2012.

BreEZe is a team that was created to ensure the successful procurement, development, and implementation of a new iLicensing system. It is expected the new system will be a web-based system that applicants can use to apply for exams, initial licenses, renewal, duplicates, and check the status of an application. Additionally, the system will provide applicants and license holders with real-time or near real-time information regarding license application and renewal status. It would also provide clients with the ability to update their information online, reducing the number of incoming calls from the public.

Completion and implementation of this project will remove most renewal functions from Board staff, which makes up half of our Cashiering workload.

For the last two years, BCPs for this project has been rejected. This year, control language has been submitted which would allow the Department to increase budgets respectively once the amount of the project is identified. The Board will not be required to absorb the costs associated with this project.

As previously mentioned DCA has implemented a “self-directed” furlough program and is no longer experiencing office closures the first and third Friday of every month. Pending ratification of the new contract negotiated by SEIU members, the “self-directed” furloughs will continue to reduce salaries and wages by 10%.

The Legislative Analyst’s Office (LAO) reports that the state continues to face a looming cash crunch. California voters and legislators must address the issue before the start of the new fiscal year, July 1<sup>st</sup>. The Legislature needs to quickly take steps to close a new budget deficit projected to be at least \$8 billion. This number is likely to increase.

Adding to the turmoil, California voters strongly oppose five of the six special election measures being sold as a budget reform and it is anticipated that on May 19, these measures will fail. As a result, the state could see deeper spending cuts, such as, a hiring freeze, and possible layoffs.

## ***Revenue***

As of March 31, 2009, Board revenue has exceeded \$4.9 million.

**BBS EXPENDITURE REPORT FY 2008/2009**

OBJECT DESCRIPTION	07/08	FY 2008/09			
	ACTUAL EXPENDITURES	BUDGET ALLOTMENT	CURRENT AS OF 3/31/2009	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
<b>PERSONAL SERVICES</b>					
Salary & Wages (Civ Svc Perm)	1,298,444	1,599,661	1,057,706	1,436,782	162,879
Salary & Wages (Stat Exempt)	94,224	91,128	69,218	90,298	830
Temp Help (907)(Seasonals)	44,576	105	12,853	30,000	(29,895)
Temp Help (915)(Proctors)	0	444	0		444
Board Memb (Per Diem)	13,700	12,900	5,500	10,000	2,900
Overtime	9,587	7,533	42,182	75,000	(67,467)
Totals Staff Benefits	583,222	679,541	489,724	650,000	29,541
Salary Savings		(73,601)			(73,601)
<b>TOTALS, PERSONAL SERVICES</b>	<b>2,043,753</b>	<b>2,317,711</b>	<b>1,677,183</b>	<b>2,292,080</b>	<b>25,631</b>
<b>OPERATING EXP &amp; EQUIP</b>					
Fingerprint Reports	3,643	36,954	4,485	13,044	23,910
General Expense	58,832	36,326	42,811	60,000	(23,674)
<b>Printing</b>	<b>74,714</b>	<b>101,847</b>	<b>62,335</b>	<b>80,000</b>	<b>21,847</b>
Communication	8,686	29,200	7,839	10,500	18,700
<b>Postage</b>	<b>58,963</b>	<b>112,435</b>	<b>45,174</b>	<b>65,448</b>	<b>46,987</b>
<b>Travel, In State</b>	<b>107,417</b>	<b>94,948</b>	<b>60,539</b>	<b>80,000</b>	<b>14,948</b>
Travel, Out-of-State	3,010	3,002	0	0	3,002
<b>Training</b>	<b>12,612</b>	<b>19,730</b>	<b>10,826</b>	<b>15,000</b>	<b>4,730</b>
Facilities Operations	166,323	211,039	124,941	164,760	46,279
C&P Services - Interdept.	0	14,360	0	0	14,360
<b>C&amp;P Services-External Contracts</b>	<b>85,429</b>	<b>10,553</b>	<b>5,496</b>	<b>70,000</b>	<b>(59,447)</b>
<b>DEPARTMENTAL PRORATA</b>					
DP Billing	331,489	408,305	306,225	408,305	0
Indirect Distribution Costs	300,896	353,159	264,870	353,159	0
Public Affairs	15,114	17,602	13,203	17,602	0
D of I Prorata	10,020	14,253	10,692	14,253	0
Consumer Relations Division	11,989	17,302	12,978	17,302	0
OPP Support Services	448	471	0	471	0
Interagency Services (OER IACs)	205,304	235,568	110,299	230,000	5,568
Consolidated Data Services	2,500	23,437	1,477	15,000	8,437
Data Proc (Maint,Supplies,Cont)	27,654	7,072	8,378	16,000	(8,928)
Statewide Pro Rata	193,601	211,637	158,727	211,637	0
<b>EXAM EXPENSES</b>					
Exam Site Rental	108,523	95,769	54,900	80,000	15,769
Exam Contract (PSI) (404.00)	352,630	400,278	245,221	350,000	50,278
Expert Examiners (404.03)	326,525	283,818	172,324	250,000	33,818
<b>ENFORCEMENT</b>					
Attorney General	449,616	443,542	388,041	520,000	(76,458)
Office of Admin. Hearing	66,380	104,568	43,277	67,000	37,568
Court Reporters	6,737	0	1,625	2,100	(2,100)
Evidence/Witness Fees	42,594	68,570	24,496	36,500	32,070
Division of Investigation	341,690	295,306	221,481	294,525	781
<b>Minor Equipment (226)</b>	<b>33,938</b>	<b>33,800</b>	<b>34,913</b>	<b>33,800</b>	<b>0</b>
<b>Major Equipment (Replace/Addit)</b>	<b>0</b>	<b>5,000</b>	<b>644</b>	<b>5,000</b>	<b>0</b>
<b>TOTAL, OE&amp;E</b>	<b>3,407,277</b>	<b>3,689,851</b>	<b>2,438,219</b>	<b>3,481,406</b>	<b>208,445</b>
<b>TOTAL EXPENDITURES</b>	<b>5,451,030</b>	<b>\$6,007,562</b>	<b>\$4,115,402</b>	<b>\$5,773,486</b>	<b>234,076</b>
Fingerprints	(3,762)	(24,000)			
Other Reimbursements	(20,050)	(26,000)			
Unscheduled Reimbursements	(24,820)	0			
Total Reimbursements	(48,632)	(50,000)			

BLUE PRINT INDICATES THE ITEMS ARE SOMEWHAT DISCRETIONARY.

# BOARD OF BEHAVIORAL SCIENCES

## Analysis of Fund Condition

(Dollars in Thousands)

**NOTE: \$9.0 Million General Fund Repayment Outstanding**

	<b>Actual</b>					
	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
<b>BEGINNING BALANCE</b>	\$ 6,273	\$ 7,048	\$ 4,174	\$ 3,242	\$ 2,162	\$ 1,440
Prior Year Adjustment	\$ 59	\$ -	\$ -	\$ -	\$ -	
<b>TOTAL ADJUSTED RESERVES</b>	<u>\$ 6,332</u>	<u>\$ 7,048</u>	<u>\$ 4,174</u>	<u>\$ 3,242</u>	<u>\$ 2,162</u>	<u>\$ 1,440</u>
<b>REVENUES AND TRANSFERS</b>						
Revenues:						
Fees	\$ 5,737	\$ 5,801	\$ 5,858	\$ 5,858	\$ 5,858	\$ 5,858
Interest	\$ 295	\$ 342	\$ 144	\$ 42	\$ 28	\$ 11
Totals, Revenues	\$ 6,032	\$ 6,143	\$ 6,002	\$ 5,900	\$ 5,886	\$ 5,869
Transfers <b>from</b> Other Funds						
F00683      Teale Data Center	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Tranfers <b>to</b> Other Funds						
General Fund Loan		(3000)				
<b>TOTAL REVENUES AND TRANSFERS</b>	<u>\$ 6,032</u>	<u>\$ 3,143</u>	<u>\$ 6,002</u>	<u>\$ 5,900</u>	<u>\$ 5,886</u>	<u>\$ 5,869</u>
<b>TOTAL RESOURCES</b>	<u>\$ 12,364</u>	<u>\$ 10,191</u>	<u>\$ 10,176</u>	<u>\$ 9,142</u>	<u>\$ 8,048</u>	<u>\$ 7,309</u>
<b>EXPENDITURES</b>						
Disbursements:						
State Controller (State Operations)	\$ 4	\$ 4	\$ -	\$ -	\$ -	
Program Expenditures (State Operations)	\$ 5,312	\$ 5,961	\$ 6,267	\$ 6,128	\$ 6,251	\$ 6,376
Projected Expenses (BCPs)		\$ 52	\$ 667	\$ 852	\$ 357	\$ 357
<b>TOTA</b>	<u>\$ 5,316</u>	<u>\$ 6,017</u>	<u>\$ 6,934</u>	<u>\$ 6,980</u>	<u>\$ 6,608</u>	<u>\$ 6,733</u>
<b>FUND BALANCE</b>						
Reserve for economic uncertainties	\$ 7,048	\$ 4,174	\$ 3,242	\$ 2,162	\$ 1,440	\$ 576
<b>Months in Reserve</b>	<b>14.1</b>	<b>7.2</b>	<b>5.6</b>	<b>4.1</b>	<b>2.7</b>	<b>1.1</b>

**NOTES:**

ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED  
EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2010-11

# MHSa EXPENDITURE REPORT

## FY 2008/2009

OBJECT DESCRIPTION	2007/08	FY 2008/09				
	EXPENDITURES	BUDGET ALLOTMENT	CURRENT AS OF 3/31/09	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE	% OF TOTAL BUDGET
<b>FIXED EXPENSES (Non-Discretionary)</b>						
<b>PERSONAL SERVICES</b>						
Salary & Wages (Civ Svc Perm)	35,055	62,418	45,089	66,148	(3,730)	
Totals Staff Benefits	14,356	26,511	21,630	27,782	(1,271)	
Salary Savings		(3,083)			(3,083)	
<b>OPERATING EXPENSES &amp; EQUIP</b>						
Facilities Operations	1,330	2,000	1,742	2,400	(400)	
General Expense	926	5,772	2,718	15,400	(9,628)	
Communication	0	1,000	582	800	200	
<b>TOTAL FIXED EXPENSES</b>	<b>51,667</b>	<b>94,618</b>	<b>71,761</b>	<b>112,530</b>	<b>(17,912)</b>	
<b>NON-FIXED EXPENSES (Discretionary)</b>						
Printing	0	800	0	0	800	
Postage	0	800	0	500	300	
Travel, In State	2,515	200	314	500	(300)	
Training	550	1,000	600	1,000	0	
Minor Equipment (226)	2,899	0	346	500	(500)	
C&P Svcs - External (402)		200,000	50,607	155,400	44,600	
<b>TOTAL DISCRETIONARY EXPENSES</b>	<b>5,964</b>	<b>202,800</b>	<b>51,867</b>	<b>157,900</b>	<b>44,900</b>	
<b>TOTAL EXPENDITURES</b>	<b>57,631</b>	<b>\$297,418</b>	<b>\$123,628</b>	<b>\$270,430</b>	<b>\$26,988</b>	

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PCA - 18385

DGS Code - 057472

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**Table 1 Validation of Predicted Model**

Application Type	07/08 Actual Numbers	07/08 Predicted Numbers	Plus/Minus	Percent Error
MFT Examination Eligibility Applications	1644	1674	30	1.82%
MFT Examination Fees	4528	4738	210	4.64%
MFT Initial License Applications	997	1274	277	27.78%
MFT Intern Registration Renewals	8684	9463	779	8.97%
MFT Active License Renewals Paid	11862	11535	-327	-2.76%
MFT Inactive License Renewals Paid	2392	2307	-85	-3.55%
LCSW Examination Eligibility	1100	1101	1	0.09%
LCSW Examination Fees	3273	3153	-120	-3.67%
LCSW Initial License Applications	535	675	140	26.17%
ASW Registration Renewals	5531	6109	578	10.45%
LCSW Active License Renewals Paid	7094	6495	-599	-8.44%
LCSW Inactive License Renewals Paid	1314	1299	-15	-1.14%
<b>Predicted Bottom Line Revenue Number</b>	<b>5729467</b>	<b>5745431</b>	<b>15964</b>	<b>0.28%</b>

**Table 2. Stagnant Growth Scenario**

Application Type	07/08 Real	08/09 Predicted	09/10 Predicted	10/11 Predicted	11/12 Predicted	12/13 Predicted
<b>MFT Intern Registration Apps</b>	<b>3325</b>	<b>3500</b>	<b>3500</b>	<b>3500</b>	<b>3500</b>	<b>3500</b>
MFT Examination Eligibility Apps	1644	1807	1951	2068	2143	2186
MFT Examination Fees	4528	5025	5361	5702	5996	6182
MFT Initial License Apps	997	1353	1449	1555	1649	1718
MFT Intern Registration Renewals	8684	10279	11074	11670	12087	12339
MFT Active License Renewals Paid	11862	11535	11859	12550	12946	13716
MFT Inactive License Renewals Paid	2392	2307	2372	2510	2589	2743
<b>ASW Registration Apps</b>	<b>2170</b>	<b>2000</b>	<b>2000</b>	<b>2000</b>	<b>2000</b>	<b>2000</b>
LCSW Examination Eligibility	1100	1098	1235	1254	1268	1282
LCSW Examination Fees	3273	3360	3648	3866	4025	4164
LCSW Initial License Apps	535	719	780	848	886	909
ASW Registration Renewals	5531	6817	7240	7548	7735	7854
LCSW Active License Renewals	7094	6495	6921	7034	7506	7670
LCSW Inactive License Renewals	1314	1299	1384	1407	1501	1534
<b>Predicted Bottom Line Revenue</b>	<b>\$5,729,467</b>	<b>\$5,967,619</b>	<b>\$6,281,637</b>	<b>\$6,586,894</b>	<b>\$6,832,531</b>	<b>\$7,075,978</b>
<b>+3% Margin of Error</b>		<b>\$6,146,648</b>	<b>\$6,470,086</b>	<b>\$6,784,500</b>	<b>\$7,037,507</b>	<b>\$7,287,949</b>
<b>-3% Margin of Error</b>		<b>\$5,788,591</b>	<b>\$6,093,189</b>	<b>\$6,389,287</b>	<b>\$6,627,555</b>	<b>\$6,863,408</b>

**Table 3. 5% Growth Scenario**

Application Type	07/08 Real	08/09 Predicted	09/10 Predicted	10/11 Predicted	11/12 Predicted	12/13 Predicted
<b>MFT Intern Registration Apps</b>	<b>3325</b>	<b>3491</b>	<b>3666</b>	<b>3849</b>	<b>4042</b>	<b>4244</b>
MFT Examination Eligibility Apps	1644	1807	1953	2089	2216	2341
MFT Examination Fees	4528	5025	5363	5726	6093	6393
MFT Initial License Apps	997	1353	1449	1556	1663	1766
MFT Intern Registration Renewals	8684	10279	11066	11817	12548	13260
MFT Active License Renewals	11862	11535	11859	12550	12946	13717
MFT Inactive License Renewals	2392	2307	2372	2510	2589	2743
<b>ASW Registration Applications</b>	<b>2170</b>	<b>2279</b>	<b>2392</b>	<b>2512</b>	<b>2638</b>	<b>2770</b>
LCSW Examination Eligibility	1100	1106	1251	1356	1446	1534
LCSW Examination Fees	3273	3368	3670	3989	4298	4617
LCSW Initial License Apps	535	719	782	864	941	1011
ASW Registration Renewals	5531	6817	7499	8152	8763	9354
LCSW Active License Renewals	7094	6495	6921	7034	7508	7683
LCSW Inactive License Renewals	1314	1299	1384	1407	1502	1537
<b>Predicted Bottom Line Revenue</b>	<b>\$5,729,467</b>	<b>\$5,989,454</b>	<b>\$6,346,729</b>	<b>\$6,736,593</b>	<b>\$7,102,269</b>	<b>\$7,495,721</b>
<b>+3% Margin of Error</b>		<b>\$6,169,138</b>	<b>\$6,537,130</b>	<b>\$6,938,690</b>	<b>\$7,315,338</b>	<b>\$7,720,593</b>
<b>-3% Margin of Error</b>		<b>\$5,809,771</b>	<b>\$6,156,327</b>	<b>\$6,534,495</b>	<b>\$6,889,201</b>	<b>\$7,270,850</b>

**Table 4, Comparison to Dept of Finance Fund Condition (Bottom Line Revenue)**

	08/09 Predicted Numbers	09/10 Predicted Numbers	10/11 Predicted Numbers	11/12 Predicted Numbers	12/13 Predicted Numbers
Dept of Finance Projections (Fees)	\$5,801,000	\$5,858,000	\$5,858,000	\$5,858,000	\$5,858,000
BBS Predicted - Stagnant Growth	\$5,967,619	\$6,281,637	\$6,586,894	\$6,832,531	\$7,075,978
BBS Predicted - 5% Growth	\$5,989,454	\$6,346,729	\$6,736,593	\$7,102,269	\$7,495,721



# California's Cash Flow Crisis: May 2009 Update

MAC TAYLOR • LEGISLATIVE ANALYST • MAY 7, 2009



AN LAO REPORT

## SUMMARY

***Much Progress Was Made in February...*** The February budget package addressed a \$40 billion shortfall in California's finances, thereby helping the state's dire cash flow situation. The package also delayed or deferred numerous state payments and allowed over \$2 billion of state special funds to be borrowed by the General Fund on a temporary basis for cash flow purposes. These actions allowed the Controller to end a one-month halt on tax refunds, payments to local governments, and other payments. The Controller has stated that the state will be able to pay its bills "in full and on time" through the rest of the 2008-09 fiscal year. In addition, passage of the February package led the Treasurer to resume sales of long-term infrastructure bonds, and recently, this allowed the state to resume funding for thousands of infrastructure projects that had been halted due to the cash crisis in late 2008.

***...But Cash Flow Pressures Are Likely to Reemerge in Summer and Fall 2009.*** While the February budget package eased the state's cash flow crunch considerably, the budget and cash pressures of recent months have taken their toll. The General Fund's "cash cushion"—the monies available to pay state bills at any given time—currently is projected to end 2008-09 at a much lower level than normal. Without additional legislative measures to address the state's fiscal difficulties or unprecedented amounts of borrowing from the short-term credit markets, the state will not be able to pay many of its bills on time for much of its 2009-10 fiscal year. Deterioration of the state's economic and revenue picture (such as the \$8 billion revenue shortfall we forecasted in March) or failure of measures in the May 19 special election would increase the state's cash flow pressures substantially—potentially increasing the short-term borrowing requirement to well over \$20 billion. California is likely to have difficulty borrowing anywhere close to the needed amounts from the short-term bond markets based on the state government's own credit.

***Prompt Legislative Action Required.*** Time is of the essence in addressing California's cash flow challenges. In our opinion, the greatest near-term threat to state cash flows would be an inability by state leaders to quickly address California's budget imbalance. If there were to be a prolonged impasse, the Treasurer and Controller could be prevented from borrowing sufficient funds to allow the state to pay its bills on time. In such a scenario, the Controller would have much less flexibility than he did in February (during personal income tax refund season) to delay non-priority state payments. An inability to borrow sufficient funds by the Controller and Treasurer could subject many more Californians—including local governments, vendors, and, perhaps, in some dire scenarios, state employees and many others awaiting payments from the state—to prolonged payment delays. Payment delays could affect many major state funds during a prolonged impasse, including the General Fund and special funds, all of which are funded from liquid resources in the state investment pool. Such payment delays could subject the already fragile state budget to even more costs (such as penalties and interest).

***The Legislature's Options to Address the Situation.*** We advise the Legislature to reduce the state's short-term borrowing need to an amount under \$10 billion for 2009-10. (Regular updates from the administration on the projected cash flow situation, therefore, will be necessary during the upcoming budget deliberations.) To reduce the borrowing need and limit the state's interest costs in 2009-10, the Legislature has two very difficult options:

- Additional actions to increase revenues or decrease expenditures in order to return the 2009-10 budget to balance.
- Additional actions to delay or defer scheduled payments to schools, local governments, service providers, and others.

***Federal Assistance Could Come With "Strings Attached."*** We believe it is appropriate for the Treasurer to explore the possibility of federal assistance—such as a federal loan guarantee—to address this summer and fall's grim cash outlook. We caution the Legislature, however, against assuming such federal assistance will be available. By taking prompt actions to reduce the state's cash flow borrowing need to under \$10 billion for 2009-10, policymakers would enhance the ability of the Treasurer and Controller to secure private investment with or without a federal loan guarantee. Moreover, reducing the state's cash flow borrowing will involve actions that improve the state's medium- and long-term budgetary outlook. These actions would increase confidence in the bond markets, which are needed to continue providing funds for infrastructure projects that spur economic activity and long-term growth. Finally, and perhaps most importantly, we advise the Legislature and other state policymakers to be cautious about accepting any strings that might be attached to federal assistance. Strings attached to recent corporate bailouts—as well as federal loan guarantees provided to New York City during its fiscal crisis three decades ago—have included measures to remove financial and operational autonomy from executives. We recommend that the Legislature agree to no substantial diminishment in the role of California's elected state leaders. In our opinion, the difficult decisions to balance the state's budget now are preferable to Californians losing some control over the state's finances and priorities to federal officials for years to come.

## INTRODUCTION

In January 2009, we published *California's Cash Flow Crisis*, one of the reports in our *2009-10 Budget Analysis Series*. This report provides an update on matters discussed in the January piece. Specifically, this report includes the following sections:

- A history of the state's recent cash flow problems.

- California's cash flow outlook.
- The Legislature's options to improve the cash flow outlook.
- The possibility of federal assistance for the state's cash flow challenges.

## HISTORY OF THE STATE'S RECENT CASH FLOW PROBLEMS

**State Must Borrow for Cash Flow Purposes Every Year.** In *California's Cash Flow Crisis*, we discussed the basic dynamics of the state's General Fund cash flows. Specifically, the report described how the state generally disburses the majority of General Fund dollars in the first half of the fiscal year (that is, between July and December), while it collects the majority of General Fund receipts in the second half of the fiscal year (between January and June).

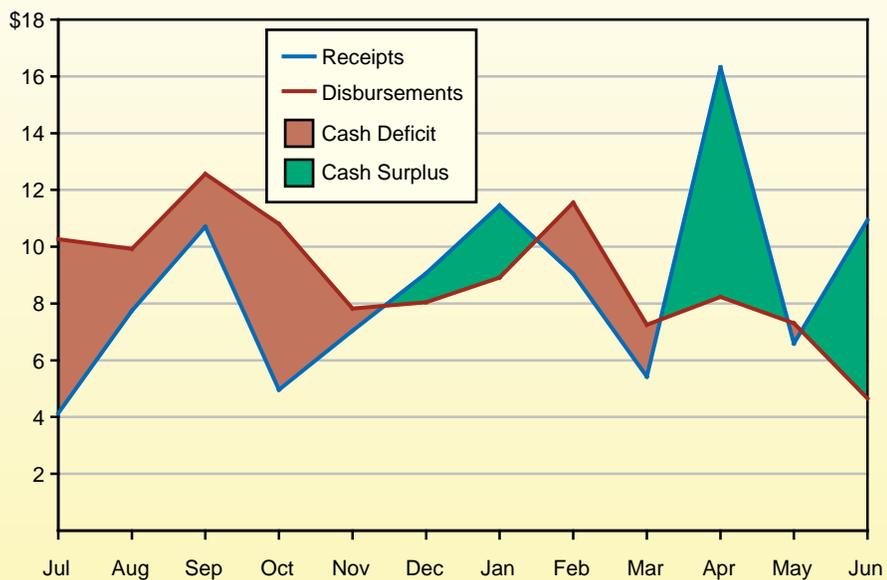
As shown in Figure 1 (which uses 2007-08 monthly cash flows as a typical example), this means that the state routinely runs monthly cash flow deficits through the first half of the fiscal

year and monthly cash flow surpluses through much of the second half. To address this regular imbalance of receipts and disbursements, the state must borrow for cash flow purposes each

**Figure 1**

### Cash Flow Deficits Mark the First Half Of the General Fund's Fiscal Year

2007-08 (In Billions)



year: first, from internally borrowable resources (principally, several hundred “special funds” in the state treasury) and second, from external private investors.

**“Double Whammy” of Weak Revenues and Credit Crisis Hurt State’s Cash Position.** As we described in our January 2009 report, weakening state revenues and limited access to the credit markets in the first half of 2008-09 reduced the state’s resources to address cash flow deficits. At the end of 2008, state officials halted funding for thousands of infrastructure projects in order to conserve state cash resources. Projections at the time indicated that, absent action by the Legislature or the Controller to conserve cash, available resources to fund normal state operations—also known as the state’s cash cushion—would be exhausted by the end of February 2009. (The Controller typically aims to have a *minimum* \$2.5 billion cash cushion in state accounts at any given time.) At the beginning of February 2009, the Controller used his authority to begin delaying certain state payments deemed to be of a lower priority under state law, including many vendor payments, payments to local governments, and tax refunds to individuals and corporations. By delaying about \$3 billion of payments in February, the Controller was able to conserve the cash cushion to make other “priority payments” of the state (such as payments for schools, debt service, and state payroll) on time.

**Legislative Actions Have Eased Cash Crunch During Second Half of 2008-09.** The budget package approved by the Legislature on February 19 and signed by the Governor on February 20 addresses a \$40 billion budget shortfall with a combination of temporary tax increases, spending cuts, borrowing, and federal stimulus funds. (For more information on the budget package,

see our *2009-10 Budget Analysis Series* report entitled *The Fiscal Outlook Under the February Budget Package*.) By their nature, revenue increases, spending cuts, and other budget-balancing actions help the state’s cash situation by putting or leaving more money in the state’s coffers. In addition to these budgetary actions, the Legislature approved a bill—Chapter 9, Statutes of 2009-10 Third Extraordinary Session (AB 13xxx, Evans)—to make additional, substantial changes to the state’s cash management practices. This bill was in addition to similar cash management legislation passed as part of the original 2008-09 budget package in September 2008.

The cash management actions enacted by the Legislature have played a key role in helping the state meet its priority payments on time through 2008-09. In total, since the beginning of the fiscal year, the Legislature has added funds with over \$6 billion of balances to the list of state accounts able to be borrowed by the General Fund temporarily for cash flow purposes. The Legislature also has deferred several billion dollars of payments to later in the 2008-09 and 2009-10 fiscal years. In addition, through its enactment of legislation in March 2009, the Legislature allowed the state to take immediate receipt of \$1.5 billion of federal stimulus funds for Medi-Cal, which directly benefits the General Fund. In May 2009, the state will draw down nearly \$800 million of federal stimulus funds available to cover costs of the state prison system on an expedited basis, thereby reducing General Fund expenditures. Enactment of the February budget package also helped the Treasurer to execute an additional \$500 million cash flow borrowing with The Golden 1 Credit Union and restart long-term infrastructure bond sales. Two huge and extraordinarily successful long-term bond

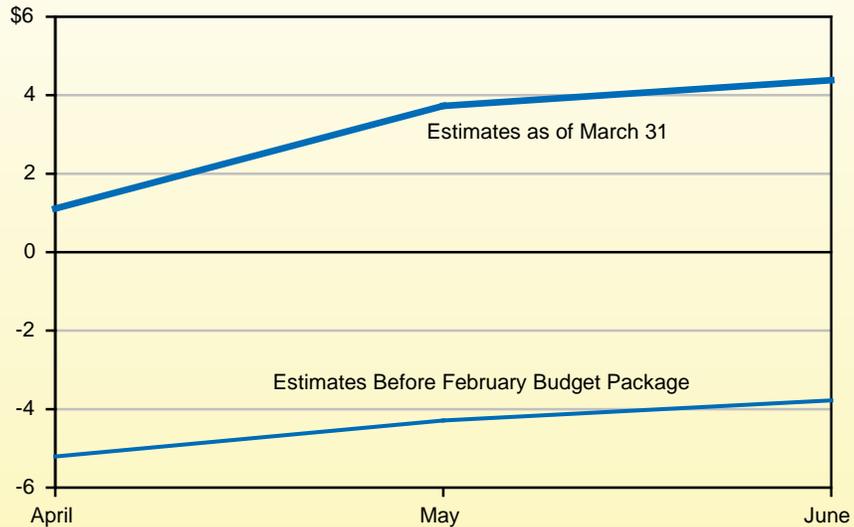
sales in March 2009 and April 2009 raised over \$13 billion for state projects and allowed the administration to end the state project “funding freeze” that had been instituted in late 2008 due to the cash crisis.

**Controller Was Able to End Previously Instituted Delay of Certain State Payments.** Due to all of the cash flow and budgetary changes described above, the Controller was able to end the delay of non-priority state payments. On March 31, 2009, the Controller stated that the state government had sufficient cash resources to “meet all of our obligations in full and on time” through the rest of 2008-09. Figure 2 shows the Controller’s estimates of the state’s cash cushion in late 2008-09 both before enactment of

**Figure 2**

**Controller: February Budget Package Eased 2008-09 Cash Crunch**

*Estimated State “Cash Cushion” (In Billions)<sup>a</sup>*



<sup>a</sup>Estimates are for the lowest amount of cash cushion available to pay state bills on any day during the months listed.

the February budget package and on March 31, when he was able to make this statement. The dramatically improved March 31 figures reflect (1) enactment of the February budget package, (2) completion of the \$500 million short-term Golden 1 cash flow borrowing, and (3) the accelerated receipt of Medi-Cal stimulus funds.

## CALIFORNIA’S CASH FLOW OUTLOOK

**Administration Projections Indicate a New Cash Crisis May Lie Ahead.** In early March 2009, the Department of Finance (DOF) prepared an estimate of how the various measures associated with the package (including the tax increases, spending reductions, payment deferrals, and newly authorized borrowable funds) affected the state’s cash flow outlook through the end of 2009-10. Even after including about \$1 bil-

lion of extra disbursements in the forecast for “unanticipated cash risks” through the end of 2008-09, DOF indicated that the budget package had practically eliminated the cash crunch in the current fiscal year. The DOF forecast, however, indicated the possibility of severe cash flow pressures reemerging as soon as July 2009 and persisting through much of 2009-10.

***Severely Weakened Cash Cushion at the End of 2008-09 Is Expected to be a Key Problem.***

The key problem identified in the DOF forecast is the likelihood of a severely weakened state cash cushion at the conclusion of the 2008-09 fiscal year. While the budget package allows the state, in the Controller's view, to meet its budgeted obligations on time through the rest of 2008-09, the DOF forecast shows that the state cash cushion would be \$6.9 billion on June 30. This is *much less* than the state typically has in its cash cushion at the end of a fiscal year—indicative of the fact that the state will most certainly end the 2008-09 fiscal year with a budgetary deficit. (The February budget plan anticipated there being an operating surplus in 2009-10 to address the 2008-09 budget deficit and build up a reserve account.) Figure 3 shows that the expected fiscal year-end cash cushion at June 30, 2009, is roughly one-half of the cash cushion the state had one year before and only about one-third of the amount of three years ago. To put these figures in perspective, note that the year-end cash cushion for 2008-09 reflects the Legislature's actions over the past year to add several billion dollars of funds to that cash cushion in the form of new special funds eligible to be borrowed by the General Fund for cash flow purposes. Had the Legislature not

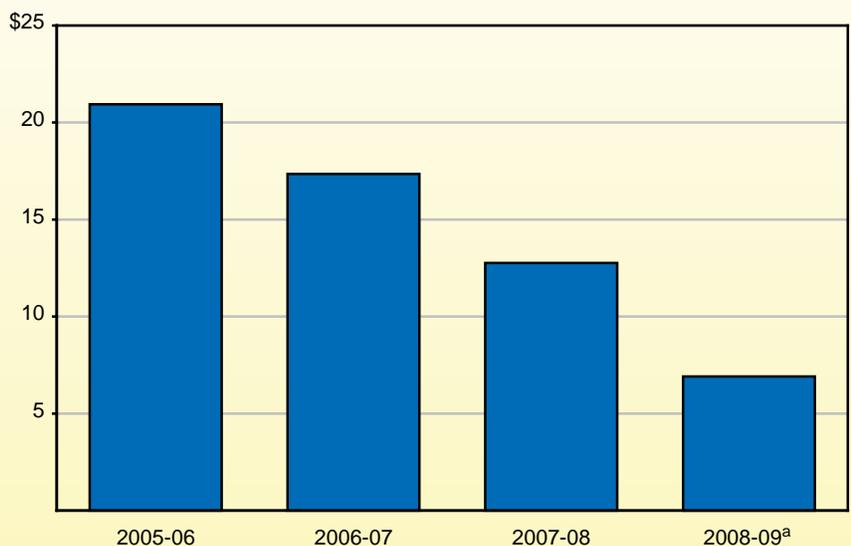
taken various budgetary and cash management actions such as these, the state's cash cushion would have been zero at the end of 2008-09.

***Potentially Unprecedented Short-Term Borrowing May Be Required in 2009-10.*** A weakened cash cushion on June 30 is a problem because of the basic dynamics of the state's General Fund cash flows displayed earlier in Figure 1. The state disburses the bulk of its General Fund expenditures during the first half of the fiscal year, but collects most of its receipts later. This means that several months at the beginning of the fiscal year have monthly cash flow deficits—that is, months when monthly General Fund receipts are less than monthly General Fund disbursements. While the DOF's March 2009 forecast projects a cash cushion of \$6.9 billion (consisting entirely of borrowable special fund balances—with no available General Fund bal-

**Figure 3**

**2008-09 Year-End Cash Cushion to Be Much Lower Than in Prior Years**

(In Billions)



<sup>a</sup>Department of Finance cash flow forecast as of March 2009. Based on assumptions in 2009-10 budget package.

ance) as of June 30, 2009, the forecast indicates that the General Fund is expected to have a monthly cash flow *deficit* of \$7.9 billion in July 2009 alone. The estimated cash flow deficit in that month is so great that DOF estimates the cash cushion will be depleted under the February budget package unless the Controller delays state payments once again as he did in February or the state borrows funds from private investors. The state borrows on a short-term basis from the credit markets virtually every year by issuing revenue anticipation notes (RANs). These notes, along with a related borrowing source—revenue

anticipation warrants (RAWs)—are described in the nearby box.

A huge concern is that monthly cash flow deficits of varying amounts are expected under the February budget package every month between July 2009 and November 2009. These five consecutive months of monthly cash flow deficits mean that, under the DOF forecast, the state would need to borrow amounts that could grow to well over \$13 billion by about October—probably through issuance of RANs or RAWs—in order to pay all bills on time and maintain the state’s traditional minimum cash cushion

### **REVENUE ANTICIPATION NOTES (RANs) AND REVENUE ANTICIPATION WARRANTS (RAWs)**

**RANs.** The state’s most commonly used device for external cash flow borrowing is the RAN—a low-cost, short-term financing tool. Typically issued early in the fiscal year, RANs must be repaid prior to the end of the fiscal year of issuance (usually in April, May, or June). Unlike most of the state’s long-term infrastructure bonds, RANs are not state general obligations. The RANs are secured by money in the General Fund that is available after providing funds for the state’s “priority payments,” such as payments to schools, general obligation debt service, and state employee payroll, among other payments. The State Treasurer’s office works with financial firms to issue RANs almost every year. The state has sold \$5.5 billion of RANs to investors during 2008-09.

**RAWs.** The state has issued RAWs for cash flow relief occasionally since these securities were created during the severe state budget crisis of the early 1930s. The main reason that the state resorts to RAWs is that they can be repaid in a subsequent fiscal year after their issuance. In fact, one California RAW issued in July 1994 matured 21 months later. The ability to have a later maturity date means the state can borrow for cash flow purposes even if the state’s cash outlook is challenging in the near term. Because of this longer maturity schedule and the fact that RAWs typically are issued when the state faces challenging budget times, they generally are more costly—with higher interest and other issuance costs—than RANs. The state’s \$7 billion of RAWs in 1994, for example, resulted in interest and other issuance costs of over \$400 million, and the \$11 billion of RAWs in 2003 resulted in over \$260 million of costs. The State Controller’s office works with financial firms to issue RAWs.

of \$2.5 billion. Figure 4 summarizes DOF’s March 2009 cash flow forecast by showing the expected end-of-month state cash cushion throughout 2009-10 before considering any borrowing from private investors. The forecast shows the state’s accumulated cash deficit—illustrated in Figure 4 as the “negative cash cushion”—would reach \$10 billion to \$11 billion for much of the middle part of 2009-10. The state, therefore, might need to borrow over \$13 billion from investors in order to pay all currently budgeted bills on time and maintain the target minimum \$2.5 billion cash cushion described above.

**Some Negative Signs Have Emerged Since the March Cash Forecast.** Figure 5 lists several developments for the state’s cash flow situation that have emerged since DOF completed its forecast in March. Some of these developments have been good news. For example, the Controller re-

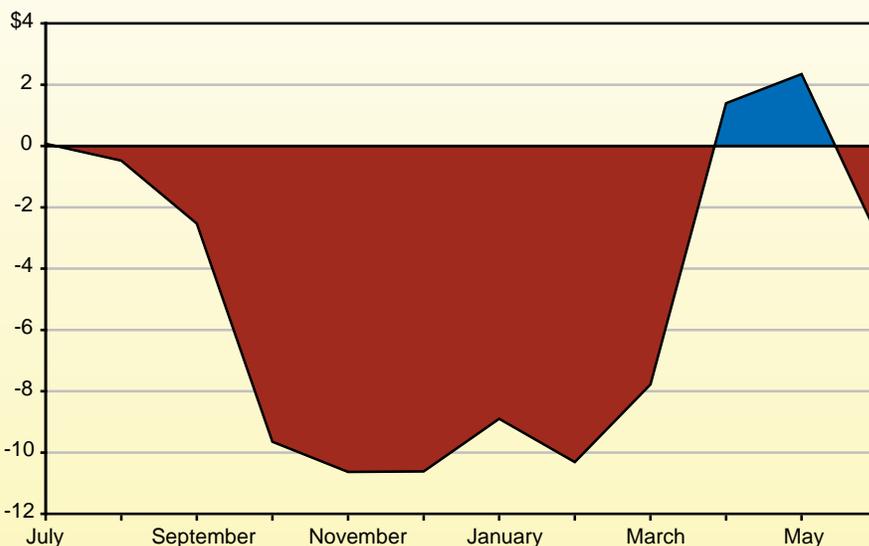
ported that, through the end of March, amounts in borrowable special funds were running about \$2 billion higher than forecast. (It is not known whether this will be a sustained trend.) In addition, as described earlier, about \$800 million of federal stimulus moneys for corrections was received earlier this month—over one year in advance of its expected date of receipt based on the DOF March forecast. (While legislative action allowed the state to expedite receipt of certain Medi-Cal funds from the federal government, this already was factored in DOF’s 2009-10 cash flow forecast.) On the other hand, more than offsetting these positive developments has been a variety of negative economic and state revenue data, which led our office to project in March 2009 that General Fund revenues in 2009-10 would be about \$8 billion below those assumed in the February budget package and DOF’s March cash forecast.

(Because of the timing of state receipts, a loss of \$8 billion in *annual* revenues does not necessarily mean the state needs to borrow the same \$8 billion to keep paying bills on time in each month.) Net state receipts of personal income and corporate tax payments in April 2009 also were weaker than expected—adding to poor February and March revenue collections. After considering these developments and

**Figure 4**

**March 2009 Forecast Projected Huge Deficit in the State’s Cash Cushion Through Much of 2009-10<sup>a</sup>**

(In Billions)



<sup>a</sup>This figure shows the projected amounts in the state’s cash cushion on the last day of each month based on the February budget package before consideration of any short-term borrowing from private investors.

assuming that higher amounts in borrowable special funds persist, we can make a rough estimate that the state's borrowing requirement from private investors in 2009-10 may be somewhere around \$17 billion—or \$4 billion higher than forecast by DOF in March. Further projected revenue declines or expenditure increases could add to this borrowing need, including the voters' possible rejection of Propositions 1C, 1D, and 1E on the May 19 ballot. As shown in Figure 5, rejection of these measures could cause the state's 2009-10 investor borrowing requirement to swell to around \$23 billion.

***Borrowing Well Over \$13 Billion on the State's Own Credit May Not Be Possible.*** Officials of the administration, the Treasurer's office, and the Controller's office meet regularly with representatives of financial institutions and institutional investors in the municipal credit markets. Despite the state's recent successes issuing bonds in the long-term credit markets, the major financial institutions reportedly have indicated to state officials that California will have difficulty borrowing \$13 billion from the short-term markets based on its own credit in 2009-10—let alone the much larger amount of around \$23 billion discussed in Figure 5. There are various reasons why the state may have difficulty borrowing such large amounts:

- First, this would be an unprecedented amount of short-term borrowing for the state. State short-term borrowing reached a peak of just under \$14 billion—raised through issuance of both RANs and RAWs—during 2003-04, but this occurred during a period of relatively easy credit availability. Then, liquidity in the short-term credit markets was healthy (unlike in recent months) and credit standards of investors and banks were less restrictive than they are now.
- Second, the amount of borrowing as a percentage of state receipts—over 13 percent for a \$13 billion short-term borrowing—is at least double the maximum typically recommended by municipal bond market credit experts. This means it is likely that RAWs or RANs

**Figure 5**  
**State's 2009-10 Short-Term Borrowing Need**

(In Billions)

<b>Administration's March Cash Forecast</b>	<b>\$13</b>
<b>Known developments since March cash forecast</b>	
Higher amounts in borrowable special funds (as of March 31)	-\$2
Expedited receipt of federal stimulus funds for corrections	-1
Lower revenue receipts from February to April 2009	3
Possible need based on LAO's forecast of lower 2009-10 revenues <sup>a</sup>	4
Subtotal	(\$4)
<b>Rough Estimate Based on Known Developments Since March</b>	<b>\$17</b>
Effect if Propositions 1C, 1D, and 1E Are Rejected by Voters	\$6
<b>Rough Estimate if Proposition are Rejected by Voters</b>	<b>\$23</b>

<sup>a</sup> In a March 2009 report we forecast that General Fund revenues would be \$8 billion below the February budget package forecast in 2009-10. Because some of this difference affects state receipts in April through June 2010, when state cash flows are relatively strong, this difference would not likely result in an \$8 billion increase in the state's needed borrowing from short-term investors. Instead, the decrease in revenues should result in a smaller increase in the state's borrowing need. We show \$4 billion here as a very rough estimate.

totaling over \$13 billion would have a poor credit rating. With weakened banks and other financial institutions limited in their ability to offer credit enhancement (essentially, a type of bond insurance) to the state's RAWs or RANs, a low rating will mean that major segments of the short-term investor market will be unable or unwilling to participate in the state's 2009-10 cash flow borrowing. With fresh memories of their own liquidity crisis last year, major short-term market investors—

such as money market funds—have stricter credit standards than ever before, and they may be reluctant to purchase RANs or RAWs with a low rating. Even if investors did purchase the securities, state interest costs for borrowing may exceed budgeted amounts—potentially by as much as hundreds of millions of dollars—as the administration warned the Legislature in a budget letter submitted in early April 2009.

## RECOMMENDATIONS AND OPTIONS FOR THE LEGISLATURE

In this section, we address ways that the Legislature can address the state's cash flow crisis. First, we discuss broad goals concerning state cash flows for the Legislature to consider in its upcoming budget deliberations. Second, we discuss specific options that the Legislature may need to consider to achieve these goals. Third, we discuss the important issue of timing: when the Legislature needs to take action to provide the greatest possible assurance that the state can continue paying its bills on time.

### **Broad Goals for the Legislature Concerning State Cash Flows**

***Recommended Legislative Goal: Reducing State's Need for Short-Term Borrowing.*** While the state's recent success in selling long-term infrastructure bonds and resuming funding of voter-approved projects is a positive sign, we are concerned about the potential difficulty and high costs involved in borrowing \$13 billion or more for cash flow needs in 2009-10. Accordingly,

we recommend that the Legislature focus in the coming weeks on a goal of reducing the state's cash flow borrowing need for 2009-10 to somewhere below \$10 billion. In any scenario, this will make it easier for state officials to execute the state's cash flow borrowing. To accomplish this goal, the Legislature will need to ask the administration for regular updates on projected cash flows during its upcoming budget deliberations.

***Reducing Short-Term Borrowing Need Below \$10 Billion Means More Difficult Choices.*** Just as the Legislature faced difficult choices earlier in 2008-09 to balance the budget and address the cash flow crisis, even more difficult choices remain for returning the budget to balance and reducing the 2009-10 cash flow borrowing need below \$10 billion. The options for the Legislature to accomplish this fit into two general categories:

- *Budgetary actions* to increase revenues or decrease expenditures of the General Fund or other state funds available for cash flow borrowing.

- *Cash flow actions* to delay budgeted state payments or accelerate receipt of revenues from either the General Fund or borrowable special funds.

***Returning the Budget to Balance Would Help the Cash Flow Situation.*** By their nature, actions to increase state revenues or decrease expenditures help the cash flow situation, thereby reducing the required borrowing from short-term credit markets. Accordingly, we recommend that the Legislature focus first on addressing the budget deficit. However, because budgetary balancing actions will not necessarily deliver their full benefit in the opening months of the fiscal year—when the state’s cash flow problems are the greatest—balancing the budget alone may not solve the state’s cash flow difficulties. Additional actions to defer payments or accelerate state receipts during the fiscal year may be necessary.

### **Specific Options for the Legislature to Achieve These Goals**

Beyond the very difficult choices for the Legislature in returning the 2009-10 state budget to balance, there are some particular options that lawmakers may need to consider to address the state’s cash flow challenge.

***Additional Payment Deferrals May Be Necessary.*** Because state payments to schools represent a large portion of General Fund disbursements in cash flow deficit months like July and October, additional measures to delay scheduled state payments to schools may be necessary. Deferrals of scheduled payments for various other programs also may be required. To the extent that federal stimulus funds are available to school districts and other local governments by early in the 2009-10 fiscal year, this may help govern-

mental entities cope with additional payment delays.

***Accelerating Issuance of Lottery Securitization Bonds May Prove Beneficial.*** The DOF cash projections assume that the state receives \$5 billion of lottery securitization proceeds—contingent upon voter approval of Proposition 1C in May 2009—in March 2010. To ease the fall 2009 cash crunch somewhat, we recommend that the Legislature encourage the administration, which would control the lottery borrowing process under Proposition 1C, to pursue issuing some or all of the lottery securitization bonds by October 2009. The lottery borrowing—a long-term bond market offering—would reduce the need for issuance of short-term state obligations by the Treasurer or Controller by perhaps a few billion dollars in the fall. Reducing the size of these short-term obligations would make it easier for state officials to market securities to short-term investors.

***“Trigger Legislation” May Be Required.*** In our January report on the cash flow crisis, we discussed the possibility that so-called trigger legislation might be needed to facilitate the sale of RAWs by the Controller. In the past, trigger legislation—such as Chapter 135, Statutes of 1994 (SB 1230, Committee on Budget and Fiscal Review)—has helped the state sell short-term cash flow instruments by providing greater assurances to potential investors. Chapter 135 required the state to reduce most categories of expenditures at the time if cash flow projections showed that timely payment of RAWs was threatened. Given the need to preserve the Legislature’s constitutional prerogatives over the state budget, we would be reluctant to recommend passage of trigger legislation that ceded to the Governor the ability to determine which revenues were in-

creased or expenditures decreased to provide assurances to investors of timely RAW repayment. Instead, assuming such legislation proves necessary, we advise the Legislature—as it did in the February budget package in constructing a revenue and expenditure trigger tied to the receipt of federal stimulus moneys—to specify which expenditures would be decreased and revenues increased in any RAW trigger legislation.

### **Action by Late June or Early July at the Latest Is Needed**

***Time Is of the Essence in Addressing Cash Flow Problems.*** Addressing the state’s cash flow challenges is inherently a matter of timing. For the state to have sufficient funds to make General Fund and special fund payments on time, access to sufficient borrowed funds—from both internal sources and private investors—is needed by a given date. The DOF projections under the terms of the February budget package show that the state will need to begin borrowing from private investors in the short-term credit markets in July. Under this package, a total of well over \$13 billion in private borrowing likely would need to be completed by October. As discussed earlier, the state may face a major new budgetary gap that will also worsen the state’s cash situation. Absent legislative actions to rebalance the budget

and address the state’s budgetary and cash flow difficulties, private investors may be unwilling to lend the state such large sums. Therefore, legislative actions to return the budget to balance and address the state’s cash flow challenges may be required before the Treasurer and Controller can issue the required amount of RANs or RAWs. Accordingly, in our view, the most significant near-term threat to the state’s cash flows is a prolonged legislative impasse in addressing California’s budget difficulties after the May Revision. The Controller and Treasurer will have the greatest ability to issue sufficient RANs and RAWs in a timely fashion if the Legislature restores the budget to balance and takes action to reduce the state’s short-term borrowing need by late June 2009 or early July 2009 *at the latest*. By taking action on this timeline, the Legislature would allow state officials to begin to access the short-term credit markets in early or mid-July. In any event, the earlier the Legislature takes action after the special election to address the state’s budget and cash problems, the less likely that the Controller will have to resume delaying state payments in order to preserve cash for timely disbursement of priority payments, such as payments to schools and bondholders.

## **THE POSSIBILITY OF FEDERAL ASSISTANCE**

***Treasurer Exploring Federal Assistance, Such as a Federal Guarantee for RANs or RAWs.*** Given the possible difficulty for the state marketing a vast amount of short-term notes or warrants, the Treasurer’s office has indicated that it is exploring potential federal assistance for the state (and other public entities) that need to ac-

cess the short-term debt markets. We believe that it is appropriate for the Treasurer to explore these options with federal officials. Among the options for possible federal assistance are:

- A federal guarantee of the state’s short-term cash flow borrowing.

- A federal commitment to purchase the state's RANs or RAWs from investors in certain circumstances, perhaps using funds of the Troubled Assets Relief Program approved by Congress in 2008.
- Accelerated receipt of federal stimulus moneys that offset state General Fund expenditures, which could reduce the state's need for cash flow borrowing in 2009-10.

Recently, the U.S. government has assisted various financial institutions and corporate entities facing insolvency. In addition, there is precedent for a federal guarantee of a public entity facing serious financial difficulties. In 1978, the Congress passed and President Carter signed the New York City Loan Guarantee Act, a response to the city's severe fiscal crisis at the time. A properly structured federal loan guarantee of this type would allow the state relatively simple access to the bond markets. Such bond market access would be based on the U.S. government's full faith and credit. A guarantee may require approval by the Congress in a bill, which would be subject to approval or veto by the President.

***Recommend That Legislature and Policymakers Be Cautious About Strings Attached to Federal Assistance.*** Given recent experience, it is likely that any substantial federal assistance for California's cash flow problems would come with conditions. Recent federal bailouts of private entities have involved those entities losing at least some operational autonomy to federal officials. At the very least, as occurred with New York City's loan guarantees in the 1970s, the federal government likely would charge the state a fee for a federal loan guarantee—just as a bank or bond insurer guaranteeing state

debt obligations would. Nevertheless, the federal government also could insist on a binding, multiyear budget balancing plan from the state or the ability to assume some sort of operational control or oversight of state operations in certain cases. For example, the New York City guarantee act required the city to submit to the Secretary of the Treasury a plan for balancing its budget within roughly four years and mandated that an independent fiscal monitor "demonstrate to the satisfaction of the secretary that it has the authority to control the city's fiscal affairs during the entire period in which federal guarantees are outstanding." The state-created fiscal control board that oversaw New York City's finances remains in existence to this day, although many of its powers under state law have expired. In short, the Legislature and policymakers should expect that there would be strings attached to federal assistance. While the severe nature of the state's cash flow problems necessitate *considering* an offer of federal aid, we recommend that the Legislature be very cautious about *accepting* federal aid with strings attached that undermine the ability of this Legislature or future Legislatures to set the state's fiscal and policy priorities. We recommend that the Legislature agree to no substantial diminishment of the role of California's elected state leaders. In our opinion, the difficult decisions to balance the state's budget now are preferable to Californians losing some control over the state's finances and priorities to federal officials for years to come.

***Legislature Should Not Assume Federal Assistance Will Be Forthcoming.*** We recommend that the Legislature *not* proceed with the assumption that federal assistance will be forthcoming to deal with this summer and fall's state cash flow problems. By beginning to address the state's

budget and cash flow challenges immediately after the May special election, the Legislature will give the Treasurer and Controller the greatest range of options to address the state's expected cash flow challenges. Moreover, the Legislature's

prompt actions to return the budget to balance and reduce the cash flow problem may help convince federal officials that temporary assistance to the state is justified.

## CONCLUSION

While the February budget package and earlier legislative decisions have helped ease the state's cash crunch during 2008-09, major challenges for the state's cash flows loom in the summer and fall of 2009. In our opinion, the greatest near-term threat to the state paying its budgeted bills on time would be a prolonged impasse by the state in addressing California's budgetary and cash flow challenges after the May special election. Moreover, we recommend that the Legislature *not* proceed with the assumption that federal assistance will be available to help the state address its cash flow crisis. Accordingly, we recommend that the Legislature:

- Focus in the coming weeks on reducing the state's cash flow borrowing need for 2009-10 to somewhere below \$10 billion.

- Act quickly—by late June or early July *at the latest*—to address the state's budget and cash flow challenges in order to help the Controller and Treasurer access the short-term bond markets beginning in July.
- Consider additional cash management measures, including possible additional delays in scheduled payments and acceleration of receipt of lottery securitization proceeds.
- Be very cautious about accepting federal assistance for the state's cash-flow problems, especially given the strings that may be attached to such aid.

### LAO Publications

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This report was prepared by Jason Dickerson, and reviewed by Michael Cohen. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

To request publications call (916) 445-4656. This report and others, as well as an E-mail subscription service, are available on the LAO's Internet site at [www.lao.ca.gov](http://www.lao.ca.gov). The LAO is located at 925 L Street, Suite 1000, Sacramento, CA 95814.



# Board of Behavioral Sciences -Quarterly Statistical Report

## Introduction

This report provides statistical information relating to various aspects of the Board's business processes. Statistics are grouped by unit. The report relies predominantly on tables with accompanying "sparkbars," which are small graphs displaying trend over time.

## Reading the Report

Items on the report are aggregated by quarter. The top of the column indicates the quarter and the year (Q407=10/2007-12/2007; Q108 = 1/2008-3/2008; Q208 = 4/2008-6/2008; Q308 = 7/2008-9/2008; Q408 = 10/2008 – 12/2008). The tables provide a combination of "totals" and "averages." Averages are represented in italics. Common abbreviations for licensees and registrants: LCSW = Licensed Clinical Social Worker; LEP = Licensed Educational Psychologist; MFT = Marriage and Family Therapist; ASW = Associate Clinical Social Worker; PCE = Continuing Education Provider. Other common abbreviations: Proc = Process; Def = Deficiency; CV= Clinical Vignette; AG = Attorney General.

## Cashiering Unit

The Board's Cashiering Unit processes license renewals and applications, removes holds on incomplete license renewals, updates licensee and registrant name and address records, and completes various other tasks related to accounts received. The majority of renewal processing occurs in the Department of Consumer Affairs Central Cashiering Unit.

### Renewals Processed In-House

Sparkbars (Current Val) (Low/High)

1451 [1451|2394]

1213 [1202|2294]

9 [7|37]

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
Processed	2394	1790	1909	1788	1456	1451	10788
Received	2294	1847	1208	1563	1202	1213	9327
Proc Time	37	33	30	9	7	9	21

### ATS Cashiering Items (e.g. exam eligibility apps, registration apps, etc)

4246 [4168|5268]

4174 [4143|5237]

4 [3|4]

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
Processed	4311	4168	4855	5268	4280	4246	27128
Received	4173	4260	4708	5237	4143	4174	26695
Proc Time	3	3	4	4	3	4	4

### Initial Licenses Issued\*

233 [167|233]

13 [13|40]

312 [311|432]

48 [44|75]

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
LCS	214	167	177	200	227	233	1218
LEP	25	40	26	21	14	13	139
MFT	311	330	432	362	332	312	2079
PCE	44	71	58	75	50	48	346

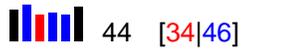
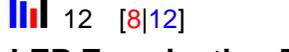
\*For MFT Intern and ASW registration statistics, please reference the Licensing Unit portion of the report

The Board's Licensing Unit evaluates applications for registration and examination eligibility. This involves verifying educational and experiential qualifications to ensure they meet requirements defined in statute and regulation.

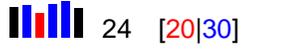
### LCSW Examination Eligibility Applications

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
 316 [255 316] Received	255	275	278	256	289	316	1669
 297 [175 297] Approved	251	237	210	175	291	297	1461
 63 [26 75] Proc Time	26	41	43	75	71	63	53
 31 [19 48] Proc Time Less Def Lapse			19	47	48	31	36

### MFT Examination Eligibility Applications

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
 436 [364 502] Received	387	364	502	462	369	436	2520
 338 [338 460] Approved	359	356	460	433	361	338	2307
 44 [34 46] Proc Time	40	46	34	36	34	44	39
 12 [8 12] Proc Time Less Def Lapse			12	11	8	12	10

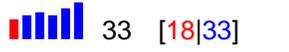
### LEP Examination Eligibility Applications

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
 26 [17 34] Received	26	27	29	34	17	26	159
 24 [20 30] Approved	25	27	20	28	30	24	154
 43 [34 91] Proc Time	52	34	63	91	82	43	60
 16 [16 32] Proc Time Less Def Lapse			30	32	30	16	27

### ASW Registration Applications

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
 380 [380 826] Received	442	409	609	826	473	380	3139
 341 [341 860] Approved	449	391	404	860	599	341	3044
 29 [14 29] Proc Time	14	15	24	27	28	29	23
 21 [9 27] Proc Time Less Def Lapse		9	19	24	27	21	20

### MFT Intern Registration Applications

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
 667 [667 1250] Received	681	713	770	1250	740	667	4821
 650 [650 1241] Approved	661	683	663	1241	801	650	4699
 33 [18 33] Proc Time	18	21	24	21	28	33	24
 25 [9 25] Proc Time Less Def Lapse		9	17	17	25	25	19

## Examination Unit

The Board's Examination Unit processes complaints and performs other administrative functions relating to the Board's examination processes.

### Exam Administration

1785 [1785|2111]

378 [329|479]

404 [390|451]

513 [513|612]

466 [466|617]

24 [24|40]

36 [27|36]

161 [158|213]

129 [120|160]

90 [90|128]

68 [56|88]

	Q407	Q108	Q208	Q308	Q408	Q109	Total
Total Exams Administered	1982	1925	2111	1900	1960	1785	11663
LCSW Written	372	432	479	329	361	378	2351
LCSW CV	433	390	391	410	451	404	2479
MFT Written	598	547	591	612	564	513	3425
MFT CV	541	516	617	512	556	466	3208
LEP	38	40	33	37	28	24	200
No Shows	31	27	27	30	31	36	182
Accommodations Granted	213	169	201	158	166	161	1068
Extra Time	156	123	160	120	124	129	812
Other	127	110	128	98	98	90	651
ESL	88	56	78	65	74	68	429

## Enforcement Unit

The Board's Enforcement Unit investigates consumer complaints and reviews prior and subsequent arrest reports for registrants and licensees.

### Enforcement Activity

12 [2|15]

21 [6|21]

8 [5|13]

0 [0|15]

5 [2|25]

181 [132|197]

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
Investigation Opened	4	4	15	4	2	12	41
Cases Referred to AG	12	18	6	18	16	21	91
Accusations Filed	7	5	10	11	13	8	54
Statement of Issues Filed	1	1	1	0	1	0	4
Final Decisions	15	11	8	6	15	0	55
Citations Issued	25	16	6	2	4	5	58
Proc Time	132	187	161	197	151	181	168

## Convictions/Subsequent Arrest

 129 [115|203]

 120 [77|177]

 208 [130|217]

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
Received	115	135	139	203	137	129	858
Closed	77	120	90	177	164	120	748
Pending**	130	145	194	217	197	208	

## Consumer Complaints

 202 [166|225]

 165 [165|255]

 353 [301|421]

	Q407	Q108	Q208	Q308	Q408	Q109	Total/Avg
Received	225	166	174	196	191	202	1154
Closed	245	255	205	198	189	165	1257
Pending**	421	332	301	302	307	353	

\*\*The pending total is a snapshot of all pending items at the close of a quarter

## Customer Satisfaction Survey

The Board maintains a Web based customer satisfaction survey.

 64 [57|68]

 67 [63|72]

 53 [53|60]

 72 [64|74]

 86 [82|86]

 30 [30|47]

 68 [64|71]

 210 [152|210]

 10 [10|14]

 90 [86|90]

	Q208	Q308	Q408	Q109	Avg
Overall Satisfaction	68	57	59	64	62
Courtesy	67	63	72	67	67
Accessibility	60	53	53	53	55
Successful Service	66	64	74	72	69
Helpful Website	83	84	82	86	84
Receive Newsletter	47	39	30	30	37
Newsletter Helpful	64	68	71	68	68
<b>Total Respondents</b>					
		176	152	210	179
> 6 contacts in 6 month		14	13	10	12
< 6 contacts in 6 month		86	87	90	88

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
[www.bbs.ca.gov](http://www.bbs.ca.gov)

**To:** Board Members

**Date:** May 8, 2009

**From:** Laurie Williams  
Personnel Liaison

**Telephone:** (916) 574-7850

**Subject: Personnel Update**

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### **New Employees:**

Troy Valdovino was hired this month to fill the new Office Technician position within the Licensing Unit. Troy was working with Sean O'Connor in our Outreach Unit as a student assistant. Troy is new to state service and will perform the duties of a Live Scan / Fingerprint Technician to allow the Board to adhere to the new Fingerprint Regulation Package.

Ellen-Marie Viegas will be joining the Board on June 1<sup>st</sup>, to fill the new Office Technician position within the Licensing Unit. She, along with Troy, will be performing the duties of a Live Scan / Fingerprint Technician. Ellen currently works in the private sector and is new to state service.

Angelica (Angie) Ramos will be promoted to a Staff Services Analyst effective June 1<sup>st</sup> within the Enforcement Unit. Angie currently works as an MST in the Enforcement Unit. She will now be performing the duties of a Subsequent Arrest Notification Reviewer to ensure the Board meets the goals of the Fingerprint Regulation Package.

Gena Beaver will be promoted to a Staff Services Analyst effective June 1<sup>st</sup> to the Enforcement Unit. Gena currently works as an OT in the Licensing Unit. She will now be performing the duties of a Subsequent Arrest Notification Reviewer to ensure the Board meets the goals of the Fingerprint Regulation Package.

### **Departures:**

No departures to report at this time.

### **Vacancies:**

The Board has the following upcoming vacancies for which it has begun recruitment:

- Office Technician - Licensing Unit (to be vacated by Gena Beaver 5/31/09)
- Management Services Technician - Enforcement Unit (to be vacated by Angie Ramos 5/31/09)

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER: AB 244**

**VERSION: AMENDED MAY 5, 2009**

**AUTHOR: BEALL**

**SPONSOR: AUTHOR**

**RECOMMENDED POSITION: SUPPORT**

**SUBJECT: MENTAL HEALTH PARITY**

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### **Existing Law:**

- 1) Sets forth the following for group health plans of fifty-one or more employees that provides both medical and surgical benefits and mental health or substance use disorder benefits, beginning no later than October 3, 2009: (42 USCS § 300gg-5)
  - a) Prohibits a health plan from placing an annual or lifetime limit on mental health and substance use disorder benefits if the plan does not include a limit for substantially all medical and surgical benefits;
  - b) Prohibits the health from placing more restrictive financial requirements on mental health or substance use disorder benefits than those financial requirements applied to all medical and surgical benefits; and,
  - c) Prohibits the health plan from placing more restrictive treatment limitations on mental health or substance use disorder benefits than those financial requirements applied to all medical and surgical benefits.
- 2) States that if a group health plan experiences an increase in actual total costs with respect to medical/surgical and mental health/substance use benefits of 1% as a result of the parity requirements (2% in the first plan –year to which this Act is applicable), the plan can be exempted from the law for the following plan year (42 USCS § 300gg-5).
- 3) Requires health care service plan contracts and disability insurance policies which cover hospital, medical, or surgical benefits to provide coverage for the following under the same terms and conditions as other medical conditions beginning July 1, 2000: (HSC § 1374.72(a), IC § 10144.5(a))
  - a) The diagnosis and treatment of severe mental illnesses
  - b) A child’s serious emotional disturbance
- 4) Defines severe mental illness as any of the following: (HSC § 1374.72(d), IC § 10144.5(d))
  - a) Schizophrenia.
  - b) Schizoaffective disorder.
  - c) Bipolar disorder (manic-depressive illness).
  - d) Major depressive disorders.
  - e) Panic disorder.

- f) Obsessive-compulsive disorder.
  - g) Pervasive developmental disorder or autism.
  - h) Anorexia nervosa.
  - i) Bulimia nervosa.
- 5) Defines "health insurance" as a disability insurance policy that provides coverage for hospital, medical, or surgical benefits in statutes effective on or after January 1, 2002. (IC § 106(b))

**This Bill:**

- 1) Permits the Board of Administration of the Public Employees' Retirement System to purchase a health care benefit plan or contract or health insurance policy that includes mental health coverage as described in HSC § 1374.74 or IC § 10144.8. (GC § 22856)
- 2) Requires health care service plan contracts which provide hospital, medical, or surgical coverage, and health insurance policies issued, amended or renewed on or after January 1, 2010 to provide coverage for the diagnosis and treatment of a mental illness of a person of any age under the same terms and conditions applied to other medical conditions. (HSC § 1374.74(a), IC § 10144.8(a))
- 3) Defines "mental illness" as a mental disorder defined in the Diagnostic and Statistical Manual IV or subsequent editions, and includes abuse of alcohol, amphetamines, caffeine, cannabis, cocaine, hallucinogens, inhalants, nicotine, opioids, phencyclidine and sedatives. (HSC § 1374.74(a), IC § 10144.8(a))
- 4) Permits a plan or insurer to provide coverage for all or part of the mental health services required through a separate specialized health care service plan or mental health plan. (HSC § 1374.74(b)(1), IC § 10144.8(b)(1))
  - Does not require a plan or insurer to obtain an additional or specialized license for this purpose.
- 5) Requires a plan or insurer to provide mental health coverage in its entire service area and in emergency situations as required by law. (HSC § 1374.74(b)(2), IC § 10144.8(b)(2))
- 6) Does not preclude health care service plans from providing benefits through preferred provider contracting arrangements from requiring enrollees who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans. (HSC § 1374.74(b)(2), IC § 10144.8(b)(2))
- 7) Permits a health care service plan to use case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing when providing treatment for mental illness to the extent permitted by law. (HSC § 1374.74(b)(3))
- 8) Does not deny or restrict the Department of Health Care Services (DHCS) authority to ensure plan compliance when a plan provides coverage for prescription drugs. (HSC § 1374.74(c))
- 9) Does not apply to contracts entered into between the DHCS and a health care service plan for enrolled Medi-Cal beneficiaries. (HSC § 1374.74(d))

- 10) Does not apply to a health care benefit plan or contract entered into with the Board of Administration of the Public Employees' Retirement System unless the board elects to purchase a health care benefit plan or contract that provides mental health coverage as described in this legislation. (HSC § 1374.74(e), IC § 10144.8(d))
- 11) Permits a health insurer to use case management, managed care or utilization review when providing treatment for mental illness except as permitted by law. (IC § 10144.8(b)(3))
- 12) Prohibits any action that a health insurer takes to implement mental health parity, including but not limited to contracting with preferred provider organizations, to be deemed as an action that would otherwise require licensure as a health care service plan. (IC § 10144.8(b)(4))
- 13) Does not require mental health parity laws to apply to accident-only, specified disease, hospital indemnity, Medicare supplement, dental-only or vision-only insurance policies. (IC § 10144.8(c))

### **Comment:**

1. **Federal Mental Health Parity.** The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Act) was enacted on October 3, 2008. The Act amends the Mental Health Parity Act of 1996 to require that a group health plan of fifty-one or more employees, that provides both medical and surgical benefits and mental health or substance abuse benefits, ensure that financial requirements and treatment limitations applicable to mental health/substance use disorder benefits are no more restrictive than the predominant requirements and limitations placed on substantially all medical/surgical benefits. The passage of the Act does not mandate mental health or substance use disorder benefit coverage but only states that if mental health/ substance use disorder benefits are offered through a health insurance plan, that those benefits must not be more restrictive or limiting than those offered for medical and surgical coverage under that plan.

One of the most important aspects of the Act is the inclusion of substance use disorders in the mental health parity law. This act places substance abuse disorder treatment on the same level as mental health disorder treatment. However, the definition of mental health benefits and substance abuse disorder benefits with respect to this Act is as defined under the terms of the health care plan.

Two major limitations were included in the Act. The first, as with the original 1996 parity law, allows a small employer exemption, making the parity requirements contained therein applicable only to group health plans with more than fifty-one employees. Secondly, the Act states that if a group health plan experiences an increase in actual total costs with respect to medical/surgical and mental health/substance use benefits of 1% as a result of the parity requirements (2% in the first plan –year to which this Act is applicable), the plan can be exempted from the law for the following plan year.

2. **State Mental Health Parity.** Mental illness and substance abuse are among the leading causes of death and disability. AB 88, California's current mental health parity law, was enacted in 2000. This bill requires health plans to provide coverage for mental health services that are equal to medical services, and covers only certain diagnoses considered to be a severe mental illness (SMI) or a serious emotional disturbance of a

child, and therefore is sometimes referred to as “partial parity.” AB 244 would extend parity to other non-SMI and substance use disorders.

- 3. Necessity of AB 244 with the Passage of Federal Parity Legislation.** The new federal mental health parity legislation will provide benefit parity for Californians that are part of a group health plan that already offers mental health and/or substance use disorder benefits, if that group plan has more than fifty employees. This is a significant step in providing parity in benefits, but it does not mandate that all health plans offer mental health and substance use disorder benefits, nor does the parity requirement apply to smaller group health plans. Additionally, the federal law defers to group health care plans the definition of mental health and substance use disorder conditions and treatment.

AB 244 would expand parity requirements to all policies that cover hospital, medical or surgical expenses in this state that are issued, amended or renewed on or after January 1, 2010. Additionally, this bill defines mental illness in statute as a disorder defined in the DSM IV, including substance abuse, as opposed to the federal law which allows the health care plan to define mental health and substance use disorder conditions and treatments.

Lastly, federal law will allow health plans subject to the requirements of the new federal law to not comply if an increase in cost of 1% is incurred as a result of compliance with the legislation. AB 244 does not provide such an exemption.

- 4. CHBRP Analysis.** The California Health Benefits Review Program (CHBRP), created by AB 1996 in 2003, is required to analyze all legislation proposing mandated health care benefits. CHBRP performed an extensive analysis of AB 1887 (Beall, 2008), legislation that was virtually identical to AB 244. According to CHBRP, roughly 18.9 million insured individuals would be affected by this bill's mandate. CHBRP also points out that approximately 92% of insured Californians affected by this bill currently have coverage for non-SMI disorders and 8% have none; 82% of insured Californians have some coverage for substance use disorders and 18% have none.
- 5. Related Legislation and Board Position.** AB 423 (Beall, 2007) was virtually identical to AB 1887 (Beall, 2008) and AB 244. Both AB 423 and AB 1887 were vetoed by the governor. The Board took a position of “support” on AB 423 and AB 1887, recognizing that mental health parity is a large and complex issue, and that support was grounded in the general idea that people should have access to mental health care.
- 6. Governor Veto of Prior Legislation.** Governor Schwarzenegger vetoed identical legislation last year, AB 1887, with the following message:

This bill is similar to a measure I vetoed last year. Without comprehensive health care reform that fully addresses prevention, affordability, cost-containment and shared responsibility, I cannot support one-sided mandates that place additional costs on our health care system. This mandate is estimated to increase health care costs for the insured population by over \$110 million annually. Mandates like these are a significant driver of cost and mean some individuals may lose their coverage and not receive health care at all.

Californians deserve better when it comes to the health care they receive. They deserve comprehensive health care reform that places a

priority on prevention and wellness, provides coverage for all, promotes shared responsibility and makes health care more affordable.

I remain committed to a comprehensive solution. For these reasons, I am unable to support this bill.

**7. Support and Opposition.** None on file at this time.

**8. History**

2009

Mar. 4 Referred to Com. on HEALTH.

Feb. 11 From printer. May be heard in committee March 13.

Feb. 10 Read first time. To print.

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AMENDED IN ASSEMBLY MAY 5, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 244**

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**Introduced by Assembly Member Beall  
(Principal coauthor: Assembly Member Chesbro)**

February 10, 2009

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An act to add Section 22856 to the Government Code, to add Section 1374.74 to the Health and Safety Code, and to add Section 10144.8 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 244, as amended, Beall. Health care coverage: mental health services.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Under existing law, a health care service plan contract and a health insurance policy are required to provide coverage for the diagnosis and treatment of severe mental illnesses of a person of any age. Existing law does not define "severe mental illnesses" for this purpose but describes it as including several conditions.

This bill would expand this coverage requirement for certain health care service plan contracts and health insurance policies issued, amended, or renewed on or after January 1, 2010, to include the diagnosis and treatment of a mental illness of a person of any age and would define mental illness for this purpose as a mental disorder defined in the Diagnostic and Statistical Manual IV. The bill would specify that

this requirement does not apply to a health care benefit plan, contract, or health insurance policy with the Board of Administration of the Public Employees’ Retirement System unless the board elects to purchase a plan, contract, or policy that provides mental health coverage.

Because this bill would expand coverage requirements for health care service plans, the willful violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 22856 is added to the Government Code,  
 2 to read:  
 3 22856. The board may purchase a health care benefit plan or  
 4 contract or a health insurance policy that includes mental health  
 5 coverage as described in Section 1374.74 of the Health and Safety  
 6 Code or Section 10144.8 of the Insurance Code.  
 7 SEC. 2. Section 1374.74 is added to the Health and Safety  
 8 Code, to read:  
 9 1374.74. (a) A health care service plan contract issued,  
 10 amended, or renewed on or after January 1, 2010, that provides  
 11 hospital, medical, or surgical coverage shall provide coverage for  
 12 the diagnosis and medically necessary treatment of a mental illness  
 13 of a person of any age, including a child, under the same terms  
 14 and conditions applied to other medical conditions as specified in  
 15 subdivision (c) of Section 1374.72. The benefits provided under  
 16 this section shall include all those set forth in subdivision (b) of  
 17 Section 1374.72. “Mental illness” for the purposes of this section  
 18 means a mental disorder defined in the Diagnostic and Statistical  
 19 Manual IV, or subsequent editions, published by the American  
 20 Psychiatric Association, and includes substance abuse.  
 21 (b) (1) For the purpose of compliance with this section, a plan  
 22 may provide coverage for all or part of the mental health services  
 23 required by this section through a separate specialized health care

1 service plan or mental health plan, and shall not be required to  
2 obtain an additional or specialized license for this purpose.

3 (2) A plan shall provide the mental health coverage required by  
4 this section in its entire service area and in emergency situations  
5 as may be required by applicable laws and regulations. For  
6 purposes of this section, health care service plan contracts that  
7 provide benefits to enrollees through preferred provider contracting  
8 arrangements are not precluded from requiring enrollees who reside  
9 or work in geographic areas served by specialized health care  
10 service plans or mental health plans to secure all or part of their  
11 mental health services within those geographic areas served by  
12 specialized health care service plans or mental health plans.

13 (3) In the provision of benefits required by this section, a health  
14 care service plan may utilize case management, network providers,  
15 utilization review techniques, prior authorization, copayments, or  
16 other cost sharing to the extent permitted by law or regulation.

17 (c) Nothing in this section shall be construed to deny or restrict  
18 in any way the department's authority to ensure plan compliance  
19 with this chapter when a plan provides coverage for prescription  
20 drugs.

21 (d) This section shall not apply to contracts entered into pursuant  
22 to Chapter 7 (commencing with Section 14000) or Chapter 8  
23 (commencing with Section 14200) of Part 3 of Division 9 of the  
24 Welfare and Institutions Code, between the State Department of  
25 Health Care Services and a health care service plan for enrolled  
26 Medi-Cal beneficiaries.

27 (e) This section shall not apply to a health care benefit plan or  
28 contract entered into with the Board of Administration of the Public  
29 Employees' Retirement System pursuant to the Public Employees'  
30 Medical and Hospital Care Act (Part 5 (commencing with Section  
31 22750) of Division 5 of Title 2 of the Government Code) unless  
32 the board elects, pursuant to Section 22856 of the Government  
33 Code, to purchase a health care benefit plan or contract that  
34 provides mental health coverage as described in this section.

35 (f) *This section shall not apply to accident-only, specified*  
36 *disease, hospital indemnity, Medicare supplement, dental-only, or*  
37 *vision-only health care service plan contracts.*

38 SEC. 3. Section 10144.8 is added to the Insurance Code, to  
39 read:

1 10144.8. (a) A policy of health insurance that covers hospital,  
2 medical, or surgical expenses in this state that is issued, amended,  
3 or renewed on or after January 1, 2010, shall provide coverage for  
4 the diagnosis and medically necessary treatment of a mental illness  
5 of a person of any age, including a child, under the same terms  
6 and conditions applied to other medical conditions as specified in  
7 subdivision (c) of Section 10144.5. The benefits provided under  
8 this section shall include all those set forth in subdivision (b) of  
9 Section 10144.5. “Mental illness” for the purposes of this section  
10 means a mental disorder defined in the Diagnostic and Statistical  
11 Manual IV, or subsequent editions, published by the American  
12 Psychiatric Association, and includes substance abuse.

13 (b) (1) For the purpose of compliance with this section, a health  
14 insurer may provide coverage for all or part of the mental health  
15 services required by this section through a separate specialized  
16 health care service plan or mental health plan, and shall not be  
17 required to obtain an additional or specialized license for this  
18 purpose.

19 (2) A health insurer shall provide the mental health coverage  
20 required by this section in its entire in-state service area and in  
21 emergency situations as may be required by applicable laws and  
22 regulations. For purposes of this section, health insurers are not  
23 precluded from requiring insureds who reside or work in  
24 geographic areas served by specialized health care service plans  
25 or mental health plans to secure all or part of their mental health  
26 services within those geographic areas served by specialized health  
27 care service plans or mental health plans.

28 (3) In the provision of benefits required by this section, a health  
29 insurer may utilize case management, managed care, or utilization  
30 review to the extent permitted by law or regulation.

31 (4) Any action that a health insurer takes to implement this  
32 section, including, but not limited to, contracting with preferred  
33 provider organizations, shall not be deemed to be an action that  
34 would otherwise require licensure as a health care service plan  
35 under the Knox-Keene Health Care Service Plan Act of 1975  
36 (Chapter 2.2 (commencing with Section 1340) of Division 2 of  
37 the Health and Safety Code).

38 (c) This section shall not apply to accident-only, specified  
39 disease, hospital indemnity, Medicare supplement, dental-only, or  
40 vision-only insurance policies.

1 (d) This section shall not apply to a policy of health insurance  
2 purchased by the Board of Administration of the Public Employees'  
3 Retirement System pursuant to the Public Employees' Medical  
4 and Hospital Care Act (Part 5 (commencing with Section 22750)  
5 of Division 5 of Title 2 of the Government Code) unless the board  
6 elects, pursuant to Section 22856 of the Government Code, to  
7 purchase a policy of health insurance that covers mental health  
8 services as described in this section.

9 SEC. 4. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER: AB 484**

**VERSION: AMENDED APRIL 20, 2009**

**AUTHOR: ENG**

**SPONSOR: FRANCHISE TAX BOARD**

**RECOMMENDED POSITION: OPOSE UNLESS AMENDED**

**SUBJECT: BUSINESS AND PROFESSIONAL LICENSES: SUSPENSION: UNPAID TAX LIABILITY**

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### **Existing Law:**

- 1) Requires a licensee to provide a federal identification number or social security number at that time of issuance of the license and provides that the licensing entity must report to the Franchise Tax Board (FTB) any licensee that fails to comply with this requirement. (BPC §30 (a)and (b))
- 2) Requires specified licensing board, upon request of the FTB, to furnish to the FTB the following information with the respect to every licensee: (BPC §30 (d))
  - a) Name
  - b) Address of record
  - c) Federal employer identification number if the entity is a partnership or social security number of all others
  - d) Type of license
  - e) Effective date if license or renewal
  - f) Expiration date of license
  - g) Whether license is active, or inactive, if known
  - h) Whether license is new or a renewal
- 3) Allows the FTB to send a notice to any licensee failing to provide the identification number or social security number as required describing the information that was missing, the penalty associated with not providing it, and that failure to provide the information within 30 days will result in the assessment of the penalty. (RTC §19528(a))
- 4) Allows the FTB after 30 days following the issuance of the notice describe above to assess a one hundred dollar (\$100) penalty, due and payable upon notice and demand, for any licensee failing to provide either its federal employer identification number or social security number. (RTC §19528(b))

- 5) Requires specified licensing entities to immediately serve notice to an applicant of the board's intent to withhold issuance or renewal of the license if the Department of Child Support Services reports that the licensee or applicant is not in compliance with a judgment or order of support. (FC §17520(e)(2))

**This Bill:**

- 1) Requires all state licensing entities issuing professional or occupational licenses, except for the Contractor's State License Board, to provide the names and social security numbers (or federal taxpayer identification number) of licensees to the FTB. (RTC §19265(a)(1))
- 2) Authorizes FTB to send a notice of license suspension to the issuing state licensing entity and the licensee if the licensee has unpaid state tax liabilities. (RTC §19265(a)(3))
- 3) Requires that FTB give the licensee 150 days notice of the suspension. (RTC §19265(a)(2))
- 4) Permits the affected licensee to request an administrative hearing to contest the suspension due to substantial financial hardship within 30 days of the notice of suspension, and requires FTB to provide for a hearing within 30 days of receipt of the request. (RTC §19265(b))
- 5) Permits FTB to defer or cancel any license suspension based on a demonstration of financial hardship by the licensee, and if the licensee agrees to an acceptable payment arrangement. (RTC §19265(b)(1) and(4))
- 6) Requires FTB to notify both the licensee and licensing entity within 10 days of the licensee satisfying the tax debt either through payment or agreement to payment terms. (RTC §19265(a)(4))
- 7) Requires state governmental licensing entities to provide the information required by this section to FTB when needed. (RTC §19265(a)(5))
- 8) States that implementation of this bill is contingent on the appropriation of funds in the Budget Act. (RTC §19265(d))
- 9) Expresses that it is the understanding and intent of the Legislature that consistent with the decision in *Crum v. Vincent* (8<sup>th</sup> Cir. 2007) 593F3d 988, the suspension of a professional or occupational license for failure to file returns or pay delinquent taxes satisfies the due process requirement of the California and Federal constitutions if a taxpayer is provided an opportunity for a hearing to challenge a proposed tax assessment prior to it becoming final and collectable. Because California law provides an opportunity for a hearing prior to a proposed assessment becoming final, due process is satisfied without an additional hearing prior to the suspension of a professional or occupational license of a delinquent taxpayer. (uncodified language)

**Comment:**

- 1) **Author's Intent.** According to the author's office, current state law lacks an effective method to collect income taxes from licensees who operate on a cash basis. This proposal would reduce the tax gap by increasing enforcement measures to collect outstanding taxes by giving FTB the ability to suspend certain tax debtors' professional or occupational licenses

- 2) Background.** According to background provided by the author's office, California loses approximately \$1.4 billion annually as a result of uncollected tax liabilities that apply to professional and occupational licensees. While FTB has an automated tax collection system to search records and locate delinquent assets, this system is largely ineffective against taxpayers who operate on a cash basis because current information on their income is unavailable.

The author's office asserts that this bill will reduce the tax gap by increasing the collection and enforcement measures available to FTB. There are over 25,000 delinquent taxpayers with a state-issued occupational or professional license, and this bill will enable FTB to suspend their ability to generate income until they reconcile their delinquency with FTB.

- 3) Possible confusion on license status.** Within 10 working days of payment of tax liabilities or an installment agreement, FTB will notify the licensee and the Board that the license suspension has been canceled. However, internal board enforcement action may affect the status of a license, unbeknownst to FTB. Because of this duplication of disciplinary action by two separate governmental entities, miscommunication and mistaken action against a licensee will most likely ensue.

Additionally, the license suspension by FTB would remain on a licensee record, and posted on the Board website for an indefinite period of time.

- 4) Unintended consequences to patients under the care of board licensees.** The practical side effect of this bill is that patients of board licensed practitioners will suddenly lose their mental health care provider. The mental health arena is already suffering from a documented workforce shortage, and although the Board believes that licensees should be held accountable for unpaid taxes and related financial liabilities to the state, the practical consequence to the consumers may far outweigh the potential revenue to the state. This bill will ultimately punish the patient and not the practitioner.

Additionally, many nonprofit facilities utilize board licensed professionals in order to receive Medi-Cal reimbursement for mental health services rendered. In some workforce shortage areas, the loss of a licensed practitioner may mean the difference between continuing to provide services and being forced to limit or even stop mental health services altogether.

- 5) Suggested Amendments.** It is important to both hold licensees accountable for their actions and to preserve vital programs for the public. Additionally, in the face of the state budget crisis, it is important to address the issue of outstanding tax liabilities – revenue needed to help prevent the reduction in core state programs and services. However, staff recommends looking within the current constructs of existing law to address the issues asserted by FTB. It is important that the board maintain the enforcement function relative to board licensees in order to continue to provide continuity in care and consumer protection.

Staff recommends amending this bill to allow the board to suspend the licenses of individuals with outstanding tax liabilities based on the model currently used for individuals in violation of a judgment or order for child support (Family Code § 17520). The Department of Consumer Affairs and the Board already have a process in place that allows the Board to receive information regarding individuals out of compliance with child support orders, and, in turn, requires the board to take action against those licensees, including suspension or denial of licensure. This model, if applied to licensees and applicants for licensure with outstanding tax liabilities, will provide a mechanism by which to collect due revenue to the state while also allowing the board to retain its regulatory and enforcement functions.

- 6) Previous Legislation and Board Action.** On May 30, 2008 the Board voted to oppose virtually identical legislation (AB 1925, Eng, 2008) unless the measure was amended to delete the current language and instead model the bill on the existing practice for child support obligations set forth in Family Code section 17520 (see above discussion). AB 1925 failed to pass out of Senate Committee of Revenue and Taxation.
- 7) Policy and Advocacy Committee recommendation.** On April 10, 2009 the Policy and Advocacy Committee voted to recommend to the Board an oppose position on this bill unless the measure is amended to delete the current language and instead model the bill on the existing practice for child support obligations set forth in Family Code section 17520 (see above discussion).
- 8) Bill Status.** This bill failed to pass out of Assembly Business and Professions Committee on April 14, 2009 and April 21, 2009. It is unclear if this legislation will move forward this year, in this form.

**9) Support and Opposition.**

*Support:* Franchise tax Board (sponsor)

*Opposition:* American Institute of Architects, California Council (AIACC)  
 Associated General Contractors of California  
 California Chapter of the American Fence Contractors  
 California Fence Contractors' Association  
 California Land Surveyors Association  
 California Landscape Contractors Association  
 California Taxpayers' Association  
 Engineering & Utility Contractors Association  
 Engineering Contractors' Association  
 Flasher/Barricade Association  
 Golden State Builders Exchanges  
 Marin Builders' Association  
 Southern California Contractors Association

**10) History**

2009  
 Apr. 21 Re-referred to Com. on B. & P.  
 Apr. 20 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.  
 Apr. 14 In committee: Set first hearing. Failed passage. Reconsideration granted.  
 Apr. 13 Re-referred to Com. on B. & P.  
 Apr. 2 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.  
 Mar. 16 Referred to Coms. on B. & P. and REV. & TAX.  
 Feb. 25 From printer. May be heard in committee March 27.  
 Feb. 24 Read first time. To print.

**Attachments**

Crum v. Vincent (8<sup>th</sup> Cir. 2007) 593F3d 988  
 Family Code Section 17520

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 484**

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**Introduced by Assembly Member Eng**

February 24, 2009

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An act to amend ~~Sections 31 and 7145.5~~ *Section 31* of the Business and Professions Code, and to add Sections 19265 and 19571 to the Revenue and Taxation Code, relating to taxes.

LEGISLATIVE COUNSEL'S DIGEST

AB 484, as amended, Eng. Franchise Tax Board: professional or occupational licenses.

The Personal Income Tax Law and the Bank and Corporation Tax Law impose taxes on, or measured by, income. Existing law allows a tax return or return information filed under those laws to be disclosed in a judicial or administrative proceeding pertaining to tax administration under certain circumstances. Existing law requires every board, as defined under the Business and Professions Code, and the Department of Insurance to, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board certain information with respect to every licensee. Existing law authorizes many of these boards to impose fees on its licensees to cover its costs in administering its respective provisions and in some cases these funds are deposited into continuously appropriated funds.

This bill would require a state governmental licensing entity, as defined, issuing professional or occupational licenses, certificates, registrations, or permits to provide to the Franchise Tax Board the name

and social security number or federal taxpayer identification number of each individual licensee of that entity. The bill would require the Franchise Tax Board, if a licensee fails to pay taxes for which a notice of state tax lien has been recorded, as specified, to mail a preliminary notice of suspension to the licensee. The bill would provide that the license of a licensee who fails to satisfy the unpaid taxes by a certain date shall be automatically suspended, except as specified, would require the Franchise Tax Board to provide a notice of suspension to the applicable state governmental licensing entity and to mail a notice of suspension to the licensee, and would provide that the suspension be canceled upon compliance with the tax obligation. The bill would require the Franchise Tax Board to meet certain requirements and would make related changes. The bill would authorize a state governmental licensing entity, as specified, to impose a fee on a licensee with a suspended license in an amount necessary to cover its administrative costs. The bill would make implementation of its provisions contingent upon appropriation of funds for that purpose in the annual Budget Act.

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

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

- 1 SECTION 1. Section 31 of the Business and Professions Code
- 2 is amended to read:
- 3 31. (a) As used in this section, “board” means any entity listed
- 4 in Section 101, the entities referred to in Sections 1000 and 3600,
- 5 the State Bar, the Department of Real Estate, and any other state
- 6 agency that issues a license, certificate, or registration authorizing
- 7 a person to engage in a business or profession.
- 8 (b) Each applicant for the issuance or renewal of a license,
- 9 certificate, registration, or other means to engage in a business or
- 10 profession regulated by a board who is not in compliance with a
- 11 judgment or order for support shall be subject to Section 17520 of
- 12 the Family Code.
- 13 (c) “Compliance with a judgment or order for support,” has the
- 14 meaning given in paragraph (4) of subdivision (a) of Section 17520
- 15 of the Family Code.
- 16 (d) Each licensee who has not paid any applicable state income
- 17 tax, including interest, penalties, and other fees, shall be subject
- 18 to Section 19265 of the Revenue and Taxation Code.

1     ~~SEC. 2.— Section 7145.5 of the Business and Professions Code~~  
2     ~~is amended to read:~~

3     ~~7145.5. (a) The registrar may refuse to issue, reinstate,~~  
4     ~~reactivate, or renew a license or may suspend a license for the~~  
5     ~~failure of a licensee to resolve all outstanding final liabilities, which~~  
6     ~~include taxes, additions to tax, penalties, interest, and any fees that~~  
7     ~~may be assessed by the board, the Department of Industrial~~  
8     ~~Relations, the Employment Development Department, or the~~  
9     ~~Franchise Tax Board.~~

10    ~~(1) Until the debts covered by this section are satisfied, the~~  
11    ~~qualifying person and any other personnel of record named on a~~  
12    ~~license that has been suspended under this section shall be~~  
13    ~~prohibited from serving in any capacity that is subject to licensure~~  
14    ~~under this chapter, but shall be permitted to act in the capacity of~~  
15    ~~a nonsupervising bona fide employee.~~

16    ~~(2) The license of any other renewable licensed entity with any~~  
17    ~~of the same personnel of record that have been assessed an~~  
18    ~~outstanding liability covered by this section shall be suspended~~  
19    ~~until the debt has been satisfied or until the same personnel of~~  
20    ~~record disassociate themselves from the renewable licensed entity.~~

21    ~~(b) The refusal to issue a license or the suspension of a license~~  
22    ~~as provided by this section shall be applicable only if the registrar~~  
23    ~~has mailed a notice preliminary to the refusal or suspension that~~  
24    ~~indicates that the license will be refused or suspended by a date~~  
25    ~~certain. This preliminary notice shall be mailed to the licensee at~~  
26    ~~least 60 days before the date certain.~~

27    ~~(c) (1) In the case of outstanding final liabilities assessed by~~  
28    ~~the Franchise Tax Board, this section shall be operative within 60~~  
29    ~~days after the Contractors' State License Board has provided the~~  
30    ~~Franchise Tax Board with the information required under Section~~  
31    ~~30, relating to licensing information that includes the federal~~  
32    ~~employee identification number or social security number.~~

33    ~~(2) All versions of the application for contractors' licenses shall~~  
34    ~~include, as part of the application, an authorization by the applicant,~~  
35    ~~in the form and manner mutually agreeable to the Franchise Tax~~  
36    ~~Board and the board, for the Franchise Tax Board to disclose the~~  
37    ~~tax information that is required for the registrar to administer this~~  
38    ~~section. The Franchise Tax Board may from time to time audit~~  
39    ~~these authorizations.~~

1 ~~(d) This section shall not be interpreted to conflict with the~~  
2 ~~suspension of a license pursuant to Section 19265 of the Revenue~~  
3 ~~and Taxation Code.~~

4 ~~SEC. 3.~~

5 *SEC. 2.* Section 19265 is added to the Revenue and Taxation  
6 Code, to read:

7 19265. (a) (1) (A) State governmental licensing entities, as  
8 defined in paragraph (4) of subdivision (e), shall provide to the  
9 Franchise Tax Board the name and social security number or  
10 federal taxpayer identification number, as applicable, of each  
11 licensee of that state governmental licensing entity.

12 (B) State governmental licensing entities shall provide to the  
13 Franchise Tax Board the information described in subparagraph  
14 (A) at a time that the Franchise Tax Board may require.

15 (2) If any licensee has failed to pay taxes, including any  
16 penalties, interest, and any applicable fees, imposed under Part 10  
17 (commencing with Section 17001), Part 11 (commencing with  
18 Section 23001), or this part, for which a notice of state tax lien has  
19 been recorded in any county recorder’s office in this state, pursuant  
20 to Chapter 14 (commencing with Section 7150) of Division 7 of  
21 Title 1 of the Government Code, the Franchise Tax Board shall  
22 mail a preliminary notice of suspension to the licensee indicating  
23 that the license will be suspended by a date certain, which shall  
24 be no earlier than ~~60~~ 150 days after the mailing of the preliminary  
25 notice of suspension, unless prior to the date certain the licensee  
26 pays the unpaid taxes or enters into an installment payment  
27 agreement, as described in Section 19008, to satisfy the unpaid  
28 taxes. The preliminary notice of suspension shall also advise the  
29 licensee of the opportunity to request deferral or cancellation of a  
30 suspension pursuant to subdivision (b).

31 (3) If any licensee subject to paragraph (2) fails to pay the unpaid  
32 taxes or to enter into an installment payment agreement, as  
33 described in Section 19008, to satisfy the unpaid taxes prior to the  
34 date certain provided in the preliminary notice of suspension, his  
35 or her license shall be automatically suspended by operation of  
36 this section, except as provided in subdivision (b), and the  
37 Franchise Tax Board shall provide a notice of suspension to the  
38 applicable state governmental licensing entity and shall mail a  
39 notice of suspension to the licensee. The rights, powers, and  
40 privileges of any licensee whose license has been suspended

1 pursuant to this section shall be subject to the same prohibitions,  
2 limitations, and restrictions as if the license were suspended by  
3 the state governmental licensing entity that issued the license.

4 (4) Upon compliance by the licensee with the tax obligation,  
5 either by payment of the unpaid taxes or entry into an installment  
6 payment agreement, as described in Section 19008, to satisfy the  
7 unpaid taxes, a suspension pursuant to this subdivision shall be  
8 canceled. The Franchise Tax Board shall, within 10 business days  
9 of compliance by the licensee with the tax obligation, provide a  
10 notice of cancellation to the state governmental licensing entity  
11 and mail a notice of cancellation to the licensee indicating that the  
12 unpaid taxes have been paid or that an installment payment  
13 agreement, as described in Section 19008, has been entered into  
14 to satisfy the unpaid taxes and that the suspension has been  
15 canceled.

16 (5) If a license is not suspended, or if the suspension of a license  
17 is canceled, based on the licensee entering into an installment  
18 payment agreement as described in Section 19008, and the licensee  
19 fails to comply with the terms of the installment payment  
20 agreement, that license shall be suspended as of the date that is 30  
21 days after the date of termination of that installment payment  
22 agreement. If a license is suspended pursuant to this paragraph,  
23 the Franchise Tax Board shall provide notice of suspension to the  
24 applicable state governmental licensing entity and mail a notice  
25 of suspension to the licensee.

26 (b) (1) The Franchise Tax Board may defer or cancel any  
27 suspension authorized by this section if a licensee would experience  
28 financial hardship. The Franchise Tax Board shall, if requested by  
29 the licensee in writing, provide for an administrative hearing to  
30 determine if the licensee would experience financial hardship from  
31 the suspension of his or her license.

32 (2) The request for a hearing specified in paragraph (1) shall be  
33 made in writing within 30 days from the mailing date of the  
34 preliminary notice described in subdivision (a).

35 (3) The Franchise Tax Board shall conduct a hearing within 30  
36 days after receipt of a request pursuant to paragraph (1), unless  
37 the Franchise Tax Board postpones the hearing, upon a showing  
38 of good cause by the licensee, in which case a suspension pursuant  
39 to subdivision (a) shall be deferred until the hearing has been  
40 completed.

1 (4) A licensee seeking relief under this subdivision shall only  
2 be entitled to relief described in paragraph (1) if the licensee  
3 provides the Franchise Tax Board with financial documents that  
4 substantiate a financial hardship, and agrees to an installment  
5 payment arrangement.

6 (5) If the deferral of a suspension of a license under this  
7 subdivision is no longer operative, that license shall be suspended  
8 as of the date that is 30 days after the date the deferral is no longer  
9 operative. If a license is suspended pursuant to this paragraph, the  
10 Franchise Tax Board shall provide notice of suspension to the  
11 applicable state governmental licensing entity and mail a notice  
12 of suspension to the licensee.

13 (c) Notwithstanding any other provision of law, a state  
14 governmental licensing entity may, with the approval of the  
15 appropriate department director or governing body, impose a fee  
16 on licensees whose license has been suspended as described in  
17 subdivision (a). The fee shall not exceed the amount necessary for  
18 the licensing entity to cover its costs in carrying out the provisions  
19 of this section. Fees imposed pursuant to this section shall be  
20 deposited in the fund in which other fees imposed by the state  
21 governmental licensing entity are deposited and shall be available  
22 to that entity upon appropriation in the annual Budget Act.

23 (d) The process described in subdivision (b) shall constitute the  
24 sole administrative remedy for contesting the suspension of a  
25 license under this section. The procedures in the administrative  
26 adjudication provisions of the Administrative Procedure Act  
27 (Chapter 4.5 (commencing with Section 11400) and Chapter 5  
28 (commencing with Section 11500) of Part 1 of Division 3 of Title  
29 2 of the Government Code) shall not apply to the suspension of a  
30 license pursuant to this section.

31 (e) For purposes of this section and Section 19571, the following  
32 definitions shall apply:

33 (1) "Financial hardship" means financial hardship within the  
34 meaning of Section 19008, as determined by the Franchise Tax  
35 Board, where suspension of a license will result in the licensee  
36 being financially unable to pay any part of the amount described  
37 in subdivision (a) and the licensee is unable to qualify for an  
38 installment payment arrangement as provided for by Section 19008.  
39 In order to establish the existence of a financial hardship, the  
40 licensee shall submit any information, including information related

1 to reasonable business and personal expenses, requested by the  
2 Franchise Tax Board for the purpose of making that determination.

3 (2) “License” includes a certificate, registration, or any other  
4 authorization to engage in a profession or occupation issued by a  
5 state governmental licensing entity.

6 (3) “Licensee” means an individual authorized by a license,  
7 certificate, registration, or other authorization to engage in a  
8 profession or occupation issued by a state governmental licensing  
9 entity.

10 (4) “State governmental licensing entity” means any entity listed  
11 in Section 101, 1000, or 19420 of the Business and Professions  
12 Code, the office of the Attorney General, the Department of  
13 Insurance, the State Bar of California, the Department of Real  
14 Estate, and any other state agency, board, or commission that issues  
15 a license authorizing an individual to engage in a profession or  
16 occupation. “State governmental licensing entity” shall not include  
17 the Department of Motor Vehicles *or the Contractor’s State*  
18 *License Board.*

19 (f) Implementation of this section shall be contingent on the  
20 appropriation of funds for the purposes of this section in the annual  
21 Budget Act.

22 ~~SEC. 4.~~

23 *SEC. 3.* Section 19571 is added to the Revenue and Taxation  
24 Code, to read:

25 19571. (a) The Franchise Tax Board may disclose to state  
26 governmental licensing entities information regarding suspension  
27 of a license pursuant to Section 19265.

28 (b) Neither the state governmental licensing entity, nor any  
29 officer, employee, or agent, or former officer, employee, or agent  
30 of a state governmental licensing entity, may disclose or use any  
31 information obtained from the Franchise Tax Board, pursuant to  
32 this section, except to inform the public of the suspension of a  
33 license pursuant to Section 19265.

34 (c) For purposes of this section, the definitions in Section 19265  
35 shall apply.

36 ~~SEC. 5.~~

37 *SEC. 4.* The Legislature hereby finds and declares the  
38 following:

39 (a) It is the intent of the Legislature that, consistent with the  
40 decision in *Gallo v. United States District Court* (9th Cir. 2003)

1 349 F.3d 1169, cert. den. (2004) 541 U.S. 1073, the suspension of  
2 a professional or occupational license pursuant to this act for failure  
3 to pay delinquent taxes is a legislative act, for which due process  
4 is satisfied by the legislative notice and hearing procedures.

5 (b) To prevent financial hardship, Section 19265 of the Revenue  
6 and Taxation Code, as added by this act, grants a delinquent  
7 taxpayer the opportunity for an additional hearing for financial  
8 hardship prior to the suspension of a professional or occupational  
9 license.

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belatedly filed his returns, he brought this action against the Missouri Director of Revenue (“the Director”) and the Missouri Board of the Healing Arts (“the Board”). The lawsuit seeks a declaration that section 324.010 violated several of Crum’s rights under federal and Missouri law, including his rights to due process and equal protection, and that the revocation of his license was void. He also seeks damages and a mandatory injunction directing the Board to expunge all records of the revocation. The district court<sup>1</sup> granted the defendants’ motion for summary judgment and dismissed the case. Crum appeals, and we affirm.

## I.

Crum has been licensed to practice medicine in Missouri since 1998. Although he knew he was required to file income tax returns with the Missouri Department of Revenue (“the Department”), he did not do so for tax years 2000, 2001, and 2002. He later explained that he did not consider filing his returns to be a “priority,” because he believed that he was entitled to a refund for each year.

In 2003, the Missouri General Assembly passed House Bill 600, section 2 of which was codified as Missouri Revised Statutes section 324.010. *See* 2003 Mo. Legis. Serv. H.B. 600, § 2 (West). Section 324.010 requires many Missouri licensing boards to report the names and social security numbers of licensees to the Director. If the Director discovers that any licensee is delinquent on state taxes or has failed to file a tax return in the last three years, the Director must send the licensee a notice indicating this delinquency or failure. As of 2003, unless the Director could verify that the licensee had made arrangements to remedy the delinquency or failure to file,

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<sup>1</sup>The Honorable Nanette Laughrey, United States District Judge for the Western District of Missouri.

the licensee's license was revoked ninety days after the mailing of the notice.<sup>2</sup> Other sections of House Bill 600 provided for sanctions on state employees, judges, and elected state officials who fail to pay taxes or file their tax returns. *See* 2003 Mo. Legis. Serv. H.B. 600, § 1 (West), codified as Mo. Rev. Stat. § 105.262 (Supp. 2003).

In late 2003, the Board sent Crum a license renewal packet containing a note that explained the operation of section 324.010. On January 26, 2004, Crum signed a license renewal application included in the packet and mailed it to the Board.

On January 21, 2004, shortly before Crum submitted his renewal application, the Department mailed Crum notices that he had not filed his state income tax returns for 2000, 2001, and 2002. These notices also stated that if he did not file his returns within ninety days, his Missouri medical license would be revoked by operation of law.

The Department received only an irrelevant federal tax form in response, with no explanation of Crum's failure to file returns or why he had sent the federal form. The Department then sent Crum another letter on February 10, 2004, explaining that it still required his Missouri tax returns with all schedules and W-2 forms.

After receiving no further response from Crum, on April 7, 2004, the Director mailed Crum "Notices of Deficiency" for tax years 2000, 2001, and 2002. These notices calculated Crum's total tax liability at \$47,679.15, including interest. They represented Crum's final notice to pay the taxes, and advised Crum that he could object by filing a protest with the Department. They also informed Crum that he must respond in some form by April 20. If he did not respond, the Notices of Deficiency automatically would become a final assessment of his tax liability after sixty days,

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<sup>2</sup> Section 324.010 has since been amended so that licenses are now suspended rather than revoked. *See* 2004 Mo. Legis. Serv. H.B. 978 (West).

without any further notice to him. Crum acknowledges that he received these deficiency notices and that he made no effort to protest or appeal.

Finally, on June 25, 2004, the Director sent a Certificate of Non-Compliance to the Board. The Certificate indicated that ninety days had elapsed since the Department informed Crum that he had failed to file tax returns, and that Crum had not remedied this failure. Accordingly, the Certificate concluded, "Pursuant to Section 324.010, RSMo., the professional license . . . shall be REVOKED." The Board then mailed Crum a letter on June 29, 2004, informing him that his medical license was "REVOKED by operation of law as of July 21, 2004." After Crum's license was revoked on July 21, the Board reported this revocation to the Healthcare Integrity and Protection Data Bank, the National Practitioner Data Bank, and the Federation of State Medical Boards of the United States.

Crum claims that before he received the June 29 letter from the Board, he was unaware that his license could be revoked if he failed to file his tax returns. Nonetheless, he apparently took no action in response to this letter until July 21, when he called the Department to request an extension of time to file his returns and was informed that the Department did not grant extensions for House Bill 600 accounts. Crum did not actually file his returns until September 30, 2004, when he submitted them in person at the Department of Revenue's Jefferson City office. When he did so, the Department issued Crum a Certificate of Tax Compliance. Crum then presented this certificate to the Board, which reinstated his license the same day.

## II.

Crum claims that section 324.010 deprives a licensee of property without due process of law, in violation of the Fourteenth Amendment and article I, section 10 of the Missouri Constitution. Generally speaking, these constitutional provisions prohibit the State from depriving a person of his property without notice and an

opportunity to be heard. *Jones v. Flowers*, 126 S. Ct. 1708, 1712 (2006); *Conseco Fin. Servicing Corp. v. Missouri Dept. of Revenue*, 195 S.W.3d 410, 415 (Mo. 2006). Crum contends that section 324.010 deprived him of a property right in his license, without either the requisite notice or opportunity to be heard. The defendants concede that Crum has a property interest in his license, but argue that section 324.010 provides sufficient notice and an opportunity for a hearing.

The Due Process Clause requires notice that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). It does not require a showing by the State that an interested party received actual notice, *Jones*, 126 S.Ct. at 1713, and “[n]otice by mail is ordinarily presumed to be constitutionally sufficient.” *Nunley v. Dep’t of Justice*, 425 F.3d 1132, 1136 (8th Cir. 2005).

Section 324.010 requires that the Department inform a licensee of his tax deficiency and then wait ninety days – to allow the licensee to cure the deficiency – before a license is revoked. Crum received notice three times: the January notices, the February letter, and the April notices. He concedes that the notices were sent to the correct address and acknowledges receiving the April notices. Although he suggests that his staff may have misplaced the other notices, he has not identified any unusual circumstances that would have made notice by mail inadequate. *Cf. Jones*, 126 S.Ct. at 1716. Thus, the State repeatedly provided Crum with notice that he had failed to file his tax returns and specifically gave notice in the January mailings that this failure could lead to the revocation of his license. Crum therefore received constitutionally adequate notice.

Crum also claims that the State could not revoke his license until he received a hearing. The State satisfied the requirements of due process, however, by giving Crum an *opportunity* for a hearing at a meaningful time and in a meaningful manner.

*See Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The tax deficiency notices mailed to Crum in April explained how he could request a hearing to challenge the Department's assessment. Crum never received such a hearing simply because he never requested one.

We also reject Crum's argument that he was constitutionally entitled to opportunities for two hearings – one to challenge the tax deficiency and another to challenge the revocation of his license. So long as one hearing will provide the affected individual with a meaningful opportunity to be heard, due process does not require two hearings on the same issue. *See Goldberg v. Kelly*, 397 U.S. 254, 267 n.14 (1970); *cf. Mitchell v. Fankhauser*, 375 F.3d 477, 481 (6th Cir. 2004) (holding a post-termination hearing was required where a pre-termination hearing was insufficiently meaningful). Both the Director's finding of a tax deficiency and the subsequent license revocation had the same factual predicate – Crum's failure to file his tax returns. A license revocation hearing could add nothing to a tax deficiency hearing in this case, because the outcome of the tax hearing would necessarily determine the outcome of the revocation hearing. Crum had notice that he could lose his license if he failed to file his returns, and he was thus apprised of the matters that would be at stake in a tax deficiency hearing. Because Crum received both notice and an opportunity for a hearing, he was not deprived of property without due process of law.

Crum also claims that section 324.010 infringes his right to equal protection of the laws under the Fourteenth Amendment and article I, section 2 of the Missouri Constitution. He argues that section 324.010 violates equal protection in two ways. First, the section does not apply to certain professional licensees, such as security brokers and teachers, or to practitioners of unlicensed professions. Second, state employees, judges, and certain elected officials face different sanctions if they fail to file their returns. State employees, for example, are terminated. *See Mo. Rev. Stat. § 105.262* (Supp. 2003).

Neither of these distinctions violates the constitutional guarantee of equal protection. As Crum has not shown that he is a member of a suspect class or that a fundamental right is at issue, his equal protection claim is analyzed under the rational basis test. *Vacco v. Quill*, 521 U.S. 793, 799 (1997). Under that analysis, “we presume legislation is valid and will sustain it if the classification drawn by the statute is rationally related to a legitimate [governmental] interest.” *Gilmore v. County of Douglas*, 406 F.3d 935, 939 (8th Cir. 2005) (internal quotation omitted). A statutory distinction will not be set aside “if any state of facts reasonably may be conceived to justify it.” *Bowen v. Gilliard*, 483 U.S. 587, 601 (1987) (internal quotation omitted); *see also Snodgras v. Martin & Bayley, Inc.*, 204 S.W.3d 638, 641 (Mo. 2006).

Section 324.010 satisfies this deferential standard. As the district court noted, several plausible reasons exist for imposing higher penalties on licensed professionals who shirk their Missouri tax obligations than on those without licenses. The General Assembly may have perceived licensed professionals as more financially secure and better educated, thus increasing the amount of taxes they likely owe and making their neglect less excusable. Similarly, since state boards already monitor licensees, limiting section 324.010 to licensees may have been a more efficient way to increase tax compliance than a statute that applied more broadly. The General Assembly’s decision to sanction judges and elected officials differently from licensees is readily explained by the limitations the Missouri Constitution places on the removal of judges and elected officials. *See Missouri Const. art. V, § 24.3; art. VII, § 12.* The differing procedure for state employees – which is arguably more onerous than that faced by licensees, *see Mo. Rev. Stat. § 105.262.2* – can rationally be explained by the State’s special interest in ensuring that its own employees comply with the tax code.

We also reject Crum’s vagueness challenge. A statute is impermissibly vague if it “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” or “authorizes or even encourages arbitrary and discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *see also*

*State v. Allen*, 905 S.W.2d 874, 877 (Mo. 1995). The conduct prohibited by section 324.010 is plain from its language – failing to pay taxes or file a tax return when obligated to do so under Missouri law. Section 324.010 does not encourage arbitrary or discriminatory enforcement. The Director is required to identify and notify those licensees who have failed to fulfill these tax obligations. If these licensees fail to remedy this failure, then the revocation of their license is automatic. The Director retains no discretion that might lead to arbitrary enforcement.

### III.

Crum also brought a series of challenges to section 324.010 based exclusively on Missouri law. We consider each in turn.

First, Crum contends that the license revocation was void because he was denied his right to appeal the Director’s finding that he had failed to file his tax returns. Section 621.050.1 of the Missouri Revised Statutes states that “[e]xcept as otherwise provided by law, any person or entity shall have the right to appeal to the administrative hearing commission from any finding, order, decision, assessment or additional assessment made by the director of revenue.” Any decision of the Director also must provide the affected party notice of this right to appeal. Mo. Rev. Stat. § 621.050.1 (2000). Crum argues that the “Certificate of Non-Compliance” that the Director sent to the Board on June 25, 2004, was such a “finding, order, [or] decision,” and that the Director violated section 621.050.1, because Crum was never informed of his right to appeal the decision.

We disagree. Before issuing the Certification of Non-Compliance, the Director sent Crum three tax deficiency notices on April 7, 2004, each of which explained his right to appeal. These findings of tax deficiency were the last “findings” the Director made for the purposes of section 621.050. The tax deficiency notices informed Crum that if he did not appeal the findings, they would become a final assessment of his tax

deficiency, by operation of law, sixty days after they were mailed. *See* Mo. Rev. Stat. § 143.621 (2000). Since Crum did not appeal the deficiency notices, the assessments became final on June 6, and no further findings by the Director were necessary. Accordingly, Crum’s tax deficiency already had been established under Missouri law when the Director issued the Certificate of Non-Compliance on June 25. The Certificate merely recognized this deficiency’s existence, and Crum was not entitled to appeal the issuance of the Certificate.

Second, Crum argues that his license was never revoked, because the Director did not have legal authority to revoke his license and the Board never voted to do so. We conclude that the license was properly revoked. As the June 29 letter from the Board stated, Crum’s license was revoked “by operation of law.” Once initial notice is given, section 324.010 requires no action by either the Director or the Board to revoke a license: “In case of such delinquency or failure to file, the licensee’s license shall be revoked within ninety days after notice of the such delinquency or failure to file.” After the Director informed Crum of his failure to file, and ninety days elapsed without Crum taking action to correct the deficiency, the license was automatically revoked by law. The Director and the Board merely recognized this revocation. Crum contends that *Cantrell v. State Bd. of Registration for the Healing Arts*, 26 S.W.3d 824 (Mo. Ct. App. 2000), holds that a license cannot be revoked without action by the Board, but *Cantrell* is inapposite. *Cantrell* was decided under sections 334.100 and 621.045, which, as we discuss below, apply to different situations than section 324.010, and establish a different procedure for revocation.

Third, Crum argues that his license could not be revoked without a finding by the Administrative Hearing Commission that cause existed to revoke it. Crum bases this argument on sections 334.100 and 621.045 of the Missouri Revised Statutes. Section 621.045 states: “The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in those cases when, under the law, a license issued by [the Board or other state licensing board] may be revoked

or suspended . . . .” Section 334.100 in turn lists numerous grounds on which licensees may be disciplined, including drug abuse, fraud, and violation of various professional standards, but it does not include tax delinquency or the failure to file tax returns. Mo. Rev. Stat. § 334.100.2 (2000). It then provides that “[u]pon a finding by the administrative hearing commission that the grounds . . . for disciplinary action are met, the board may . . . revoke the person’s license.” Mo. Rev. Stat. § 334.100.4 (2000). Based on this statutory scheme, the Supreme Court of Missouri held that “[t]he Board may discipline a physician *only* if the Administrative Hearing Commission first finds cause for discipline.” *Bodenhausen v. Mo. Bd. of Registration for the Healing Arts*, 900 S.W.2d 621, 622 (Mo. 1995). Because Crum’s license was revoked without a finding by the Administrative Hearing Commission, he argues that the revocation violated sections 334.100 and 621.045.

Crum is incorrect, however, because he reads sections 324.010, 334.100, and 621.045 in isolation. As the district court noted, Missouri law requires courts to read statutes *in pari materia*, harmonizing sections covering the same subject matter if possible. *See, e.g., Bachtel v. Miller County Nursing Home Dist.*, 110 S.W.3d 799, 801 (Mo. 2003). When doing so, courts are not to interpret statutes in a “hyper-technical” manner, but rather in a manner that is “reasonable, logical, and . . . give[s] meaning to the statutes.” *See In re Boland*, 155 S.W.3d 65, 67 (Mo. 2005). Thus, if possible, the provisions of sections 334.100 and 621.045 must be reconciled with section 324.010’s requirement that the license of a licensee who has not filed his tax return be revoked by operation of law. When a general and a specific statute cannot be fully reconciled, “the more specific prevails over the more general.” *KC Motorcycle Escorts, L.L.C. v. Easley*, 53 S.W.3d 184, 187 (Mo. Ct. App. 2001).

The district court correctly reconciled the statutes here, holding that a hearing before the Administrative Hearing Commission was not required to revoke Crum’s license. A hearing before the Administrative Hearing Commission is required when a licensee has been accused of one of the disciplinary infractions listed in

section 334.100. There is practical reason for this statutory directive: The Administrative Hearing Commission must determine whether the licensee is in fact guilty of one of the infractions listed in section 334.100. No such findings are necessary, however, when a license is revoked under section 324.010. A license cannot be revoked under section 324.010 until the Director has found that the licensee has failed to pay his taxes or to file his tax return, but the licensee is entitled to appeal this finding to the Administrative Hearing Commission when it is made. We do not think the Missouri General Assembly intended to grant a licensee the opportunity to present exactly the same factual question to the Administrative Hearing Commission a second time before his license is revoked. If the General Assembly had intended to subject license revocations for tax delinquency and failure to file to the requirements of sections 334.100 and 621.045, it could simply have added these wrongs to section 334.100's preexisting list of infractions, instead of establishing a new, separate revocation procedure under section 324.010. Therefore, we hold that the State was not required to conduct a hearing before the Administrative Hearing Commission before Crum's license was revoked.<sup>3</sup>

Crum next contends that section 324.010 is "retrospective in its operation," and thus unconstitutional under article I, section 13 of the Missouri Constitution. His argument is premised on the fact that section 324.010 was passed in 2003, while he was sanctioned for failing to file tax returns in 1999, 2000, and 2001.

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<sup>3</sup>Crum raises no argument that he remedied or arranged to remedy his failure to file tax returns within ninety days of receiving notice of this failure. He does not contend, for example, that the Director failed to "verify" such remedial action in accordance with section 324.010, or that the revocation of his license occurred despite such verification by the Director, in contravention of section 324.010. We need not address, therefore, whether a licensee in one of those situations would have an opportunity for administrative review or judicial review pursuant to section 621.050 or section 536.150, given that the issue in dispute would be different from the question here – whether the Director was correct in the first instance to find that the licensee failed to file his tax returns.

Under Missouri law, a law is generally retrospective only if it impairs a “vested right.” *See La-Z-Boy Chair Co. v. Dir. of Econ. Dev.*, 983 S.W.2d 523, 525 (Mo. 1999). An individual does not have a vested right to be free from suit or sanction for a legal violation until the statute of limitations for that violation has expired. *See Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. 1993). Missouri has no statute of limitations for the failure to file a tax return. “If no return is filed . . . a notice of deficiency may be mailed to the taxpayer at any time.” Mo. Rev. Stat. § 143.711.3 (2000). Thus, Crum had no vested right to be free from sanction for his failure to file his tax returns, and punishing him for his failure was not unconstitutionally retrospective.

For all of these reasons, we conclude that the State of Missouri properly revoked Crum’s medical license for non-payment of taxes. Thus, contrary to Crum’s claims, this revocation was a “final adverse action” within the meaning of 42 U.S.C. § 1320a-7e(g)(1)(A)(iii)(II) (2000), and the revocation was properly reported under § 1320a-7e(b)(1) to the Healthcare Integrity and Protection Data Bank, the National Practitioner Data Bank, and the Federation of State Medical Boards of the United States.

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For the foregoing reasons, the judgment of the district court is affirmed.

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**Family Code Section 17520.** (a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) "Certified list" means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.

(5) "License" includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) "Licensee" means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business,

occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles, any person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, "licensee" includes any individual who is either listed on the license or who qualifies for the license.

(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.

(c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies.

(e) (1) Promptly after receiving the certified consolidated list from the department, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the department. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's

licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The department may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant's name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the

applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

- (1) Judicial review of the local child support agency's decision not to issue a release.
- (2) A judicial determination of compliance.
- (3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) (A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

(B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

(C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (l) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(l) The department shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support. Any board that has received a release from the local child support agency pursuant to this subdivision shall process the release within five business days of its receipt.

If the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support

agency may notify the board, the obligor, and the department in a format prescribed by the department that the obligor is not in compliance.

The department may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed.

The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The department may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section.

These agreements shall provide that boards shall reimburse the department for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

- (1) The number of delinquent obligors certified by district attorneys under this section.
- (2) The number of support obligors who also were applicants or licensees subject to this section.
- (3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.
- (4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) (1) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(2) Notwithstanding any other provision of law, the suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

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**AB 612 (Beall) has been substantively amended. The new version of the bill is not within the jurisdiction of the Board.**

**Revised bill attached.**

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AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 612**

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**Introduced by Assembly Member Beall**  
*(Coauthors: Assembly Members Ma, Smyth, and Torrico)*  
*(Coauthor: Senator Yee)*

February 25, 2009

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An act to add Section ~~3005~~ 3027.3 to the Family Code, relating to custody and visitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Beall. Custody and visitation: nonscientific theories.

Existing law governs the determination of child custody and visitation with a child in contested proceedings. Existing law provides for the use of court-appointed investigators, as defined, including court-appointed evaluators directed by the court to conduct a child custody investigation in those proceedings. Existing law authorizes the court to appoint a child custody evaluator if the court determines it is in the best interest of the child. If directed by the court, the evaluator is required to file a written confidential report on his or her evaluation. The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report. *Existing law requires all child custody evaluators to have completed specified training relating to domestic violence and child abuse.* Existing law requires the Judicial Council to adopt standards for court-connected evaluations, investigations, and assessments related to child custody.

*Existing law also requires the Judicial Council to formulate rules of court that establish education, experience, and training requirements for child custody evaluators and to establish related forms, as specified.*

~~This bill would prohibit a court from relying upon a nonscientific theory, as defined, submitted to the court by a court-appointed or court-connected professional mediator, evaluator, or other person in making a determination regarding the best interest of, child custody of or visitation with a child. The bill would provide that a report that relies on a nonscientific theory would not be admissible into evidence in any proceeding to determine custody or visitation and would make a related change. The bill would also prohibit a court from relying upon any conclusion by an investigator or evaluator that is not supported by observed actions, behaviors, or conduct of a parent that may affect or may impact the child's best interest. The bill would prohibit those providing training approved by the Judicial Council, including the Judicial Council, from training professionals to rely on unscientific theories.~~

*This bill would provide that a child's expression of significant hostility toward a parent may be admitted as possible corroborating evidence that the parent has abused the child. The bill would prohibit a court from concluding that an accusation of child physical or sexual abuse against a parent is false based solely on the child's expression of significant hostility toward the parent. The bill would also require that, on and after January 1, 2010, these provisions be included in all training required of child custody evaluators, and would, consequently, require the Judicial Council to revise training standards for child custody evaluators. The bill would include a statement of legislative intent.*

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

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

- 1     *SECTION 1. It is the intent of the Legislature that courts strive*
- 2     *to protect the safety and best interest of children in custody matters*
- 3     *by ensuring that allegations of physical and sexual abuse are*
- 4     *investigated appropriately or referrals are made to the child*
- 5     *welfare services agency.*
- 6     *SEC. 2. Section 3027.3 is added to the Family Code, to read:*
- 7     *3027.3. (a) A child's expression of significant hostility toward*
- 8     *a parent may, in the discretion of the court, be admitted as possible*

1 corroborating evidence that the parent has abused the child. The  
2 court may not conclude that an accusation of child physical or  
3 sexual abuse against a parent is false based solely on the child's  
4 expression of significant hostility toward the parent.

5 (b) On and after January 1, 2010, the provisions of this section  
6 shall be included in all training required pursuant to Section  
7 3110.5.

8 SECTION 1. ~~(a) The Legislature finds and declares that it is~~  
9 ~~the policy of the State of California to ensure that all children are~~  
10 ~~safe from physical and sexual harm.~~

11 ~~(b) It is also the intent of the Legislature to ease the burden on~~  
12 ~~family court resources caused by reliance on nonscientific theories~~  
13 ~~in family court proceedings, resulting in unnecessary prolongation~~  
14 ~~of cases by discouraging proper investigation of crimes and shifting~~  
15 ~~the fact finding process away from determining whether children~~  
16 ~~are safe from physical and sexual abuse.~~

17 SEC. 2. Section 3005 is added to the Family Code, to read:

18 3005. ~~(a) As used in this chapter.~~

19 ~~(1) A "nonscientific theory" is one that is not consistent with~~  
20 ~~generally accepted clinical, forensic, scientific, diagnostic, or~~  
21 ~~medical standards, and does not meet the Kelly-Frye standards of~~  
22 ~~evidence.~~

23 ~~(2) An "alienation theory" is a nonscientific theory which is~~  
24 ~~based on the assumption that a child's refusal to visit with,~~  
25 ~~expression of hostility toward, or report of physical or sexual abuse~~  
26 ~~by a parent is caused or maliciously fabricated by the other parent.~~

27 ~~(b) A court may not rely upon a nonscientific theory, including,~~  
28 ~~but not limited to, an alienation theory, submitted to the court by~~  
29 ~~a court-appointed or court-connected professional mediator,~~  
30 ~~evaluator, or other person in determining the best interest of, or~~  
31 ~~custody or visitation arrangements for, children.~~

32 ~~(c) (1) A report that relies upon a nonscientific theory, including~~  
33 ~~an alienation theory, shall not be admissible into evidence in any~~  
34 ~~proceeding to determine custody or visitation.~~

35 ~~(2) Any report by an evaluator, investigator, or recommending~~  
36 ~~mediator to the court regarding the best interests of a child for~~  
37 ~~purposes of determining child custody or visitation shall not be~~  
38 ~~read or considered by the court until the parties stipulate to its~~  
39 ~~admissibility into evidence, or until a properly noticed evidentiary~~

1 ~~hearing is held at which the admissibility of the report is~~  
2 ~~established.~~

3 ~~(d) (1) A court may not rely upon any conclusion by an~~  
4 ~~investigator or evaluator that is not supported by observed actions,~~  
5 ~~behaviors, or conduct of a parent that may affect or may impact~~  
6 ~~the child's best interest.~~

7 ~~(2) Nothing in this section precludes a child custody investigator~~  
8 ~~or evaluator from interviewing parents and children, observing~~  
9 ~~parent-child interaction, speaking to collateral sources, consulting~~  
10 ~~with other professionals regarding psychological data, or using his~~  
11 ~~or her professional expertise to integrate data, assess and evaluate~~  
12 ~~psychological issues, or communicate the results of those analyses~~  
13 ~~to the court consistent with ethical and professional standards.~~

14 ~~(e) Those providing Judicial Council-approved training to~~  
15 ~~mediators, evaluators, investigators, judges, and other court-related~~  
16 ~~or court-connected professionals, including the Judicial Council,~~  
17 ~~may not train professionals to rely upon unscientific theories,~~  
18 ~~including, but not limited to, alienation theories.~~

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 681                      **VERSION:** INTRODUCED FEBRUARY 26, 2009

**AUTHOR:** HERNANDEZ                      **SPONSOR:** CAMFT

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** CONFIDENTIALITY OF MEDICAL INFORMATION: PSYCHOTHERAPY EXEMPTION

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### **Existing Law:**

- 1) Prohibits a health care provider from releasing information that specifically relates to a patient's participation in outpatient treatment with a psychotherapist unless the requester submits a written request, signed by the requester, that includes all the following information: (Civil Code § 56.104(a))
  - a) The specific information relating to patient's participation in outpatient treatment and the intended use or uses of the information;
  - b) The length of time during which the information will be kept before being destroyed or disposed of;
  - c) A statement that the information will not be used for any other purpose other than its intended use; and,
  - d) A statement that the person or entity requesting the information will destroy the information after the specified length of time.
- 2) Allows a psychotherapist to disclose medical information, if the psychotherapist in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. (CC § 56.10(c)(19))
- 3) Provides that a psychotherapist is not liable to warn and protect a potential victim from a patient's violent behavior unless the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. (CC § 43.92)
- 4) Provides, as to admissibility of evidence, an exemption to the patient-psychotherapist privilege if the psychotherapist has reasonable cause to believe that the patient is in such a mental or emotional state as to be dangerous to himself or to the person or property of another and the disclosure is necessary to prevent the threatened disclosure. (Evidence Code §1024)

**This Bill:** Allows a psychotherapist to disclose information related to the patient’s outpatient treatment, if the psychotherapist in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, without a written request, as specified in current law.

**Comment:**

1) **Author’s Intent.** According to the author, the California Confidentiality of Medical Information Act (CMIA) generally prohibits the disclosure of medical information. However, there are a number of exemptions, including the provision that allows a psychotherapist to release information on a patient that poses a serious danger to others. Moreover, under *Tarasoff v. Regents of University of California* ((1976) 17 Cal. 3d 425), the court found that a psychotherapist has a duty to exercise reasonable care to protect a foreseeable victim of danger. However, Civil Code Section 56.104 requires an elaborate and time-consuming request and notification process when a psychotherapist shares information relating to a patient’s participation in outpatient treatment. In situations requiring prompt action because of a “dangerous” patient, this written request process poses a significant impediment to protecting and warning a potential victim. This bill would exempt psychotherapists from the written request for information requirement in order to allow psychotherapist to exercise their duty to warn and protect a potential victim in a timely manner.

2) **Previous Legislation.** AB 1178 (Hernandez), Chapter 506, Statutes of 2007, permitted a provider of health care to disclose medical information when a psychotherapist had reasonable cause to believe that the patient was in such a mental or emotional condition as to be dangerous to himself or herself or to the person or property of another and that disclosure was necessary to prevent the threatened danger. The Board took a support position on this legislation.

3) **Support and Opposition.**

*Support:* California Association of Marriage and Family Therapists (sponsor)  
American Association for Marriage and Family Therapy, CA division  
American Federation of State, County and Municipal Employees,  
AFL-CIO  
California Psychiatric Association  
California Society for Clinical Social Work

*Opposition:* None on file

4) **History**

2009  
Apr. 15 From committee: Do pass, and re-refer to Com. on JUD. with recommendation: To Consent Calendar. Re-referred. (Ayes 19. Noes 0.) (April 14).  
Mar. 23 Referred to Coms. on HEALTH and JUD.  
Feb. 27 From printer. May be heard in committee March 29.  
Feb. 26 Read first time. To print.

**ASSEMBLY BILL**

**No. 681**

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**Introduced by Assembly Member Hernandez**

February 26, 2009

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An act to amend Section 56.104 of the Civil Code, relating to confidentiality of medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 681, as introduced, Hernandez. Confidentiality of medical information: psychotherapy.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor. However, existing law excepts from those provisions specified disclosures that are made for the purpose of diagnosis or treatment of a patient.

This bill would also except from those provisions disclosures that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

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

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

1 SECTION 1. Section 56.104 of the Civil Code is amended to  
2 read:

1 56.104. (a) Notwithstanding subdivision (c) of Section 56.10,  
2 except as authorized in paragraph (1) *and paragraph (19)* of  
3 subdivision (c) of Section 56.10, no provider of health care, health  
4 care service plan, or contractor may release medical information  
5 to persons or entities authorized by law to receive that information  
6 pursuant to subdivision (c) of Section 56.10, if the requested  
7 information specifically relates to the patient's participation in  
8 outpatient treatment with a psychotherapist, unless the person or  
9 entity requesting that information submits to the patient pursuant  
10 to subdivision (b) and to the provider of health care, health care  
11 service plan, or contractor a written request, signed by the person  
12 requesting the information or an authorized agent of the entity  
13 requesting the information, that includes all of the following:

14 (1) The specific information relating to a patient's participation  
15 in outpatient treatment with a psychotherapist being requested and  
16 its specific intended use or uses.

17 (2) The length of time during which the information will be  
18 kept before being destroyed or disposed of. A person or entity may  
19 extend that timeframe, provided that the person or entity notifies  
20 the provider, plan, or contractor of the extension. Any notification  
21 of an extension shall include the specific reason for the extension,  
22 the intended use or uses of the information during the extended  
23 time, and the expected date of the destruction of the information.

24 (3) A statement that the information will not be used for any  
25 purpose other than its intended use.

26 (4) A statement that the person or entity requesting the  
27 information will destroy the information and all copies in the  
28 person's or entity's possession or control, will cause it to be  
29 destroyed, or will return the information and all copies of it before  
30 or immediately after the length of time specified in paragraph (2)  
31 has expired.

32 (b) The person or entity requesting the information shall submit  
33 a copy of the written request required by this section to the patient  
34 within 30 days of receipt of the information requested, unless the  
35 patient has signed a written waiver in the form of a letter signed  
36 and submitted by the patient to the provider of health care or health  
37 care service plan waiving notification.

38 (c) For purposes of this section, "psychotherapist" means a  
39 person who is both a "psychotherapist" as defined in Section 1010

1 of the Evidence Code and a “provider of health care” as defined  
2 in subdivision (i) of Section 56.05.

3 (d) This section does not apply to the disclosure or use of  
4 medical information by a law enforcement agency or a regulatory  
5 agency when required for an investigation of unlawful activity or  
6 for licensing, certification, or regulatory purposes, unless the  
7 disclosure is otherwise prohibited by law.

8 (e) Nothing in this section shall be construed to grant any  
9 additional authority to a provider of health care, health care service  
10 plan, or contractor to disclose information to a person or entity  
11 without the patient’s consent.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 1113                      **VERSION:** INTRODUCED FEBRUARY 27, 2009

**AUTHOR:** BONNIE LOWENTHAL              **SPONSOR:** CAMFT

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** DEPARTMENT OF CORRECTIONS AND REHABILITATION: MARRIAGE AND FAMILY THERAPIST INTERN EXPERIENCE

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### **Existing Law:**

- 1) Requires any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state or to supervise or provide consultation on these services in the state correctional system to be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state, with specified exemptions. (PC §5068.5(a))
- 2) Exempts from the licensure requirement for mental health practitioners employed with the state correctional system, persons employed as psychologists or persons employed to supervise or provide consultation on the diagnostic or treatment services, as of specified dates, as long as they continue in employment in the same class and in the same department. (PC §5068.5(b))
- 3) Allows licensure requirements for mental health practitioners employed with the state correctional system to be waived for a person to gain qualifying experience for licensure as a psychologist or clinical social worker. (PC §5068.5(c))

**This Bill:** Allows licensure requirements for mental health practitioners employed with the state correctional system to be waived for a person to gain qualifying experience for licensure as a marriage and family therapist. (PC §5068.5(c))

### **Comment:**

- 1) **Author's Intent.** Marriage and family therapists currently provide mental health services in state facilities. While the current law governing correctional facilities allows a waiver of the licensure requirements for trainees in psychology and clinic social work, the waiver does not currently extend to MFT trainees. According to the author's office, this waiver should also apply to MFTs, "whose training and education are comparable to LCSWs."
- 2) **Background.** The California Department of Corrections and Rehabilitation is suffering from a severe shortage of mental health programs throughout the State. According to the author, the Division of Correctional Health Care Services recommends proposing a new classification for MFTs within Corrections to allow MFTs to apply and be considered in the hiring process, thereby increasing the candidate pool, ultimately decreasing vacancies in this classification.

3) **Previous Legislation and Board Action.** Identical legislation was introduced last year, AB 2652 (Anderson). The Board's Policy and Advocacy Committee recommended to the Board to support this legislation, however, the bill was no longer viable at the time the Board considered a position on the bill, and therefore no formal position was adopted by the Board.

4) **Support and Opposition.**

*Support:* California Association of Marriage and Family Therapists (sponsor)  
American Association for Marriage and Family Therapy -  
California Division  
California Council of Community Mental Health Agencies  
Mental Health Association in California

*Opposition:* California Psychological Association  
Local 2620 of the American Federation of State, County, and  
Municipal Employees

5) **History**

2009

Apr. 30	From committee: Do pass. (Ayes 14. Noes 0.) (April 29).
Apr. 15	From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 8. Noes 0.) (April 14).
Mar. 26	Referred to Com. on B. & P.
Mar. 2	Read first time.
Mar. 1	From printer. May be heard in committee March 30.
Feb. 27	Introduced. To print.

**ASSEMBLY BILL**

**No. 1113**

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**Introduced by Assembly Member Bonnie Lowenthal  
(Principal coauthor: Assembly Member Anderson)**

February 27, 2009

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An act to amend Section 5068.5 of the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 1113, as introduced, Bonnie Lowenthal. Prisoners: professional mental health providers: marriage and family therapists.

Existing law requires any person employed or under contract to provide mental health diagnostic or treatment or other mental health services in the state correctional system to be a physician and surgeon, psychologist, or other health professional, licensed to practice in this state, except as specified. This licensure requirement may be waived in order for a person to gain qualifying experience for licensure as a psychologist or clinical social worker in this state.

This bill would also authorize the waiver for a person to gain qualifying experience for licensure as a marriage and family therapist. The bill would provide that a person gaining qualifying experience for licensure as a marriage and family therapist is limited to working within his or her scope of practice.

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

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

1 SECTION 1. Section 5068.5 of the Penal Code is amended to  
2 read:

3 5068.5. (a) Notwithstanding any other provision of law, except  
4 as provided in subdivision (b), any person employed or under  
5 contract to provide diagnostic, treatment, or other mental health  
6 services in the state or to supervise or provide consultation on these  
7 services in the state correctional system shall be a physician and  
8 surgeon, a psychologist, or other health professional, licensed to  
9 practice in this state.

10 (b) Notwithstanding Section 5068 or Section 704 of the Welfare  
11 and Institutions Code, the following persons are exempt from the  
12 requirements of subdivision (a), so long as they continue in  
13 employment in the same class and in the same department:

14 (1) Persons employed on January 1, 1985, as psychologists to  
15 provide diagnostic or treatment services including those persons  
16 on authorized leave but not including intermittent personnel.

17 (2) Persons employed on January 1, 1989, to supervise or  
18 provide consultation on the diagnostic or treatment services  
19 including persons on authorized leave but not including intermittent  
20 personnel.

21 (c) The requirements of subdivision (a) may be waived in order  
22 for a person to gain qualifying experience for licensure as a  
23 ~~psychologist or psychologist~~, clinical social ~~worker~~ *worker*, or  
24 *marriage and family therapist* in this state in accordance with  
25 Section 1277 of the Health and Safety Code. *A person gaining*  
26 *qualifying experience for licensure as a marriage and family*  
27 *therapist is limited to working within his or her scope of practice.*

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER: AB 1310**

**VERSION: AMENDED: APRIL 2, 2009**

**AUTHOR: HERNANDEZ**

**SPONSOR:**

**RECOMMENDED POSITION: OPPOSE UNLESS AMENDED**

**SUBJECT: DATA SURVEY REQUIREMENT FOR HEALING ARTS BOARDS**

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### **Existing Law:**

1. Establishes within the Office of Statewide Health Planning and Development (OSHPD) the Health Care Workforce Clearinghouse, which is responsible for the collection analysis, and distribution of information on the educational and employment trends for health care occupations in the state. (Health and Safety Code § 128050)
2. Requires OSHPD to work with the Employment Development Department's (EDD) Labor Market Information Division state licensing boards, and state higher education entities to collect, to the extent available, all of the following data:
  - (a) The current supply of health care workers, by specialty.
  - (b) The geographical distribution of health care workers, by specialty.
  - (c) The diversity of the health care workforce, by specialty, including, but not necessarily limited to, data on race, ethnicity, and languages spoken.
  - (d) The current and forecasted demand for health care workers, by specialty.
  - (e) The educational capacity to produce trained, certified, and licensed health care workers, by specialty and by geographical distribution, including, but not necessarily limited to, the number of educational slots, the number of enrollments, the attrition rate, and wait time to enter the program of study. (Health and Safety Code § 128051)
3. Requires OSHPD to prepare an annual report to the California State Legislature that does all of the following:
  - (a) Identifies education and employment trends in the health care profession.
  - (b) Reports on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas.
  - (c) Recommends state policy needed to address issues of workforce shortage and distribution. (Health and Safety Code § 128052)

### **This Bill:**

1. Requires specific healing arts boards in the Department of Consumer Affairs (DCA) to add and label as "mandatory" certain fields on an application for initial licensure or renewal. These fields include:
  - a) First name, middle name, and last name.

- b) Last four digits of social security number.
  - c) Complete mailing address.
  - d) Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
  - e) Birth date and place of birth.
  - f) Sex.
  - g) Race and ethnicity.
  - h) Location of high school.
  - i) Mailing address of primary practice, if applicable.
  - j) Number of hours per week spent at primary practice location, if applicable.
  - k) Description of primary practice setting, if applicable.
  - l) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.
  - m) Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP Code, and county. (Business and Professions Code § 857 (a))
2. Requires DCA, in consultation with OSHPD's Healthcare Workforce Development Division and the Health Care Workforce Clearinghouse, to select a database to store the information. The data shall be submitted to the Health Care Workforce Clearinghouse annually on or before January 1. (Business and Professions Code § 857(b) and (d)(1))
  3. Requires the Health Care Workforce Clearinghouse to prepare a written report based on the findings of the data no later than March 1 of any year, beginning March 1, 2012. (Business and Professions Code § 857(d)(2))
  4. The following boards would be subject to the provisions of this bill:
    - a. The Acupuncture Board
    - b. The Dental Hygiene Committee of California
    - c. The Dental Board of California
    - d. The Medical Board of California
    - e. The Bureau of Naturopathic Medicine
    - f. The California Board of Occupational Therapy
    - g. The State Board of Optometry
    - h. The Osteopathic Medical Board of California
    - i. The California State Board of Pharmacy
    - j. The Physical Therapy Board of California
    - k. The Physician Assistant Committee, Medical Board of California
    - l. The California Board of Podiatric Medicine
    - m. The Board of Psychology
    - n. The Board of Registered Nursing
    - o. The Respiratory Care Board of California
    - p. The Speech-Language Pathology and Audiology Board
    - q. The Board of Vocational Nursing and Psychiatric Technicians of the State of California (Business and Professions Code § 857(c))

**Comment:**

- 1) **Author's Intent.** According to the author, this bill will provide OSHPD and the Health Care Workforce Clearinghouse with the information it needs to carry out its requirements set forth in statute.

## **Policy Issues**

- 2) **Status of the Health Care Workforce Clearinghouse:** According to the OSHPD Web site, the Clearinghouse is still in its early development stages. A review of past OSHPD focus group meetings relating to the creation of the database revealed a tentative development period of 18-24 months.

A centralized and accessible database will facilitate an increase in research and policy analysis relating to health care workforce trends. Currently, a research gap exists in the study of workforce trends for some health care professions, including marriage and family therapists and clinical social workers.

- 3) **Absence of the Board of Behavioral Sciences (BBS):** The bill's current language does not include the BBS. The author's staff indicates this was an oversight, and the BBS will be included in an amended version of the bill.
- 4) **Necessity of Regulation Changes:** The content of some BBS forms is outlined in regulation; thus, a change to some forms would require a regulation change, which is typically a lengthy process.

## **Administrative Issues**

- 5) **Overlap with Current Procedures:** The BBS already tracks some of the proposed mandatory fields:
- First name, middle name, and last name.
  - Last four digits of social security number.
  - Complete mailing address.
  - Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
  - Birth date
- 6) **Technology Issues:** The databases currently used to track information related to applicants, registrants, and licensees are not equipped to capture all the proposed mandatory fields. Revisions to existing technology would need to be altered to capture the following fields:
- Place of birth.
  - Gender.
  - Ethnicity.
  - Location of high school.
  - Mailing address of primary practice, if applicable.
  - Description of primary practice setting, if applicable.
  - Number of hours per week spent at primary practice location, if applicable.
  - Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP code, and county.
  - Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP code, and county.
- 7) **Implementation Date Ambiguity:** The bill requires DCA to submit the collected data to the Health Care Workforce Clearinghouse annually on or before January 1. If this date refers to

January 1, 2011, DCA would likely not be able to get the necessary technology in place to capture such data and provide it to the Health Care Workforce Clearinghouse in this implied timeframe.

- 8) **Cost Concerns:** If required to significantly change or update current technology to capture the mandatory fields, the BBS may incur substantial cost.
- 9) **Relevant Data Collection:** The bill is specific as to what methods each board will use to collect the data, specifically initial licensure applications and renewals. Depending on the board, the initial licensure application period might not be the point at which it makes sense to obtain this information. For example, in the case of the BBS, obtaining this information at the point of registration is more appropriate. Furthermore, some of the identified fields will change for an individual over time (e.g. primary practice location).
- 10) **Collection of Data via License Renewal:** Requiring this information as a condition of renewal, as implied by the bill, will likely significantly increase the number of incomplete renewals received. This will increase renewal processing time and staff workload.
- 11) **Similarities to other Legislation:** The intent of this bill to support the implementation of the Health Care Workforce Clearinghouse is similar to SB 43 (Alquist).
- 12) **Suggested Amendments:** A functioning data clearinghouse that assists policy makers in making more informed decisions would be a valuable resource for policy analysts, decision makers, and researchers, but this bill needs significant amendment to succeed upon implementation.

Staff recommends using language similar to what is included in SB 43 (Alquist) in including a definition of "board" as any healing arts board, division, or examining committee that licenses, certifies, or regulates health professionals pursuant to Division 2 (Healing Arts) of the Business and Professions Code. Finally, mandating the collection of this information on an initial license or renewal application limits the discretion of the board. In some instances, obtaining the information on an initial license application or renewal might not make sense. Staff suggests altering the language to provide the board with some level of discretion as to the method of collecting the data. (Please see Attachment for suggested changes to language in the context of the bill.)

Finally, staff feels the implied requirement to submit data to the Health Care Workforce Clearinghouse annually beginning on January 1, 2011 is unrealistic given the changes to applications and potential database construction/revision needed. In staff's opinion, such changes can require significant time and resources. Before including such a deadline in the bill, staff suggests consulting with the Office of Information Services at the DCA to assess the necessity for technology changes, and if needed, how long it would take to implement the needed changes.

- 13) **Recommendation of Committee:** The Policy and Advocacy Committee met on April 10, 2009 and recommended a position of oppose unless amended.
- 14) **Support and Opposition.**  
*Support:* None on file.  
*Opposition:* None on file.

## **15) History**

- Apr. 29 In committee: Set, first hearing. Referred to APPR. suspense file.
- Apr. 15 From committee: Do pass, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. Re-referred. (Ayes 9. Noes 0.) (April 14).
- Apr. 13 Re-referred to Com. on B. & P.
- Apr. 2 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
- Mar. 31 Referred to Com. on B. & P.
- Mar. 2 Read first time.
- Mar. 1 From printer. May be heard in committee March 30.
- Feb. 27 Introduced. To print.

## **ATTACHMENT**

Proposed amended language

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## **Proposed amended language**

An act to add Section 857 to the Business and Professions Code, relating to healing arts.  
LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as introduced, Hernandez. Healing arts: database.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California's health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state.

This bill would require the specified healing arts boards to add and label as "mandatory" specified fields on an application for initial licensure or a renewal form for applicants applying to those boards. The bill would require the department, in consultation with the division and the clearinghouse, to select a database and to add some of the data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse annually on or before January 1. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.

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

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

SECTION 1. Section 857 is added to the Business and Professions Code, to read:

857. (a) ~~Every healing arts board specified in subdivision (c)~~ A healing arts board referred in this division shall add and label as "mandatory" the following fields on an application for initial licensure, certification, registration, or renewal, and/or other forms or applications as designated by the board for a person applying to that board:

- (1) First name, middle name, and last name.
- (2) Last four digits of social security number.
- (3) Complete mailing address.
- (4) Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
- (5) Birth date and place of birth.
- (6) Sex.
- (7) Race and ethnicity.
- (8) Location of high school.
- (9) Mailing address of primary practice, if applicable.
- (10) Number of hours per week spent at primary practice location, if applicable.
- (11) Description of primary practice setting, if applicable.
- (12) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.

(13) Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP Code, and county.

(b) The ~~department board~~, in consultation with the Healthcare Workforce Development Division and the Health Care Workforce Clearinghouse, shall select a database and shall add the data specified in paragraphs (5) to (13) ~~inclusive, of subdivision (a) to that database.~~

~~(c) The following boards are subject to subdivision (a):~~

~~(1) The Acupuncture Board.~~

~~(2) The Dental Hygiene Committee of California.~~

~~(3) The Dental Board of California.~~

~~(4) The Medical Board of California.~~

~~(5) The Bureau of Naturopathic Medicine.~~

~~(6) The California Board of Occupational Therapy.~~

~~(7) The State Board of Optometry.~~

~~(8) The Osteopathic Medical Board of California.~~

~~(9) The California State Board of Pharmacy.~~

~~(10) The Physical Therapy Board of California.~~

~~(11) The Physician Assistant Committee, Medical Board of California.~~

~~(12) The California Board of Podiatric Medicine.~~

~~(13) The Board of Psychology.~~

~~(14) The Board of Registered Nursing.~~

~~(15) The Respiratory Care Board of California.~~

~~(16) The Speech Language Pathology and Audiology Board.~~

~~(17) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.~~

~~(d) (c)(1)~~ The department shall collect the specified data in the database pursuant to subdivision (b) and shall submit that data to Health Care Workforce Clearinghouse annually on or before January 1.

(2) The Health Care Workforce Clearinghouse shall prepare a written report containing the findings of this data and shall submit the written report annually to the Legislature no later than March 1, commencing March 1, 2012.

(d) For purposes of this section, "board" refers to any healing arts board, division, or examining committee that licenses, certifies, or regulates health professionals pursuant to this division.

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1310**

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**Introduced by Assembly Member Hernandez**

February 27, 2009

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An act to add Section 857 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as amended, Hernandez. Healing arts: database.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California's health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state.

This bill would require ~~the department~~ *specified healing arts boards* to add and label as "mandatory" specified fields on an application for initial licensure or a renewal form for applicants applying to ~~specified healing arts~~ *those* boards. The bill would require the department, in consultation with the division and the clearinghouse, to select a database and to add some of the data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse

annually on or before January 1. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.

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

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

1 SECTION 1. Section 857 is added to the Business and  
2 Professions Code, to read:

3 857. (a) ~~The department~~ *Every healing arts board specified*  
4 *in subdivision (c)* shall add and label as “mandatory” the following  
5 fields on an application for initial licensure or renewal for a person  
6 applying to ~~a board described in subdivision (e)~~ *that board:*

- 7 (1) First name, middle name, and last name.
- 8 (2) Last four digits of social security number.
- 9 (3) Complete mailing address.
- 10 (4) Educational background and training, including, but not
- 11 limited to, degree, related school name and location, and year of
- 12 graduation, and, as applicable, the highest professional degree
- 13 obtained, related professional school name and location, and year
- 14 of graduation.
- 15 (5) Birth date and place of birth.
- 16 (6) Sex.
- 17 (7) Race and ethnicity.
- 18 (8) Location of high school.
- 19 (9) Mailing address of primary practice, if applicable.
- 20 (10) Number of hours per week spent at primary practice
- 21 location, if applicable.
- 22 (11) Description of primary practice setting, if applicable.
- 23 (12) Primary practice information, including, but not limited
- 24 to, primary specialty practice, practice location ZIP Code, and
- 25 county.
- 26 (13) Information regarding any additional practice, including,
- 27 but not limited to, a description of practice setting, practice location
- 28 ZIP Code, and county.
- 29 (b) The department, in consultation with the Healthcare
- 30 Workforce Development Division and the Health Care Workforce
- 31 Clearinghouse, shall select a database and shall add the data

1 specified in paragraphs (5) to (13) ~~of subdivision (a), inclusive,~~  
2 *inclusive, of subdivision (a)* to that database.

3 (c) The following boards are subject to subdivision (a):

4 (1) The Acupuncture Board.

5 (2) The Dental Hygiene Committee of California.

6 (3) The Dental Board of California.

7 (4) The Medical Board of California.

8 (5) The Bureau of Naturopathic Medicine.

9 (6) The California Board of Occupational Therapy.

10 (7) The State Board of Optometry.

11 (8) The Osteopathic Medical Board of California.

12 (9) The California State Board of Pharmacy.

13 (10) The Physical Therapy Board of California.

14 (11) The Physician Assistant Committee, Medical Board of  
15 California.

16 (12) The California Board of Podiatric Medicine.

17 (13) The Board of Psychology.

18 (14) The Board of Registered Nursing.

19 (15) The Respiratory Care Board of California.

20 (16) The Speech-Language Pathology and Audiology Board.

21 (17) The Board of Vocational Nursing and Psychiatric  
22 Technicians of the State of California.

23 (d) (1) The department shall collect the specified data in the  
24 database pursuant to subdivision (b) and shall submit that data to  
25 Health Care Workforce Clearinghouse annually on or before  
26 January 1.

27 (2) The Health Care Workforce Clearinghouse shall prepare a  
28 written report containing the findings of this data and shall submit  
29 the written report annually to the Legislature no later than March  
30 1, commencing March 1, 2012.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 43

**VERSION:** AMENDED: APRIL 20, 2009

**AUTHOR:** ALQUIST

**SPONSOR:**

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** IMPROVING HEALTHCARE WORKFORCE AND EDUCATION DATA

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### **Existing Law:**

1. Establishes within the Office of Statewide Health Planning and Development (OSHPD) the Health Care Workforce Clearinghouse, which is responsible for the collection analysis, and distribution of information on the educational and employment trends for health care occupations in the state. (Health and Safety Code § 128050)
2. Requires OSHPD to work with the Employment Development Department's (EDD) Labor Market Information Division state licensing boards, and state higher education entities to collect, to the extent available, all of the following data:
  - (a) The current supply of health care workers, by specialty.
  - (b) The geographical distribution of health care workers, by specialty.
  - (c) The diversity of the health care workforce, by specialty, including, but not necessarily limited to, data on race, ethnicity, and languages spoken.
  - (d) The current and forecasted demand for health care workers, by specialty.
  - (e) The educational capacity to produce trained, certified, and licensed health care workers, by specialty and by geographical distribution, including, but not necessarily limited to, the number of educational slots, the number of enrollments, the attrition rate, and wait time to enter the program of study. (Health and Safety Code § 128051)
3. Requires OSHPD to prepare an annual report to the California State Legislature that does all of the following:
  - (a) Identifies education and employment trends in the health care profession.
  - (b) Reports on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas.
  - (c) Recommends state policy needed to address issues of workforce shortage and distribution. (Health and Safety Code § 128052)

## **This Bill:**

1. Enables OSHPD to obtain labor market, workforce, and earnings data from EDD. The data will be used for the purposes of the Health Care Workforce Clearinghouse. (Unemployment and Insurance Code § 1095)
2. Authorizes healing arts boards, which includes the Board of Behavioral Sciences (BBS), to, in a manner deemed appropriate by the board, collect information regarding the cultural and linguistic competency of persons licensed, certified, registered, or otherwise subject to regulation under the board. Personally identifiable information collected pursuant to this section shall be confidential and not subject to public inspection. (Business and Professions Code § 851.5)

## **Comment:**

- 1) **Author's Intent.** According to the author, this bill will improve data available for workforce policy and development efforts. This bill will ensure that OSHPD can fully implement the Health Care Workforce Clearinghouse with the most relevant data available.
- 2) **Status of the Health Care Workforce Clearinghouse:** According to the OSHPD Web site, the Clearinghouse is still in its early development stages. A review of notes from past OSHPD focus group meetings relating to the creation of the database revealed a tentative development period of 18-24 months.
- 3) **Necessity of Including Cultural and Linguistic Information in Database:** While the reporting of cultural and linguistic competencies might make some individuals uncomfortable, many academic studies related to workforce trends in the health care professions document significant relationships for explanatory factors relating to ethnicity and culture. From the perspective of a researcher or policy analyst using data, accessibility to cultural and linguistic data, greatly improves the probability of valid and useful conclusions. Any concern relating to the reporting of this data should be mediated by the bill's stated mandate that all personally identifiable information collected shall be confidential.
- 4) **Prior BBS Demographic Research:** In 2006, the BBS implemented a voluntary demographic survey to its licensees and registrants. The results of the survey are available on the BBS Web site.
- 5) **Implementation Concerns:** While the bill merely authorizes collection of this data, should any board choose to begin capturing this data, changes to existing technology, specifically the Applicant Tracking System and Consumer Affairs System databases, would be necessary. Such changes can be time consuming, but since the bill does not include a deadline nor mandate collection of the data, the BBS would not be at risk of non-compliance should the bill become law.
- 6) **Authorization vs. Mandate:** This bill *authorizes* healing arts boards to collect cultural and linguistic competencies. In order to collect this information, the BBS may need to hire additional staff and upgrade current technology. Since the bill does not *require* the BBS to obtain this information, justifying an increase in spending authority could be a challenge.
- 7) **Similarities to other Legislation:** The intent of this bill to support the implementation of the Health Care Workforce Clearinghouse is similar to AB 1310 (Hernandez).

**8) Support and Opposition.**

*Support:* None on file.

*Opposition:* None on file.

**9) History**

2009

May 5 Read second time. To third reading.

May 4 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.

Apr. 28 Set for hearing May 4.

Apr. 27 Hearing postponed by committee.

Apr. 22 Set for hearing April 27.

Apr. 21 Withdrawn from committee. Re-referred to Com. on APPR.

Apr. 20 From committee: Do pass, but first be re-referred to Com. on JUD. (Ayes 8. Noes 1. Page 580.) Re-referred to Com. on JUD. From committee with author's amendments. Read second time. Amended. Re-referred to Com. on JUD.

Mar. 27 Set for hearing April 20.

Jan. 29 To Coms. on B., P. & E.D. and JUD.

Jan. 7 From print. May be acted upon on or after February 6.

Jan. 6 Introduced. Read first time. To Com. on RLS. for assignment. To print.

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AMENDED IN SENATE APRIL 20, 2009

**SENATE BILL**

**No. 43**

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**Introduced by Senator Alquist**

January 6, 2009

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An act to add Section 851.5 to the Business and Professions Code, to amend Section 128051 of the Health and Safety Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to health professions.

LEGISLATIVE COUNSEL'S DIGEST

SB 43, as amended, Alquist. Health professions.

Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Existing law establishes the Task Force on Culturally and Linguistically Competent Physicians and Dentists and assigns the task force various duties, including, among other things, identifying the key cultural elements necessary to meet cultural competency. Existing law authorizes physicians and surgeons, dentists, and dental auxiliaries to report information regarding their cultural background and foreign language proficiency to their respective licensing boards and requires those boards to collect that information, as specified.

This bill would authorize the healing arts boards, as defined, to collect information regarding the cultural and linguistic competency of persons licensed, certified, registered, or otherwise subject to regulation by those boards. The bill would require that this information be used *only* for the purpose of meeting the cultural and linguistic concerns of the state's diverse patient population.

Existing law requires the Office of Statewide Health Planning and Development to establish a health care workforce clearinghouse to serve

as the central source of health care workforce and educational data in the state *and requires the office to work with specified entities to collect that data*. Existing law requires the Director of the Employment Development Department to permit the use of information in his or her possession for specified purposes.

This bill would additionally require the director to permit the use of that information in order to enable the Office of Statewide Health Planning and Development to obtain specified data for the health care workforce clearinghouse. *The bill would specify that personally identifiable information obtained by that office for the health care workforce clearinghouse is confidential and not subject to public inspection.*

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

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

1 SECTION 1. Section 851.5 is added to the Business and  
2 Professions Code, to read:  
3 851.5. (a) A healing arts board referred to in this division may,  
4 in a manner deemed appropriate by the board, collect information  
5 regarding the cultural and linguistic competency of persons  
6 licensed, certified, registered, or otherwise subject to regulation  
7 by that board.  
8 (b) The information collected pursuant to this section shall be  
9 used for the purpose of meeting the cultural and linguistic concerns  
10 of the state's diverse patient population. *Any other use of the*  
11 *information collected pursuant to this section is prohibited.*  
12 (c) Personally identifiable information collected pursuant to this  
13 section shall be confidential and not subject to public inspection.  
14 (d) The authority provided in this section shall be in addition  
15 to, and not a limitation on, the authority provided under subdivision  
16 (c) of Section 2425.3 and subdivision (d) of Section 1717.5.  
17 (e) For purposes of this section, "board" refers to any healing  
18 arts board, division, or examining committee that licenses, certifies,  
19 or regulates health professionals pursuant to this division.  
20 SEC. 2. *Section 128051 of the Health and Safety Code is*  
21 *amended to read:*  
22 128051. (a) The Office of Statewide Health Planning and  
23 Development shall work with the Employment Development

1 Department's Labor Market Information Division, state licensing  
2 boards, and state higher education entities to collect, to the extent  
3 available, all of the following data:

4 ~~(a)~~

5 (1) The current supply of health care workers, by specialty.

6 ~~(b)~~

7 (2) The geographical distribution of health care workers, by  
8 specialty.

9 ~~(c)~~

10 (3) The diversity of the health care workforce, by specialty,  
11 including, but not necessarily limited to, data on race, ethnicity,  
12 and languages spoken.

13 ~~(d)~~

14 (4) The current and forecasted demand for health care workers,  
15 by specialty.

16 ~~(e)~~

17 (5) The educational capacity to produce trained, certified, and  
18 licensed health care workers, by specialty and by geographical  
19 distribution, including, but not necessarily limited to, the number  
20 of educational slots, the number of enrollments, the attrition rate,  
21 and wait time to enter the program of study.

22 *(b) Personally identifiable information collected for purposes*  
23 *of this article shall be confidential and not subject to public*  
24 *inspection.*

25 ~~SEC. 2.~~

26 *SEC. 3.* Section 1095 of the Unemployment Insurance Code  
27 is amended to read:

28 1095. The director shall permit the use of any information in  
29 his or her possession to the extent necessary for any of the  
30 following purposes and may require reimbursement for all direct  
31 costs incurred in providing any and all information specified in  
32 this section, except information specified in subdivisions (a) to  
33 (e), inclusive:

34 (a) To enable the director or his or her representative to carry  
35 out his or her responsibilities under this code.

36 (b) To properly present a claim for benefits.

37 (c) To acquaint a worker or his or her authorized agent with his  
38 or her existing or prospective right to benefits.

39 (d) To furnish an employer or his or her authorized agent with  
40 information to enable him or her to fully discharge his or her

1 obligations or safeguard his or her rights under this division or  
2 Division 3 (commencing with Section 9000).

3 (e) To enable an employer to receive a reduction in contribution  
4 rate.

5 (f) To enable federal, state, or local government departments  
6 or agencies, subject to federal law, to verify or determine the  
7 eligibility or entitlement of an applicant for, or a recipient of, public  
8 social services provided pursuant to Division 9 (commencing with  
9 Section 10000) of the Welfare and Institutions Code, or Part A of  
10 Title IV of the Social Security Act, where the verification or  
11 determination is directly connected with, and limited to, the  
12 administration of public social services.

13 (g) To enable county administrators of general relief or  
14 assistance, or their representatives, to determine entitlement to  
15 locally provided general relief or assistance, where the  
16 determination is directly connected with, and limited to, the  
17 administration of general relief or assistance.

18 (h) To enable state or local governmental departments or  
19 agencies to seek criminal, civil, or administrative remedies in  
20 connection with the unlawful application for, or receipt of, relief  
21 provided under Division 9 (commencing with Section 10000) of  
22 the Welfare and Institutions Code or to enable the collection of  
23 expenditures for medical assistance services pursuant to Part 5  
24 (commencing with Section 17000) of Division 9 of the Welfare  
25 and Institutions Code.

26 (i) To provide any law enforcement agency with the name,  
27 address, telephone number, birth date, social security number,  
28 physical description, and names and addresses of present and past  
29 employers, of any victim, suspect, missing person, potential  
30 witness, or person for whom a felony arrest warrant has been  
31 issued, when a request for this information is made by any  
32 investigator or peace officer as defined by Sections 830.1 and  
33 830.2 of the Penal Code, or by any federal law enforcement officer  
34 to whom the Attorney General has delegated authority to enforce  
35 federal search warrants, as defined under Sections 60.2 and 60.3  
36 of Title 28 of the Code of Federal Regulations, as amended, and  
37 when the requesting officer has been designated by the head of  
38 the law enforcement agency and requests this information in the  
39 course of and as a part of an investigation into the commission of  
40 a crime when there is a reasonable suspicion that the crime is a

1 felony and that the information would lead to relevant evidence.  
2 The information provided pursuant to this subdivision shall be  
3 provided to the extent permitted by federal law and regulations,  
4 and to the extent the information is available and accessible within  
5 the constraints and configurations of existing department records.  
6 Any person who receives any information under this subdivision  
7 shall make a written report of the information to the law  
8 enforcement agency that employs him or her, for filing under the  
9 normal procedures of that agency.

10 (1) This subdivision shall not be construed to authorize the  
11 release to any law enforcement agency of a general list identifying  
12 individuals applying for or receiving benefits.

13 (2) The department shall maintain records pursuant to this  
14 subdivision only for periods required under regulations or statutes  
15 enacted for the administration of its programs.

16 (3) This subdivision shall not be construed as limiting the  
17 information provided to law enforcement agencies to that pertaining  
18 only to applicants for, or recipients of, benefits.

19 (4) The department shall notify all applicants for benefits that  
20 release of confidential information from their records will not be  
21 protected should there be a felony arrest warrant issued against  
22 the applicant or in the event of an investigation by a law  
23 enforcement agency into the commission of a felony.

24 (j) To provide public employee retirement systems in California  
25 with information relating to the earnings of any person who has  
26 applied for or is receiving a disability income, disability allowance,  
27 or disability retirement allowance, from a public employee  
28 retirement system. The earnings information shall be released only  
29 upon written request from the governing board specifying that the  
30 person has applied for or is receiving a disability allowance or  
31 disability retirement allowance from its retirement system. The  
32 request may be made by the chief executive officer of the system  
33 or by an employee of the system so authorized and identified by  
34 name and title by the chief executive officer in writing.

35 (k) To enable the Division of Labor Standards Enforcement in  
36 the Department of Industrial Relations to seek criminal, civil, or  
37 administrative remedies in connection with the failure to pay, or  
38 the unlawful payment of, wages pursuant to Chapter 1  
39 (commencing with Section 200) of Part 1 of Division 2 of, and

1 Chapter 1 (commencing with Section 1720) of Part 7 of Division  
2 2 of, the Labor Code.

3 (l) To enable federal, state, or local governmental departments  
4 or agencies to administer child support enforcement programs  
5 under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et  
6 seq.).

7 (m) To provide federal, state, or local governmental departments  
8 or agencies with wage and claim information in its possession that  
9 will assist those departments and agencies in the administration  
10 of the Victims of Crime Program or in the location of victims of  
11 crime who, by state mandate or court order, are entitled to  
12 restitution that has been or can be recovered.

13 (n) To provide federal, state, or local governmental departments  
14 or agencies with information concerning any individuals who are  
15 or have been:

16 (1) Directed by state mandate or court order to pay restitution,  
17 fines, penalties, assessments, or fees as a result of a violation of  
18 law.

19 (2) Delinquent or in default on guaranteed student loans or who  
20 owe repayment of funds received through other financial assistance  
21 programs administered by those agencies. The information released  
22 by the director for the purposes of this paragraph shall not include  
23 unemployment insurance benefit information.

24 (o) To provide an authorized governmental agency with any or  
25 all relevant information that relates to any specific workers'  
26 compensation insurance fraud investigation. The information shall  
27 be provided to the extent permitted by federal law and regulations.  
28 For the purposes of this subdivision, "authorized governmental  
29 agency" means the district attorney of any county, the office of  
30 the Attorney General, the Department of Industrial Relations, and  
31 the Department of Insurance. An authorized governmental agency  
32 may disclose this information to the State Bar, the Medical Board  
33 of California, or any other licensing board or department whose  
34 licensee is the subject of a workers' compensation insurance fraud  
35 investigation. This subdivision shall not prevent any authorized  
36 governmental agency from reporting to any board or department  
37 the suspected misconduct of any licensee of that body.

38 (p) To enable the Director of the Bureau for Private  
39 Postsecondary and Vocational Education, or his or her  
40 representatives, to access unemployment insurance quarterly wage

1 data on a case-by-case basis to verify information on school  
2 administrators, school staff, and students provided by those schools  
3 who are being investigated for possible violations of Chapter 7  
4 (commencing with Section 94700) of Part 59 of the Education  
5 Code.

6 (q) To provide employment tax information to the tax officials  
7 of Mexico, if a reciprocal agreement exists. For purposes of this  
8 subdivision, “reciprocal agreement” means a formal agreement to  
9 exchange information between national taxing officials of Mexico  
10 and taxing authorities of the State Board of Equalization, the  
11 Franchise Tax Board, and the Employment Development  
12 Department. Furthermore, the reciprocal agreement shall be limited  
13 to the exchange of information that is essential for tax  
14 administration purposes only. Taxing authorities of the State of  
15 California shall be granted tax information only on California  
16 residents. Taxing authorities of Mexico shall be granted tax  
17 information only on Mexican nationals.

18 (r) To enable city and county planning agencies to develop  
19 economic forecasts for planning purposes. The information shall  
20 be limited to businesses within the jurisdiction of the city or county  
21 whose planning agency is requesting the information, and shall  
22 not include information regarding individual employees.

23 (s) To provide the State Department of Developmental Services  
24 with wage and employer information that will assist in the  
25 collection of moneys owed by the recipient, parent, or any other  
26 legally liable individual for services and supports provided pursuant  
27 to Chapter 9 (commencing with Section 4775) of Division 4.5 of,  
28 and Chapter 2 (commencing with Section 7200) and Chapter 3  
29 (commencing with Section 7500) of Division 7 of, the Welfare  
30 and Institutions Code.

31 (t) Nothing in this section shall be construed to authorize or  
32 permit the use of information obtained in the administration of this  
33 code by any private collection agency.

34 (u) The disclosure of the name and address of an individual or  
35 business entity that was issued an assessment that included  
36 penalties under Section 1128 or 1128.1 shall not be in violation  
37 of Section 1094 if the assessment is final. The disclosure may also  
38 include any of the following:

39 (1) The total amount of the assessment.

1 (2) The amount of the penalty imposed under Section 1128 or  
2 1128.1 that is included in the assessment.

3 (3) The facts that resulted in the charging of the penalty under  
4 Section 1128 or 1128.1.

5 (v) To enable the Contractors' State License Board to verify  
6 the employment history of an individual applying for licensure  
7 pursuant to Section 7068 of the Business and Professions Code.

8 (w) To provide any peace officer with the Division of  
9 Investigation in the Department of Consumer Affairs information  
10 pursuant to subdivision (i) when the requesting peace officer has  
11 been designated by the Chief of the Division of Investigation and  
12 requests this information in the course of and as part of an  
13 investigation into the commission of a crime or other unlawful act  
14 when there is reasonable suspicion to believe that the crime or act  
15 may be connected to the information requested and would lead to  
16 relevant information regarding the crime or unlawful act.

17 (x) To enable the Labor Commissioner of the Division of Labor  
18 Standards Enforcement in the Department of Industrial Relations  
19 to identify, pursuant to Section 90.3 of the Labor Code, unlawfully  
20 uninsured employers. The information shall be provided to the  
21 extent permitted by federal law and regulations.

22 (y) To enable the Chancellor of the California Community  
23 Colleges, in accordance with the requirements of Section 84754.5  
24 of the Education Code, to obtain quarterly wage data, commencing  
25 January 1, 1993, on students who have attended one or more  
26 community colleges, to assess the impact of education on the  
27 employment and earnings of students, to conduct the annual  
28 evaluation of district-level and individual college performance in  
29 achieving priority educational outcomes, and to submit the required  
30 reports to the Legislature and the Governor. The information shall  
31 be provided to the extent permitted by federal statutes and  
32 regulations.

33 (z) To enable the Public Employees' Retirement System to seek  
34 criminal, civil, or administrative remedies in connection with the  
35 unlawful application for, or receipt of, benefits provided under  
36 Part 3 (commencing with Section 20000) of Division 5 of Title 2  
37 of the Government Code.

38 (aa) To enable the Office of Statewide Health Planning and  
39 Development to obtain labor market, workforce, and earnings data  
40 for the purpose of collecting health care workforce data for the

1 health care workforce clearinghouse established pursuant to Section  
2 128050 of the Health and Safety Code. *Personally identifiable*  
3 *information obtained by the Office of Statewide Health Planning*  
4 *and Development pursuant to this subdivision shall be confidential*  
5 *and not subject to public inspection.*

6 ~~SEC. 3.~~

7 ~~SEC. 4.~~ The Legislature finds and declares that ~~Section 1 of~~  
8 ~~this act, which adds Section 851.5 to the Business and Professions~~  
9 ~~Code, imposes Sections 1, 2, and 3 of this act impose~~ a limitation  
10 on the public's right of access to the meetings of public bodies or  
11 the writings of public officials and agencies within the meaning  
12 of Section 3 of Article I of the California Constitution. Pursuant  
13 to that constitutional provision, the Legislature makes the following  
14 findings to demonstrate the interest protected by this limitation  
15 and the need for protecting that interest:

16 In order to protect the privacy of ~~healing arts licensees~~ *individual*  
17 *members of the health care workforce*, it is necessary to ensure  
18 that personally identifiable information ~~submitted by licensees~~  
19 ~~pursuant to this act regarding those individuals~~ is protected as  
20 confidential.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER: SB 296**

**VERSION: AMENDED APRIL 13, 2009**

**AUTHOR: LOWENTHAL**

**SPONSOR: CALIFORNIA COALITION FOR  
MENTAL HEALTH**

**RECOMMENDED POSITION: SUPPORT**

**SUBJECT: MENTAL HEALTH SERVICES**

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### **Existing Law:**

- 1) Requires health care service plan contracts and disability insurance policies which cover hospital, medical, or surgical benefits to provide coverage for the following under the same terms and conditions as other medical conditions beginning July 1, 2000: (HSC § 1374.72(a), IC § 10144.5(a))
- 2) A health care service plan, other than a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall file a written continuity of care policy as a material modification with the department before March 31, 2004. (HSC § 1373.95(a)(1))
- 3) The health care service plan, including a specialized healthcare service plan that offers professional mental health services on an employer-sponsored group basis, shall provide to all new enrollees notice of its written continuity of care policy and information regarding the process for an enrollee to request a review under the policy and shall provide, upon request, a copy of the written policy to an enrollee. (HSC § 1373.95(c))

### **This Bill:**

- 1) Makes the following legislative findings and declarations: (HSC § 1367.27 and Insurance Code §10123.197)
  - a) The coordination of care between mental health care providers and general physical health care providers is necessary to optimize the overall health of the patient; and,
  - b) Every health care plan that offers professional mental health services, including a specialized health care service plan that offers those services, shall direct those services to be provided in a manner that ensures coordination of benefits between mental health care providers and general physical health care providers.
- 2) Requires every health care service plan that offers professional mental health services, including a specialized health care service plan that offers those services, on or before January 1, 2012, to establish an internet Web site, to include plan policies and procedures related to enrollee benefits, modified contracts, providers, continuity of care, independent review and grievances. (HSC § 1367.28(b))

- 3) Requires health care service plans subject to this bill, beginning on and after July 1, 2012, to issue a benefits card to each enrollee for assistance with mental health benefits coverage information. The benefits cards must include all of the following information: (HSC § 1367.29)
  - a) The name of the benefit administrator or health care service plan issuing the card, which shall be displayed on the front side of the card.
  - b) The enrollee's identification number, or the subscriber's identification number when the enrollee is a dependent who accesses services using the subscriber's identification number. The numbers shall be displayed on the front side of the card
  - c) A telephone number that enrollees may call 24 hours a day, seven days a week, for assistance regarding health benefits coverage information, in-network provider access information, and claims processing.
  - d) A brief statement indicating that enrollees may call the telephone number for assistance regarding mental health services and coverage.
  - e) The plans web site address.
- 4) Prohibits a health care service plan from printing any of the following information on the benefits card described in this bill:
  - a) Any information that may result in fraudulent use of the card.
  - b) Any information that is otherwise prohibited from being included on the card.

**Comment:**

**1) Author's Intent.** According to the author's office, SB 296 is necessary to improve access to mental health service. In 2005 the Department of Mental Health released a report discussing the reasoning behind the continued barriers to parity. The report found that although there had been some improvement in access to care "there still appear[ed] to be confusion about procedures for learning about benefits, obtaining prior authorization, and accessing mental health services, particularly in crisis and urgent situations." The report further noted barriers such as: "Prior authorization procedures required by many plans are reported to be complicated and burdensome;" "Continuity issues, although improving, still arise when plans change or drop providers;" "Many health plans' [grievance and appeal] procedures are complex and difficult for individuals or families dealing with serious mental health conditions to negotiate;" and, that the "lack of access to qualified and appropriate providers is perhaps the largest barrier to making mental health parity successful," citing examples of several month wait times, insufficient practitioners per geographical location, and "phantom panels."

**2) Support and Opposition.**

*Support:* California Association of Marriage and Family Therapists (Sponsor)  
 California Society for Clinical Social Workers (Sponsor)

*Opposition:* California Association of Health Plans

### 3) History

2009

May 5

Read second time. To third reading.

May 4

From committee: Be placed on second reading file pursuant to Senate Rule 28.8.

Apr. 24

Set for hearing May 4.

Apr. 23

From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 10. Noes 1. Page 637.) Re-referred to Com. on APPR.

Apr. 13

From committee with author's amendments. Read second time. Amended. Re-referred to Com. on HEALTH.

Apr. 3

Set for hearing April 22.

Mar. 9

To Com. on HEALTH.

Feb. 26

From print. May be acted upon on or after March 28.

Feb. 25

Introduced. Read first time. To Com. on RLS. for assignment. To print.

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AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 296**

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**Introduced by Senator Lowenthal**

February 25, 2009

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An act to add Sections 1367.27, 1367.28, and 1367.29 to the Health and Safety Code, *and to add Sections 10123.197, 10123.198, and 10123.199 to the Insurance Code*, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 296, as amended, Lowenthal. Mental health services.

Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. *Existing law provides for licensing and regulation of health insurers by the Department of Insurance.* A willful violation of provisions governing health care service plans is a crime. Existing law imposes certain requirements on health care service plans ~~and~~, specialized health care service plans, *and health insurers* that provide coverage for professional mental health services.

This bill would require every health care service plan, including a specialized health care service plan, *and every health insurer* that offers professional mental health services to direct those services to be provided in a manner that ensures coordination of benefits between all mental health care providers and general physical health care providers. The bill would require these plans *and insurers* to establish an Internet Web site ~~conforming to minimum standards and guidelines established by the department by an unspecified date~~, and to issue a benefits card to enrollees *or insureds* with specified information.

By imposing new requirements on certain health care service plans, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1367.27 is added to the Health and Safety  
2 Code, to read:

3 1367.27. (a) The Legislature finds and declares that  
4 coordination of care between mental health care providers and  
5 general physical health care providers is necessary to optimize the  
6 overall health of a patient.

7 (b) Every health care service plan that offers professional mental  
8 health services, including a specialized health care service plan  
9 that offers those services, shall direct those services to be provided  
10 in a manner that ensures coordination of benefits between mental  
11 health care providers and general physical health care providers.

12 SEC. 2. Section 1367.28 is added to the Health and Safety  
13 Code, to read:

14 ~~1367.28. (a) On or before January 1, \_\_\_\_\_, every health care~~  
15 ~~service plan that offers professional mental health services,~~  
16 ~~including a specialized health care service plan that offers those~~  
17 ~~services, shall establish a plan Internet Web site. The purpose of~~  
18 ~~the plan Internet Web site shall be to provide consumer, patient,~~  
19 ~~and provider access to plan procedures, policies, and network~~  
20 ~~provider information.~~

21 ~~(b) Each Internet Web site shall, at a minimum, include the~~  
22 ~~plan's policies and procedures identified in Sections 1363, 1363.5,~~  
23 ~~1367.01, 1367.23, 1367.26, 1368.015, 1371, 1371.8, 1373.95,~~  
24 ~~1374.30, and 1380.~~

25 *1367.28. (a) The Legislature finds and declares that health*  
26 *care consumers should be provided important information*  
27 *regarding health care services in an easily accessible manner.*

1 While most health care service plans are required to maintain  
2 Internet Web sites pursuant to subdivision (f) of Section 1368.015,  
3 it is the intent of this section to improve online access to all  
4 policies, guidelines, disclosure forms, and other materials that  
5 health care service plans are required by law to provide to the  
6 department or consumers.

7 (b) On or before January 1, 2012, every health care service  
8 plan that offers professional mental health services, including a  
9 specialized health care service plan that offers only those services,  
10 shall establish an Internet Web site. Each Web site shall include,  
11 or provide a link to, information relative to all of the following:

12 (1) Plan policies and procedures related to:

13 (A) Modified contracts or coverage as required by Section  
14 1352.1.

15 (B) Enrollee contract benefits and terms as required by  
16 subdivisions (a) and (b) of Section 1363.

17 (C) Economic profiling as required by Section 1367.02.

18 (D) Utilization review and modified coverage as required by  
19 Sections 1363.5 and 1367.01.

20 (E) Cancellation of contracts as required by Section 1367.23.

21 (F) Lists of providers as required by Section 1367.26.

22 (G) Enrollee and subscriber grievances as required by Sections  
23 1368 and 1368.015.

24 (H) Continuity of care as required by subdivisions (a) and (b)  
25 of Section 1373.95.

26 (I) Independent medical review as required by subdivision (i)  
27 of Section 1374.30.

28 (2) The department's final report of the plan's periodic review  
29 as required by subdivision (h) of Section 1380.

30 (3) All provider manuals, policies, and procedures related to  
31 the terms and conditions of provider contracts, including any  
32 material changes to those manuals, policies, and procedures.

33 (c) The material described in subdivision (b) shall be updated  
34 at least every month.

35 ~~(d) On or before January 1, \_\_\_\_\_, the department shall establish~~  
36 ~~minimum standards and guidelines for plan Internet Web sites,~~  
37 ~~after consultation with stakeholder groups, including, but not~~  
38 ~~limited to, individual, group, and institutional providers and~~  
39 ~~consumer protection groups. The minimum standards shall be~~  
40 ~~implemented by plans on or before January 1, \_\_\_\_\_.~~

1 (e)

2 (d) The department shall include on the department’s Internet  
3 Web site a link to each plan Internet Web site.

4 SEC. 3. Section 1367.29 is added to the Health and Safety  
5 Code, to read:

6 1367.29. (a) Every health care service plan that offers  
7 professional mental health services, including a specialized health  
8 care service plan that offers those services, shall issue a benefits  
9 card to each enrollee for assistance with mental health benefits  
10 coverage information, in-network provider access information,  
11 and claims processing purposes. The benefits card, at a minimum,  
12 shall include all of the following information:

13 (1) The name of the benefit administrator or health care service  
14 plan issuing the card, which shall be displayed on the front side  
15 of the card.

16 (2) The enrollee’s identification number, or the subscriber’s  
17 identification number when the enrollee is a dependent who  
18 accesses services using the subscriber’s identification number. The  
19 number shall be displayed on the front side of the card.

20 (3) A telephone number that enrollees may call 24 hours a day,  
21 seven days a week, for assistance regarding health benefits  
22 coverage information, in-network provider access information,  
23 and claims processing.

24 (4) A brief statement indicating that enrollees may call the  
25 telephone number for assistance regarding mental health services  
26 and coverage.

27 ~~(5) Preauthorization restrictions or requirements.~~

28 ~~(6) Information required by the benefits administrator or health  
29 care service plan that is necessary to commence processing a claim,  
30 except as otherwise provided in subdivision (b).~~

31 (5) *The plan’s Internet Web site address.*

32 (b) A health care service plan shall not print any of the following  
33 information on the benefits card:

34 (1) Any information that may result in fraudulent use of the  
35 card.

36 (2) Any information that is otherwise prohibited from being  
37 included on the card.

38 (c) On and after July 1,        2011, the benefits card required by  
39 this section shall be issued by a health care service plan or a  
40 specialized health care service plan to an enrollee upon enrollment

1 or upon any change in the enrollee's coverage that impacts the  
2 data content or format of the card.

3 (d) Nothing in this section requires a health care service plan  
4 to issue a separate benefits card for mental health coverage if the  
5 plan issues a card for health care coverage in general and the card  
6 provides the information required by this section.

7 (e) If a specialized health care service plan delegates  
8 responsibility for issuing the benefits card to a contractor or agent,  
9 then the contract between the plan and its contractor or agent shall  
10 require compliance with this section.

11 *SEC. 4. Section 10123.197 is added to the Insurance Code, to*  
12 *read:*

13 *10123.197. (a) The Legislature finds and declares that*  
14 *coordination of care between mental health care providers and*  
15 *general physical health care providers is necessary to optimize*  
16 *the overall health of a patient.*

17 *(b) Every health insurer that offers professional mental health*  
18 *services shall direct those services to be provided in a manner that*  
19 *ensures coordination of benefits between mental health care*  
20 *providers and general physical health care providers.*

21 *SEC. 5. Section 10123.198 is added to the Insurance Code, to*  
22 *read:*

23 *10123.198. (a) The Legislature finds and declares that health*  
24 *care consumers should be provided important information*  
25 *regarding health care services in an easily accessible manner.*  
26 *The intent of this section is to improve online access to all policies,*  
27 *guidelines, disclosure forms, and other materials that health*  
28 *insurers are required by law to provide to the commissioner or*  
29 *consumers.*

30 *(b) On or before January 1, 2012, every health insurer that*  
31 *offers professional mental health services shall establish an*  
32 *Internet Web site. Each Web site shall include, or provide a link*  
33 *to, information relative to all of the following:*

34 *(1) Insurer policies and procedures related to:*

35 *(A) Modified contracts or coverage.*

36 *(B) Policyholder contract benefits and terms.*

37 *(C) Economic profiling as required by Section 10123.36.*

38 *(D) Utilization review and modified coverage as required by*  
39 *Section 10123.135.*

40 *(E) Cancellation of contracts as required by Section 10199.44.*

- 1 (F) Lists of providers as required by Section 10133.1.  
2 (G) Policyholder and insured grievances.  
3 (H) Continuity of care as required by Section 10133.55.  
4 (I) Independent medical review as required by subdivision (i)  
5 of Section 10169.  
6 (2) The results of any market conduct examinations of the  
7 insurer as required by Section 12938.  
8 (3) All provider manuals, policies, and procedures related to  
9 the terms and conditions of provider contracts, including any  
10 material changes to those manuals, policies, and procedures.  
11 (c) The material described in subdivision (b) shall be updated  
12 at least every month.  
13 (d) The commissioner shall include on the department's Internet  
14 Web site, a link to each health insurer's Internet Web site.  
15 SEC. 6. Section 10123.199 is added to the Insurance Code, to  
16 read:  
17 10123.199. (a) Every health insurer that offers professional  
18 mental health services shall issue a benefits card to each insured  
19 for assistance with mental health benefits coverage information,  
20 in-network provider access information, and claims processing  
21 purposes. The benefits card, at a minimum, shall include all of the  
22 following information:  
23 (1) The name of the benefit administrator or health insurer  
24 issuing the card, which shall be displayed on the front side of the  
25 card.  
26 (2) The insured's identification number, or the policyholder's  
27 identification number when the insured is a dependent who  
28 accesses services using the policyholder's identification number.  
29 The number shall be displayed on the front side of the card.  
30 (3) A telephone number that insureds may call 24 hours a day,  
31 seven days a week, for assistance regarding health benefits  
32 coverage information, in-network provider access information,  
33 and claims processing.  
34 (4) A brief statement indicating that insureds may call the  
35 telephone number for assistance regarding mental health services  
36 and coverage.  
37 (5) The health insurer's Internet Web site address.  
38 (b) A health insurer shall not print any of the following  
39 information on the benefits card:

1 (1) Any information that may result in fraudulent use of the  
2 card.

3 (2) Any information that is otherwise prohibited from being  
4 included on the card.

5 (c) On and after July 1, 2011, the benefits card required by this  
6 section shall be issued by a health insurer to an insured upon  
7 commencement of coverage or upon any change in the insured's  
8 coverage that impacts the data content or format of the card.

9 (d) Nothing in this section requires a health insurer to issue a  
10 separate benefits card for mental health coverage if the plan issues  
11 a card for health care coverage in general and the card provides  
12 the information required by this section.

13 ~~SEC. 4.~~

14 SEC. 7. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 389                      **VERSION:** AMENDED MAY 5, 2009

**AUTHOR:** NEGRETE MCLEOD              **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** OPPOSE UNLESS AMENDED

**SUBJECT:** FINGERPRINT SUBMISSION

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### **Existing Law:**

- 1) Requires specified agencies, including the Board, to require applicants to furnish a full set of fingerprints for the purpose of conducting criminal history record checks. (Business and Professions Code §144)
- 2) 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). (BPC §144)
- 3) 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. (BPC 4982(a), 4989.54(a) and 4992.3(a))
- 4) Requires a licensee upon renewal to notify the Board whether he or she has been convicted of a misdemeanor or a felony. (BPC §4996.6)

### **This Bill:**

- 1) States that specified Boards under the Department of Consumer Affairs (DCA) shall require applicants for licensure to successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice (DOJ). (BPC §144(a) and (b))
- 2) Requires specified boards to direct applicants for a license and renewal to submit to DOJ fingerprints for the purpose of obtaining information as to the existence and content of a state or federal criminal record. (BPC §144(c) and BPC §144.5(d))
- 3) Requires DOJ to charge a fee sufficient to cover the cost of processing the criminal record search pursuant to this bill. (BPC §144(c) and BPC §144.5(d))
- 4) States that specified agencies shall require a licensee who has not previously submitted fingerprints or for whom a record of the submission of fingerprints no longer exists to, as a condition of license renewal, successfully complete a state and federal level criminal offender record information search conducted through DOJ. (BPC §144.5(a))

- 5) Requires a licensee subject to the fingerprint submission requirements upon renewal to certify on the renewal application that he or she has successfully complete a state and federal level criminal offender record information search. (BPC §144.5(b)(1))
- 6) Requires a licensee subject to the licensure renewal provisions of this bill 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 a receipt evidencing that the licensee's fingerprints were taken. (BPC §144.5(b)(2))
- 7) Makes failure to certify the successful completion of a criminal offender record information search renders an application for renewal incomplete and prohibits an agency from renewing the license until a complete application is submitted. (BPC §144.5(c))
- 8) Allows an agency to waive the license renewal requirements contained in this bill if a license is inactive or retired, or if the licensee is actively serving in the military. (BPC §144.5(e))
- 9) Makes a licensee who falsely certifies completion of a state and federal level criminal record information search may be subject to disciplinary action by the Board. (BPC §144.5(f))
- 10) Requires specified boards to require a licensee, as a condition of renewal, to notify the respective board of any felony or misdemeanor since his or her last renewal. (BPC §144.6(a))
- 11) Makes the provisions related to fingerprint submission as a condition of licensure renewal operative on January 1, 2011. (BPC §144.5(h))
- 12) Deletes related obsolete language. (BPC §144(c))

**Comment:**

- 1) **Author's Intent.** According to the Author's office, the purpose of this legislation is to create a consistent fingerprinting policy for all licensees under the DCA umbrella.
- 2) **Background.** 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.

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 examination 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.

- 3) Pending Board Regulation.** The final rulemaking package requiring 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 was approved by the Board at its February 26, 2009 meeting. Currently staff is awaiting final approval of the package from the Department of Consumer Affairs. Upon Department approval the package will be submitted to the Office of Administrative Law.

Specifically the Board's proposed 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.

**4) Differences in Proposed Legislation and Board Rulemaking.** The language in SB 389 and the board's proposed fingerprint regulation are very similar. However, one major difference is that the Board proposed regulation is NOT tied to license renewal. If a licensee fails to comply with the fingerprint requirements as set forth in the Board's regulation it is a citable offense; fingerprint submission is not a condition of renewal.

Another significant difference between the Board regulation and the bill before the Committee is the implementation timeline. The Board's regulation requires that all licensees and registrants subject to the regulatory requirements (those they have not submitted fingerprints previously or for whom an electronic record of their fingerprints do not exist with DOJ) to submit fingerprints by his or her license or registration renewal date that occurs after October 31, 2009. SB 389 fingerprint submission requirement as a condition of renewal becomes operative for those renewing after January 1, 2011.

**5) Fingerprint Submission and Certification as a Condition of License Renewal.** The Board's proposed regulation does not make fingerprint submission a condition of licensure or registration for a number of reasons. First, due to the nature of the work Board licensees perform and the populations they serve, the Board did not feel that it was appropriate to take these professionals out of the workforce for failure to submit fingerprints by their renewal

date. Many people and entities rely on Board licensees, including some communities that may only have one mental health practitioner serving the entire area/region.

Section 144.5(a) of this states that renewal is contingent on successful completion of a Criminal Offender Record Information (CORI) search by DOJ. Subdivision (b) of the same section makes certification of completion of CORI an additional condition of renewal. Therefore, if a licensee fails to check the box (certify that he or she has completed the requirement) their licenses may not be renewed (though they have actually completed a CORI search with DOJ). This can mean a delay in the ability of a licensee to practice. Additionally, completion of a CORI search can be interpreted to mean not the submission of the prints, but the running of the report by DOJ. If a person has a criminal background, or there is an error with the prints with state or federal system (there is a 15% error rate) - it may take months to *complete* a CORI search. Again - a licensee will not be able to work in that time that the Board is waiting for the search to be completed, though they have submitted the fingerprints required.

The Board of Behavioral Sciences is one of the boards under DCA that have proposed fingerprint regulations either already in place or in the rulemaking process. Each board is different and serves a unique population of consumers and licensees and therefore, creating a one size fits all solution, as with this proposed legislation, may not be the best way to address the fingerprinting problem.

If this bill were to go into effect as currently written it would hamper the Board's ability to protect consumers from professionals with related convictions in a expedient and efficient manner. The Board has been granted funding for extra staff to move forward with fingerprinting 30,000 licensees that currently do not have an electronic fingerprint record with DOJ, beginning this year. It is important that the Board be able to move forward as soon as possible to ensure that all Board licensees meet the current licensing standards and consumers are not unduly put into harm's way.

#### **6) SB 389 Implementation Issues.**

Linking fingerprint submission to licensure renewal creates a significant workload problem for the Board, in addition to creating confusion to the licensees. Currently the Employment Development Department (EDD) sends Board renewal notices (automatically 90 days before license expiration) to all licensees and registrants. If fingerprint submission is a condition of renewal, and certification is required on the renewal form, then *all* licensees, 90 days before the expiration of their license, would get a renewal form asking for certification of fingerprint submission. In the Board's case, that means that 40,000 licensee that do not need to meet the new requirement (because they have already been fingerprinted) will get a renewal form that asks for certification of fingerprint submission. The volume of inquires that would result would be overwhelming to the Board staff and would take time away from processing new licenses and renewals. This of course could lead to less professionals being able to practice.

As currently written, this bill stipulates that the fingerprint submission upon renewal requirement becomes operative in January 1, 2011. In actuality this means that a licensee could go nearly four years from now before the Board would have a CORI report on a licensee (renewal is biennial; last possible renewal with fingerprints would be due December 31, 2012). The Board's proposed regulation requires licensees with renewals after October 31, 2009 to submit fingerprints - making the last possible licensee to submit fingerprints due October, 2011.

**7) Policy and Advocacy Committee Recommendation.** On April 10, 2009 the Policy and Advocacy Committee voted to recommend to the Board an oppose position on this bill unless the measure is amended to remove the Board from BPC sections 144.5 and 144.6 of the bill that relates to the fingerprinting of licensees as a condition of renewal.

**8) Support and Opposition.**

Support: California Medical Board  
California Board of Accountancy  
California Chiropractic Association

Opposition: California Chapter of the American Fence Contractors Association  
California Fence Contractors Association  
Engineering and Utility Contractors Association  
Engineering Contractors Association  
Flasher/Barricade Association  
Golden State Builders Exchanges  
Marin Builders Association

Oppose unless amended:

California Medical Association  
Contractors State License Board

**9) History**

2009

Apr. 24

Set for hearing April 28.

Apr. 21

From committee: Do pass, but first be re-referred to Com. on PUB.S. (Ayes 9. Noes 0. Page 580.) Re-referred to Com. on PUB.S.

Mar. 27

Set for hearing April 20.

Mar. 12

To Coms. on B., P. & E.D. and PUB. S.

Feb. 27

From print. May be acted upon on or after March 28.

Feb. 26

Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE MAY 5, 2009

**SENATE BILL**

**No. 389**

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**Introduced by Senator Negrete McLeod**

February 26, 2009

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An act to amend Section 144 of, and to add Sections 144.5 and 144.6 to, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as amended, Negrete McLeod. Professions and vocations.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on various grounds, including, but not limited to, conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law requires applicants to certain boards to provide a full set of fingerprints for the purpose of conducting criminal history record checks.

This bill would make that fingerprinting requirement applicable to the Dental Board of California, the Dental Hygiene Committee of California, the Professional—~~Fiduciary~~ *Fiduciaries* Bureau, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners. The bill would require applicants for a license and, commencing January 1, 2011, licensees who have not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to successfully complete a state and federal level criminal offender record information search, as specified. The bill would require licensees

to certify compliance with that requirement, as specified, and would subject a licensee to disciplinary action for making a false certification. The bill would also require a licensee to, as a condition of renewal of the license, notify the board on the license renewal form if he or she has been convicted, as defined, of a felony or misdemeanor since his or her last renewal, or if this is the licensee’s first renewal, since the initial license was issued.

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

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

- 1 SECTION 1. Section 144 of the Business and Professions Code
- 2 is amended to read:
- 3 144. (a) Notwithstanding any other provision of law, an agency
- 4 designated in subdivision (b) shall require an applicant for a license
- 5 to furnish to the agency a full set of fingerprints for purposes of
- 6 conducting criminal history record checks and shall require the
- 7 applicant to successfully complete a state and federal level criminal
- 8 offender record information search conducted through the
- 9 Department of Justice as provided in subdivision (c) or as otherwise
- 10 provided in this code.
- 11 (b) Subdivision (a) applies to the following:
- 12 (1) California Board of Accountancy.
- 13 (2) State Athletic Commission.
- 14 (3) Board of Behavioral Sciences.
- 15 (4) Court Reporters Board of California.
- 16 (5) State Board of Guide Dogs for the Blind.
- 17 (6) California State Board of Pharmacy.
- 18 (7) Board of Registered Nursing.
- 19 (8) Veterinary Medical Board.
- 20 (9) Registered Veterinary Technician Committee.
- 21 (10) Board of Vocational Nursing and Psychiatric Technicians.
- 22 (11) Respiratory Care Board of California.
- 23 (12) Hearing Aid Dispensers Bureau.
- 24 (13) Physical Therapy Board of California.
- 25 (14) Physician Assistant Committee of the Medical Board of
- 26 California.
- 27 (15) Speech-Language Pathology and Audiology Board.
- 28 (16) Medical Board of California.

- 1 (17) State Board of Optometry.
- 2 (18) Acupuncture Board.
- 3 (19) Cemetery and Funeral Bureau.
- 4 (20) Bureau of Security and Investigative Services.
- 5 (21) Division of Investigation.
- 6 (22) Board of Psychology.
- 7 (23) California Board of Occupational Therapy.
- 8 (24) Structural Pest Control Board.
- 9 (25) Contractors' State License Board.
- 10 (26) Bureau of Naturopathic Medicine.
- 11 (27) Dental Board of California.
- 12 (28) Dental Hygiene Committee of California.
- 13 ~~(27)~~
- 14 (29) Professional Fiduciaries Bureau.
- 15 ~~(28)~~
- 16 (30) California Board of Podiatric Medicine.
- 17 ~~(29)~~
- 18 (31) Osteopathic Medical Board of California.
- 19 ~~(30)~~
- 20 (32) State Board of Chiropractic Examiners.

21 (c) Except as otherwise provided in this code, each agency listed  
22 in subdivision (b) shall direct applicants for a license to submit to  
23 the Department of Justice fingerprint images and related  
24 information required by the Department of Justice for the purpose  
25 of obtaining information as to the existence and content of a ~~state~~  
26 ~~or federal criminal record~~ *record of state or federal convictions*  
27 *and state or federal arrests and also information as to the existence*  
28 *and content of a record of state or federal arrests for which the*  
29 *Department of Justice establishes that the person is free on bail*  
30 *or on his or her recognizance pending trial or appeal. The*  
31 Department of Justice shall forward the fingerprint images and  
32 related information received to the Federal Bureau of Investigation  
33 and request federal criminal history information. The Department  
34 of Justice shall compile and disseminate state and federal responses  
35 to the agency pursuant to subdivision (p) of Section 11105 of the  
36 Penal Code. The agency shall request from the Department of  
37 Justice subsequent arrest notification service, pursuant to Section  
38 11105.2 of the Penal Code, for each person who submitted  
39 information pursuant to this subdivision. The Department of Justice

1 shall charge a fee sufficient to cover the cost of processing the  
2 request described in this section.

3 SEC. 2. Section 144.5 is added to the Business and Professions  
4 Code, to read:

5 144.5. (a) Notwithstanding any other provision of law, an  
6 agency designated in subdivision (b) of Section 144 shall require  
7 a licensee who has not previously submitted fingerprints or for  
8 whom a record of the submission of fingerprints no longer exists  
9 to, as a condition of license renewal, successfully complete a state  
10 and federal level criminal offender record information search  
11 conducted through the Department of Justice as provided in  
12 subdivision (d).

13 (b) (1) A licensee described in subdivision (a) shall, as a  
14 condition of license renewal, certify on the renewal application  
15 that he or she has successfully completed a state and federal level  
16 criminal offender record information search pursuant to subdivision  
17 (d).

18 (2) The licensee shall retain for at least three years, as evidence  
19 of the certification made pursuant to paragraph (1), either a receipt  
20 showing that he or she has electronically transmitted his or her  
21 fingerprint images to the Department of Justice or, for those  
22 licensees who did not use an electronic fingerprinting system, a  
23 receipt evidencing that the licensee's fingerprints were taken.

24 (c) Failure to provide the certification required by subdivision  
25 (b) renders an application for renewal incomplete. An agency shall  
26 not renew the license until a complete application is submitted.

27 (d) Each agency listed in subdivision (b) of Section 144 shall  
28 direct licensees described in subdivision (a) to submit to the  
29 Department of Justice fingerprint images and related information  
30 required by the Department of Justice for the purpose of obtaining  
31 information as to the existence and content of ~~a state or federal~~  
32 ~~criminal record~~ *record of state or federal convictions and state or*  
33 *federal arrests and also information as to the existence and content*  
34 *of a record of state or federal arrests for which the Department*  
35 *of Justice establishes that the person is free on bail or on his or*  
36 *her recognizance pending trial or appeal.* The Department of  
37 Justice shall forward the fingerprint images and related information  
38 received to the Federal Bureau of Investigation and request federal  
39 criminal history information. The Department of Justice shall  
40 compile and disseminate state and federal responses to the agency

1 pursuant to subdivision (p) of Section 11105 of the Penal Code.  
2 The agency shall request from the Department of Justice  
3 subsequent arrest notification service, pursuant to Section 11105.2  
4 of the Penal Code, for each person who submitted information  
5 pursuant to this subdivision. The Department of Justice shall charge  
6 a fee sufficient to cover the cost of processing the request described  
7 in this section.

8 (e) An agency may waive the requirements of this section if the  
9 license is inactive or retired, or if the licensee is actively serving  
10 in the military. The agency may not activate an inactive license or  
11 return a retired license to full licensure status for a licensee  
12 described in subdivision (a) until the licensee has successfully  
13 completed a state and federal level criminal offender record  
14 information search pursuant to subdivision (d).

15 (f) With respect to licensees that are business entities, each  
16 agency listed in subdivision (b) of Section 144 shall, by regulation,  
17 determine which owners, officers, directors, shareholders,  
18 members, agents, employees, or other natural persons who are  
19 representatives of the business entity are required to submit  
20 fingerprint images to the Department of Justice and disclose the  
21 information on its renewal forms, as required by this section.

22 (g) A licensee who falsely certifies completion of a state and  
23 federal level criminal record information search under subdivision  
24 (b) may be subject to disciplinary action by his or her licensing  
25 agency.

26 (h) This section shall become operative on January 1, 2011.

27 SEC. 3. Section 144.6 is added to the Business and Professions  
28 Code, to read:

29 144.6. (a) An agency described in subdivision (b) of Section  
30 144 shall require a licensee, as a condition of license renewal, to  
31 notify the board on the license renewal form if he or she has been  
32 convicted, as defined in Section 490, of a felony or misdemeanor  
33 since his or her last renewal, or if this is the licensee's first renewal,  
34 since the initial license was issued.

35 (b) The reporting requirement imposed under this section shall  
36 apply in addition to any other reporting requirement imposed under  
37 this code.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** SB 543                      **VERSION:** INTRODUCED FEBRUARY 27, 2009

**AUTHOR:** LENO                              **SPONSOR:** NASW,  
California Chapter Mental Health  
America of Northern California  
GSA Network, Equality California

**RECOMMENDED POSITION:** NONE

**SUBJECT:** MINORS: CONSENT TO MENTAL HEALTH TREATMENT

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### **Existing Law:**

- 1) Defines a “professional person” related to mental health treatment or counseling services in the treatment of minors on an outpatient basis or in a residential shelter as any of the following: (Family Code §6924 (a)(2))
  - a) A psychiatrist;
  - b) A psychologist, licensed by the State Board of Medical Quality Assurance;
  - c) A Licensed Clinical Social Worker (LCSW), with specified exemptions for continuous employment in the same class in the same program facility, or enrollment in an accredited doctoral program in social work, social welfare or social science;
  - d) A Licensed Marriage and Family Therapist (MFT);
  - e) A Licensed Educational Psychologist (LEP);
  - f) A credentialed school psychologist;
  - g) A clinical psychologist;
  - h) A MFT Intern, while working under the supervision of a licensed professional; and,
  - i) A chief administrator of at a mental health treatment or counseling entity described or a residential shelter.
- 2) Defines “mental health treatment or counseling services” as the provision of mental health treatment or counseling on an outpatient basis by any of the following: (Family Code §6924 (a)(1))

- a) A governmental agency;
  - b) A person or agency having a contract with a governmental agency to provide those services;
  - c) An agency that receives funding from community united funds;
  - d) A runaway house or crisis resolution center; or,
  - e) A professional person, as defined.
- 3) Defines a “residential shelter service” as any of the following: (Family Code §6924 (a)(3))
- a) A provision of residential and other support services to minors on a temporary emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.
  - b) The provision of other support services on a temporary or emergency basis by any professional person, as defined.
- 4) Allows a minor who is 12 years of age or older to consent to mental health services on an outpatient basis or to a residential shelter facility if the minor is mature enough to participate intelligently in the counseling services and if the minor either would present a danger of serious physical or mental harm to self or others without receiving the services or if the minor is an alleged victim of incest or child abuse. (Family Code §6924 (b))
- 5) Requires a professional person offering residential shelter services to make his or her best efforts to notify the parent or guardian of the provision of services. (Family Code §6924 (c))
- 6) Requires the mental health treatment or counseling of a minor authorized by this section of law to include the involvement of the minor’s parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. (Family Code §6924 (c))

**This Bill:**

- 1) Allows a minor who is 12 years of age or older to consent to mental health services on an outpatient basis or to a residential shelter facility if the minor is mature enough to participate intelligently in the counseling services or if the minor either would present a danger of serious physical or mental harm self or others without receiving the services or if the minor is an alleged victim of incest or child abuse. (Family Code §6924 (b))

- 2) Deletes the requirement that a professional person offering residential shelter services make his or her best efforts to notify the parent or guardian of the provision of services. (Family Code §6924 (c))
- 3) States that the mental health treatment or counseling of a minor authorized in this section of law shall include the involvement of the minor's parent or guardian if appropriate, as determined by the professional person or treatment facility treating the minor. (Family Code §6924 (c))

**Comment:**

- 1) **Author's Intent.** According to the author's office, this bill addresses the identified barrier of parental consent for minor youth seeking mental health services and increases accessibility to mental health programs, particularly prevention and early intervention programs, which have better results, reduce future costs and are less expensive to administer.

Currently, youth age 12-17 must receive parental consent for mental health treatment or counseling, unless they present a danger of serious physical or mental harm to themselves or others. According to the author, parental consent for mental health services can create a barrier, especially in prevention and early intervention programs where youth may not be experiencing serious physical or mental harm. This barrier is especially harmful to certain populations of youth including lesbian, gay, bisexual, and transgender (LGBT) youth.

Many LGBT youth do not seek prevention or early intervention services due to the need for parental consent. Requiring parental consent can force LGBT youth into emotionally damaging and sometimes physically threatening situations of coming out to their parents prematurely and without support.

- 2) **Expanded population of individuals that may receive services.** This bill will allow a minor 12 -17 years of age to participate in mental health treatment or counseling in certain settings if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently or if the minor may present a danger to himself/herself or others. Currently a minor would have to be able to meet both of these requirements to receive services (essentially specifying that the youth must be in crisis to receive services without parental consent). By lowering the threshold for services, more minors will be eligible for mental health services in particular settings. Additionally, meeting the requirement of being able to participate intelligently in the services is subjective. If a minor is able to locate mental health services that he or she perceives they need, one could assume that the individual would be able to participate intelligently in those services. If a minor did not meet the requirement to be able to participate intelligently, it could be assumed that the individual would most likely meet the criteria of being a mental harm to self or others. Therefore, it could be stated that by allowing these minors to meet only one of the current requirements to consent to mental health services, this bill will effectively open up services in the specified settings for a majority of all youth 12-17 years of age.
- 3) **Parental Rights.** Current law requires a professional person offering residential shelter services to make his or her best effort to notify the parent and guardian of the minor receiving services. Also, current law requires a practitioner to involve the minor's parent or guardian in those services, unless the practitioner believes that the involvement would be inappropriate. This bill will allow a practitioner to provide services in a residential shelter to a minor without notifying a parent or guardian of the services provided. Additionally, as discussed in #2 (above), this bill expands the population of minors that may be eligible for services without the consent of his or her parents. This bill will remove the right of a parent

to consent or be notified of mental health services that his or her child is receiving in any case where the minor can participate intelligently in services. The practitioner is only required to involve the parent or guardian if the practitioner believes it would be appropriate. This takes considerable discretion away from the parent and gives that discretion to a minor and a mental health practitioner.

- 4) **Burden for therapist to involve parent or guardian.** Current law requires that a professional person must include involvement of the minor's parent or guardian unless, in the opinion of the practitioner, the involvement would be inappropriate. This bill instead states that the practitioner shall involve the parent or guardian if appropriate. This modification changes the assumption that the parent or guardian *will be* involved to an assumption that they *will not be* involved, unless the practitioner deems it appropriate. This places the burden of involving the parent or guardian on the practitioner, instead of the involvement being a function of the law.
- 5) **Confidentiality.** Patient privilege exists with the patient that consents to services. This bill presents questions as to the subsequent involvement of a minor's parent or guardian in services. If a practitioner deems it appropriate to involve a parent or guardian in a minor patient's mental health services, what information can the practitioner release to the parent or guardian, and to what extent can that parent or guardian be involved without the consent of the minor?
- 6) **Existing Youth Consent Laws.** Current law allows minors of varying ages to seek many services without parental consent, including: reproductive health, treatment of communicable diseases and alcohol or drug abuse counseling. Specifically, current law allows:
  - Minors of any age to consent to medical care related to the prevention or treatment of pregnancy (Family Code section 6925).
  - Minors 12 years of age or older to consent to medical care related to the diagnosis or treatment of an infectious, contagious or communicable disease, as described. (FC Section 6926)
  - Minors 12 years of age or older to consent to medical care and counseling related to the diagnosis and treatment of a drug or alcohol related problem. This treatment may involve the minor's parent or guardian, if appropriate, as determined by the treatment professional. (FC Section 6929)
  - A minor who is alleged to have been sexually assaulted to consent to medical care related to the diagnosis and treatment of the condition, however, the professional person providing treatment must attempt to contact the minor's parent or guardian (unless it is believed that the parent or guardian committed the sexual assault on the minor). (FC Section 6928)
  - A minor 15 years of age or older to consent to medical care or dental care if the minor is living separate and apart from the minor's parent's or guardians and the minor manages his or her own financial affairs. (FC Section 6922)
- 7) **Suggested Technical Amendment.** Currently subdivision (g) of Family Code Section 6924, specifies that a professional person, defined in this section of law, may be an MFT Intern while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code. This bill inserts language in

this provision that the supervision by the licensed professional must be as specified in 4980.40(f), as that subdivision read on January 1, 2003. According to the author's office, this language was added during the drafting on the bill and was intended to clarify the supervision provision. However, inserting the reference to law as it appeared in 2003 adds confusion; this code section has been amended three times since the reference date of January 1, 2003, making it difficult to ascertain what requirements were in effect on that date. Additionally, supervision requirements evolve as does the requirements for registration as a MFT intern, making a reference to outdated requirements not consistent with current law or the Board's mandate to hold consumer protection as its highest priority.

**8) Support and Opposition.**

*Support:* National Association of Social Workers, California Chapter (sponsors)  
Mental Health America of Northern California (Sponsor)  
GSA Network (Sponsor)  
Equality California (Sponsor)

*Opposition:* None on file.

**9) History**

2009  
Apr. 23 Set for hearing May 5.  
Mar. 12 To Com. on JUD.  
Mar. 2 Read first time.  
Feb. 28 From print. May be acted upon on or after March 30.  
Feb. 27 Introduced. To Com. on RLS. for assignment. To print.

**ATTACHMENT**

Family Code Sections relating to existing youth consent laws

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**Introduced by Senator Leno**February 27, 2009

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An act to amend Section 6924 of the Family Code, relating to minors.

## LEGISLATIVE COUNSEL'S DIGEST

SB 543, as introduced, Leno. Minors: consent to mental health treatment.

Existing law authorizes a minor who is 12 years of age or older to consent to mental health treatment or counseling, except as specified, on an outpatient basis, or to residential shelter services, if two circumstances are satisfied. First, the minor, in the opinion of the attending professional person, must be mature enough to participate intelligently in the outpatient services or residential shelter services. Second, the minor must present a danger of serious physical or mental harm to himself or herself, or others, without the mental health treatment or counseling or residential shelter services, or be the alleged victim of incest or child abuse. Existing law also requires that a professional person offering residential shelter services make his or her best efforts to notify the parent or guardian of the provision of those services. These provisions also require that the mental health treatment or counseling of a minor include the involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate.

This bill would instead authorize a minor who is 12 years of age or older to consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if either circumstance described above is satisfied. The bill would delete the requirement that a professional person offering residential shelter services make his or her best efforts to notify the parent or guardian of the provision of those

services to a minor pursuant to this provision. The bill would also revise the latter provision to require that the mental health treatment or counseling of a minor pursuant to these provisions include the involvement of the minor’s parent or guardian if appropriate, as determined by the professional person or treatment facility treating the minor.

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

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

1 SECTION 1. Section 6924 of the Family Code is amended to  
2 read:  
3 6924. (a) As used in this section:  
4 (1) “Mental health treatment or counseling services” means the  
5 provision of mental health treatment or counseling on an outpatient  
6 basis by any of the following:  
7 (A) A governmental agency.  
8 (B) A person or agency having a contract with a governmental  
9 agency to provide the services.  
10 (C) An agency that receives funding from community united  
11 funds.  
12 (D) A runaway house or crisis resolution center.  
13 (E) A professional person, as defined in paragraph (2).  
14 (2) “Professional person” means any of the following:  
15 (A) A person designated as a mental health professional in  
16 Sections 622 to 626, inclusive, of Article 8 of ~~Subchapter 3 of~~  
17 ~~Chapter 3 of~~ *Division 1 of* Title 9 of the California Code of  
18 Regulations.  
19 (B) A marriage and family therapist as defined in Chapter 13  
20 (commencing with Section 4980) of Division 2 of the Business  
21 and Professions Code.  
22 (C) A licensed educational psychologist as defined in ~~Article 5~~  
23 ~~(commencing with Section 4986) of Chapter 13~~ *Chapter 13.5*  
24 *(commencing with Section 4989.10)* of Division 2 of the Business  
25 and Professions Code.  
26 (D) A credentialed school psychologist as described in Section  
27 49424 of the Education Code.  
28 (E) A clinical psychologist as defined in Section 1316.5 of the  
29 Health and Safety Code.

1 (F) The chief administrator of an agency referred to in paragraph  
2 (1) or (3).

3 (G) A marriage and family therapist registered intern, as defined  
4 in Chapter 13 (commencing with Section 4980) of Division 2 of  
5 the Business and Professions Code, while working under the  
6 supervision of a licensed professional specified in subdivision (f)  
7 of Section 4980.40 of the Business and Professions Code *as that*  
8 *subdivision read on January 1, 2003.*

9 (3) “Residential shelter services” means any of the following:

10 (A) The provision of residential and other support services to  
11 minors on a temporary or emergency basis in a facility that services  
12 only minors by a governmental agency, a person or agency having  
13 a contract with a governmental agency to provide these services,  
14 an agency that receives funding from community funds, or a  
15 licensed community care facility or crisis resolution center.

16 (B) The provision of other support services on a temporary or  
17 emergency basis by any professional person as defined in paragraph  
18 (2).

19 (b) A minor who is 12 years of age or older may consent to  
20 mental health treatment or counseling on an outpatient basis, or  
21 to residential shelter services, if ~~both~~ *either* of the following  
22 requirements are satisfied:

23 (1) The minor, in the opinion of the attending professional  
24 person, is mature enough to participate intelligently in the  
25 outpatient services or residential shelter services.

26 (2) The minor (A) would present a danger of serious physical  
27 or mental harm to self or to others without the mental health  
28 treatment or counseling or residential shelter services, or (B) is  
29 the alleged victim of incest or child abuse.

30 ~~(e) A professional person offering residential shelter services,~~  
31 ~~whether as an individual or as a representative of an entity specified~~  
32 ~~in paragraph (3) of subdivision (a), shall make his or her best~~  
33 ~~efforts to notify the parent or guardian of the provision of services.~~

34 ~~(d)~~

35 (c) The mental health treatment or counseling of a minor  
36 authorized by this section shall include involvement of the minor’s  
37 parent or guardian ~~unless, in the opinion of the professional person~~  
38 ~~who is treating or counseling the minor, the involvement would~~  
39 ~~be inappropriate if appropriate, as determined by the professional~~  
40 *person or treatment facility treating the minor.* The professional

1 person who is treating or counseling the minor shall state in the  
2 client record whether and when the person attempted to contact  
3 the minor's parent or guardian, and whether the attempt to contact  
4 was successful or unsuccessful, or the reason why, in the  
5 professional person's opinion, it would be inappropriate to contact  
6 the minor's parent or guardian.

7 (e) The minor's parents or guardian are not liable for payment  
8 for mental health treatment or counseling services provided  
9 pursuant to this section unless the parent or guardian participates  
10 in the mental health treatment or counseling, and then only for  
11 services rendered with the participation of the parent or guardian.  
12 The minor's parents or guardian are not liable for payment for any  
13 residential shelter services provided pursuant to this section unless  
14 the parent or guardian consented to the provision of those services.

15 (f) This section does not authorize a minor to receive convulsive  
16 therapy or psychosurgery as defined in subdivisions (f) and (g) of  
17 Section 5325 of the Welfare and Institutions Code, or psychotropic  
18 drugs without the consent of the minor's parent or guardian.

## **EXISTING YOUTH CONSENT LAWS**

### **Family Code Section**

**6925.** (a) A minor may consent to medical care related to the prevention or treatment of pregnancy.

(b) This section does not authorize a minor:

(1) To be sterilized without the consent of the minor's parent or guardian.

(2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 123450 of the Health and Safety Code.

**6926.** (a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.

(b) The minor's parents or guardian are not liable for payment for medical care provided pursuant to this section.

**6929.** (a) As used in this section:

(1) "Counseling" means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.

(2) "Drug or alcohol" includes, but is not limited to, any substance listed in any of the following:

(A) Section 380 or 381 of the Penal Code.

(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) Subdivision (f) of Section 647 of the Penal Code.

(3) "LAAM" means levoalphacetylmethadol as specified in paragraph (10) of subdivision (c) of Section 11055 of the Health and Safety Code.

(4) "Professional person" means a physician and surgeon, registered nurse, psychologist, clinical social worker, marriage and family therapist, marriage and family therapist registered intern when appropriately employed and supervised pursuant to subdivision (f) of Section 4980.40 of the Business and Professions Code, psychological assistant when appropriately employed and supervised pursuant to Section 2913 of the Business and Professions Code, or associate clinical social worker when appropriately employed and supervised pursuant to Section 4996.18 of the Business and Professions Code.

(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem.

(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor's parent or guardian, if appropriate, as determined by the professional person or treatment

facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the professional person attempted to contact the minor's parent or guardian, and whether the attempt to contact the parent or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian.

(d) The minor's parent or guardian is not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.

(f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.

(g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug- or alcohol-related problem of a minor child, the physician shall disclose medical information concerning the care to the minor's parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure.

**6928.** (a) "Sexually assaulted" as used in this section includes, but is not limited to, conduct coming within Section 261, 286, or 288a of the Penal Code.

(b) A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.

(c) The professional person providing medical treatment shall attempt to contact the minor's parent or guardian and shall note in the minor's treatment record the date and time the professional person attempted to contact the parent or guardian and whether the attempt was successful or unsuccessful. This subdivision does not apply if the professional person reasonably believes that the minor's parent or guardian committed the sexual assault on the minor.

**6922.** (a) A minor may consent to the minor's medical care or dental care if all of the following conditions are satisfied:

(1) The minor is 15 years of age or older.

(2) The minor is living separate and apart from the minor's parents or guardian, whether with or without the consent of a parent or guardian and regardless of the duration of the separate residence.

(3) The minor is managing the minor's own financial affairs,

regardless of the source of the minor's income.

(b) The parents or guardian are not liable for medical care or dental care provided pursuant to this section.

(c) A physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian.

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- Requires each board to demonstrate a compelling public need for the continued existence of the board, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.
- 7) Requires the JCBCCP to evaluate and determine whether a board has demonstrated a public need for the continued existence of the board and for the degree of regulation the board implements based on certain factors and minimum standards of performance. (BPC § 473.4(a))
  - 8) Requires the JCBCCP to consider alternatives to placing responsibilities and jurisdiction of the board under the DCA. (BPC § 473.4(b))

**This Bill:**

- 1) Abolishes the JCBCCP. (BPC § 473)
- 2) Terminates the terms of office for each member of the Board on an unspecified date, unless a later enacted statute, which is enacted before that date, deletes or extends that date. (BPC § 473.12(a))
- 3) Provides that if the terms of office of the Board membership are terminated pursuant to the provisions of this bill, successor members shall be appointed for the remainder of the office terms by the same appointing authorities as the original membership. (BPC § 101.1)
- 4) Requires the Board, with the assistance of DCA, to prepare an analysis and submit a report to the appropriate policy committee of the legislature no later than 22 months before the board's membership shall be terminated with the following information: (BPC § 473.2)
  - a) The number of complaints it received per year, the number of complaints per year that proceeded to investigation, the number of accusations filed per year, and the number and kind of disciplinary actions taken, including, but not limited to, interim suspension orders, revocations, probations, and suspensions.
  - b) The average amount of time per year that elapsed between receipt of a complaint and the complaint being closed or referred to investigation; the average amount of time per year elapsed between the commencement of an investigation and the complaint either being closed or an accusation being filed; the average amount of time elapsed per year between the filing of an accusation and a final decision, including appeals; and the average and median costs per case.
  - c) The average amount of time per year between final disposition of a complaint and notice to the complainant.
  - d) A copy of the enforcement priorities including criteria for seeking an interim suspension order.
  - e) A brief description of the board's or bureau's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.
  - f) A brief description of the cost per year required to implement and administer its licensing examination, ownership of the license examination, the last assessment of the relevancy

and validity of the licensing examination, the passage rate for each of the last four years, and areas of examination.

- g) A copy of sponsored legislation and a description of its budget change proposals.
  - h) A brief assessment of its licensing fees as to whether they are sufficient, too high, or too low.
  - i) A brief statement detailing how the board or bureau over the prior four years has improved its enforcement, public disclosure, accessibility to the public, including, but not limited to, Web casts of its proceedings, and fiscal condition
- 5) Allows the appropriate policy committee to hold a public hearing before the termination of the terms of office for Board membership to receive and consider testimony from the Director of DCA, the Board, the Attorney General, members of the public, and representatives of the regulated industry regarding the Board's policies and practices and whether an enforcement monitor may be necessary to obtain further information on operations. (BPC § 473.3)
  - 6) Allows the appropriate policy committee of the Legislature to regulatory program has demonstrated a public need for continued existence based on the factors and standards of performance currently in statute. (BPC § 473.4(a))
  - 7) Deletes the sunset review process, including the requirement of JCBCCP to report to DCA findings on the Boards under review, and the requirement that DCA to make recommendations on its findings related to the Board under review to JCBCCP. Also deletes the requirement that the final report of be made public and a hearing to discuss the recommendations be held by JCBCCP. (BPC § 473.5)
  - 8) Makes the appropriate policy committee of the legislature responsible for reviewing by interim study any legislative issue to create a new licensure ore regulatory category. (BPC § 473.6)
  - 9) States that the appropriate policy committees of the legislature may, through their oversight function, investigate the operations of any entity subject to this bill and hold public hearings on whether the Board's policies and practices, including enforcement, disclosure, licensing exams and fee structure, are sufficient to protect consumers and are fair to licensees and prospective licensees, whether licensure of the professions is required to protect the public, and whether an enforcement monitor may be necessary to obtain further information on operations. (BPC § 473.7)

**Comment:**

- 1) **Author's Intent.** According to the author's office, in recent years when problems have been identified with a variety of boards, the most effective means of achieving resolution and change has been reconstitution the board. This bill would make reconstitution automatic when a board becomes inoperative. According to the author this bill is needed to update and streamline the sunset review process.

- 2) **Sunset Review.** In 1994, the legislature enacted the “sunset review” process, which permits the periodic review of the need for licensing and regulation of a profession and the effectiveness of the administration of the law by the licensing board. The sunset review process is in part built on an assumption in law that if a board is operating poorly, and lesser measures have been ineffective in rectifying the problems, the board should be allowed to sunset and the administration of the licensing act would be done more effectively if the board becomes a bureau under the DCA.

Under a bureau, a bureau chief is in charge and reports to the director of the Department. In bureaus, many decisions are made through a closed-door administrative management structure. Under a board structure, board members are appointed and hold hearings in public. The board members appoint an executive officer who manages the operations of the board and reports to the board in public. This process is more accountable and transparent and offers the public more opportunity to participate.

This bill would essentially allow the creation of a new board membership by allowing appointing authorities to appoint new members to replace problem members and to reappoint effective members. The new board may then replace the executive officer if the executive officer has been ineffective in managing the operations.

- 3) **Requirements of Board Report to Legislature.** Previous sunset reports required by the legislature required the Board to provide general information regarding the Board’s mission, goals and objectives and legal jurisdiction in protecting the health, safety, and welfare of the public. Additionally, the legislature required an overview of the Board’s enforcement priorities, budget expenditures for enforcement efforts and case aging data. SB 638 recasts these provisions prescriptively. For instance, the current statutory requirement described above relating to Board enforcement data is contained in one subdivision. In SB 788, information required related to enforcement is detailed in three separate subdivisions, outlining the exact information required by the Legislature, such as, the number of complaints received per year, the average amount of time per year between final disposition of a complaint and notice of compliant and the average cost per case. The new report requirements are listed in detail in this analysis under number four of the section explaining the requirements of this bill.

All the information required to be reported to the Legislature by this bill is information currently tracked and compiled by this Board. However, BPC Section 473.2(a)(7) states that the Board’s report to the Legislature must include a description of its budget change proposals (BCPs) related to sponsored legislation. The Board would be unable to comply with this provision as BCPs are not public information until they are included in the Governor’s budget.

- 4) **Effective Legislative Oversight.** The Sunset Review process has not always been well received by boards and bureaus.
- The process has been time consuming and does drain scarce resources away from other priorities.
  - As a legislative process, Sunset Review has sometimes felt political influences independent of assessing the performance of individual programs.
  - The review process has also suffered from not having well articulated performance standards for boards. Review has been on a “we know a problem when we see it” basis. A holistic element is necessary in any board review

process, but it ought to be bracketed by some relatively concrete performance standards.

Despite those issues, regular legislative oversight has real value and should be continued. It provides an opportunity for sharing successful strategies among programs and has been a vehicle for progressive changes on boards with strong track records. However, it appears that the existing Sunset Review process may no longer be viable, and some replacement oversight mechanism needs to be considered.

The committee may want to consider providing comment for the Legislature's consideration regarding elements of an effective oversight process. The staff suggests the following concepts:

Oversight Processes should include:

- 1) Open/collaborative process of establishing some concrete performance standards in major program areas (licensing, cashiering, examinations, etc.).
- 2) Thematic Focus. Existing review processes are conducted by snapshot reviews of individual boards over time. This may be appropriate for boards/bureaus with particularly acute problems; however, performing an individual round of oversight along a particular theme (licensing, enforcement, customer service, communications, etc.) and sampling the 37 DCA boards and bureaus as to that theme would be more productive and informative for both the Legislature and the participating boards/bureaus.
- 3) Coordination between the Assembly and Senate committees. Duplicative or conflicting oversight and standard setting efforts are in no one's interest.
- 4) Hands On. Oversight staff should attend/participate in public board and committee meetings as part of the process. Board policymaking and public processes are essential to our functions and are hard to evaluate completely without seeing them in person.

The Legislature can command the attention and participation of any board both through the relevant policy committees and through the annual budget process. Sunset dates are not needed to "enforce" effective oversight.

- 5) **Previous Legislation and Board Action.** SB 963 (Ridley-Thomas), Chapter 385, Statutes of 2007 similarly streamlined the sunset review process by making board reconstitution automatic when a board becomes inoperative on a specified date. The Board took no formal position on this legislation. SB 963 was later amended to extend the inoperative date the Board, at which time the Board adopted a support position on the legislation.

**6) Support and Opposition.**

None on file

**7) History**

2009

Apr. 21 From committee: Do pass, but first be re-referred to Com. on RLS.

(Ayes 8. Noes 1. Page 581.) Re-referred to Com. on RLS.

Mar. 27 Set for hearing April 20.

Mar. 19 To Coms. on B., P. & E.D. and RLS.  
Mar. 2 Read first time.  
Feb. 28 From print. May be acted upon on or after March 30.  
Feb. 27 Introduced. To Com. on RLS. for assignment. To print.

**Introduced by Senator Negrete McLeod**February 27, 2009

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An act to amend Sections 22, 473.1, 473.15, 473.2, 473.3, 473.4, 473.6, and 9882 of, to add Sections 473.12 and 473.7 to, to repeal Sections 473.16 and 473.5 of, and to repeal and add Sections 101.1 and 473 of, the Business and Professions Code, relating to regulatory boards.

## LEGISLATIVE COUNSEL'S DIGEST

SB 638, as introduced, Negrete McLeod. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs, with board members serving specified terms of office. Existing law generally makes the regulatory boards inoperative and repealed on specified dates, unless those dates are deleted or extended by subsequent legislation, and subjects these boards that are scheduled to become inoperative and repealed as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified. Existing law requires the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California to submit certain analyses and reports to the committee on specified dates and requires the committee to review those boards and hold hearings as specified, and to make certain evaluations and findings.

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief

within the department on unspecified dates and would authorize successor board members and bureau chiefs to be appointed, as specified. The bill would also subject interior design organizations, the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and the Tax Education Council to review on unspecified dates. The bill would authorize the appropriate policy committees of the Legislature to review the boards, bureaus, or entities that are scheduled to have their board membership or bureau chief so terminated or reviewed, as specified, and would authorize the appropriate policy committees of the Legislature to investigate their operations and to hold specified public hearings. The bill would require a board, bureau, or entity, if their annual report contains certain information, to post it on its Internet Web site. The bill would make other conforming changes.

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

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

1 SECTION 1. Section 22 of the Business and Professions Code  
2 is amended to read:

3 22. ~~(a) “Board,” as used in any provision of this code, refers~~  
4 ~~to the board in which the administration of the provision is vested,~~  
5 ~~and unless otherwise expressly provided, shall include “bureau,”~~  
6 ~~“commission,” “committee,” “department,” “division,” “examining~~  
7 ~~committee,” “program,” and “agency.”~~

8 ~~(b) Whenever the regulatory program of a board that is subject~~  
9 ~~to review by the Joint Committee on Boards, Commissions, and~~  
10 ~~Consumer Protection, as provided for in Division 1.2 (commencing~~  
11 ~~with Section 473), is taken over by the department, that program~~  
12 ~~shall be designated as a “bureau.”~~

13 SEC. 2. Section 101.1 of the Business and Professions Code  
14 is repealed.

15 ~~101.1. (a) It is the intent of the Legislature that all existing~~  
16 ~~and proposed consumer-related boards or categories of licensed~~  
17 ~~professionals be subject to a review every four years to evaluate~~  
18 ~~and determine whether each board has demonstrated a public need~~  
19 ~~for the continued existence of that board in accordance with~~  
20 ~~enumerated factors and standards as set forth in Division 1.2~~  
21 ~~(commencing with Section 473).~~

1 ~~(b) (1) In the event that any board, as defined in Section 477,~~  
2 ~~becomes inoperative or is repealed in accordance with the act that~~  
3 ~~added this section, or by subsequent acts, the Department of~~  
4 ~~Consumer Affairs shall succeed to and is vested with all the duties,~~  
5 ~~powers, purposes, responsibilities and jurisdiction not otherwise~~  
6 ~~repealed or made inoperative of that board and its executive officer.~~

7 ~~(2) Any provision of existing law that provides for the~~  
8 ~~appointment of board members and specifies the qualifications~~  
9 ~~and tenure of board members shall not be implemented and shall~~  
10 ~~have no force or effect while that board is inoperative or repealed.~~  
11 ~~Every reference to the inoperative or repealed board, as defined~~  
12 ~~in Section 477, shall be deemed to be a reference to the department.~~

13 ~~(3) Notwithstanding Section 107, any provision of law~~  
14 ~~authorizing the appointment of an executive officer by a board~~  
15 ~~subject to the review described in Division 1.2 (commencing with~~  
16 ~~Section 473), or prescribing his or her duties, shall not be~~  
17 ~~implemented and shall have no force or effect while the applicable~~  
18 ~~board is inoperative or repealed. Any reference to the executive~~  
19 ~~officer of an inoperative or repealed board shall be deemed to be~~  
20 ~~a reference to the director or his or her designee.~~

21 ~~(e) It is the intent of the Legislature that subsequent legislation~~  
22 ~~to extend or repeal the inoperative date for any board shall be a~~  
23 ~~separate bill for that purpose.~~

24 SEC. 3. Section 101.1 is added to the Business and Professions  
25 Code, to read:

26 101.1. (a) Notwithstanding any other provision of law, if the  
27 terms of office of the members of a board are terminated in  
28 accordance with the act that added this section or by subsequent  
29 acts, successor members shall be appointed that shall succeed to,  
30 and be vested with, all the duties, powers, purposes,  
31 responsibilities, and jurisdiction not otherwise repealed or made  
32 inoperative of the members that they are succeeding. The successor  
33 members shall be appointed by the same appointing authorities,  
34 for the remainder of the previous members' terms, and shall be  
35 subject to the same membership requirements as the members they  
36 are succeeding.

37 (b) Notwithstanding any other provision of law, if the term of  
38 office for a bureau chief is terminated in accordance with the act  
39 that added this section or by subsequent acts, a successor bureau  
40 chief shall be appointed who shall succeed to, and be vested with,

1 all the duties, powers, purposes, responsibilities, and jurisdiction  
2 not otherwise repealed or made inoperative of the bureau chief  
3 that he or she is succeeding. The successor bureau chief shall be  
4 appointed by the same appointing authorities, for the remainder  
5 of the previous bureau chief's term, and shall be subject to the  
6 same requirements as the bureau chief he or she is succeeding.

7 SEC. 4. Section 473 of the Business and Professions Code is  
8 repealed.

9 ~~473. (a) There is hereby established the Joint Committee on  
10 Boards, Commissions, and Consumer Protection.~~

11 ~~(b) The Joint Committee on Boards, Commissions, and  
12 Consumer Protection shall consist of three members appointed by  
13 the Senate Committee on Rules and three members appointed by  
14 the Speaker of the Assembly. No more than two of the three  
15 members appointed from either the Senate or the Assembly shall  
16 be from the same party. The Joint Rules Committee shall appoint  
17 the chairperson of the committee.~~

18 ~~(c) The Joint Committee on Boards, Commissions, and  
19 Consumer Protection shall have and exercise all of the rights,  
20 duties, and powers conferred upon investigating committees and  
21 their members by the Joint Rules of the Senate and Assembly as  
22 they are adopted and amended from time to time, which provisions  
23 are incorporated herein and made applicable to this committee and  
24 its members.~~

25 ~~(d) The Speaker of the Assembly and the Senate Committee on  
26 Rules may designate staff for the Joint Committee on Boards,  
27 Commissions, and Consumer Protection.~~

28 ~~(e) The Joint Committee on Boards, Commissions, and  
29 Consumer Protection is authorized to act until January 1, 2012, at  
30 which time the committee's existence shall terminate.~~

31 SEC. 5. Section 473 is added to the Business and Professions  
32 Code, to read:

33 473. Whenever the provisions of this code refer to the Joint  
34 Committee on Boards, Commissions and Consumer Protection,  
35 the reference shall be construed to be a reference to the appropriate  
36 policy committees of the Legislature.

37 SEC. 6. Section 473.1 of the Business and Professions Code  
38 is amended to read:

39 473.1. This chapter shall apply to all of the following:

1 (a) Every board, as defined in Section 22, that is scheduled to  
2 ~~become inoperative and to be repealed~~ *have its membership*  
3 *reconstituted* on a specified date as provided by ~~the specific act~~  
4 ~~relating to the board~~ *subdivision (a) of Section 473.12.*

5 (b) ~~The Bureau for Postsecondary and Vocational Education.~~  
6 ~~For purposes of this chapter, "board" includes the bureau~~  
7 *bureau that is named in subdivision (b) of Section 473.12.*

8 (c) ~~The Cemetery and Funeral Bureau~~  
9 *Every entity that is named in subdivision (c) of Section 473.12.*

10 SEC. 7. Section 473.12 is added to the Business and Professions  
11 Code, to read:

12 473.12. (a) Notwithstanding any other provision of law, the  
13 term of office of each member of the following boards in the  
14 department shall terminate on the date listed, unless a later enacted  
15 statute, that is enacted before the date listed for that board, deletes  
16 or extends that date:

- 17 (1) The Dental Board of California: January 1, \_\_\_\_.
- 18 (2) The Medical Board of California: January 1, \_\_\_\_.
- 19 (3) The State Board of Optometry: January 1, \_\_\_\_.
- 20 (4) The California State Board of Pharmacy: January 1, \_\_\_\_.
- 21 (5) The Veterinary Medical Board: January 1, \_\_\_\_.
- 22 (6) The California Board of Accountancy: January 1, \_\_\_\_.
- 23 (7) The California Architects Board: January 1, \_\_\_\_.
- 24 (8) The State Board of Barbering and Cosmetology: January 1,
- 25 \_\_\_\_.
- 26 (9) The Board for Professional Engineers and Land Surveyors:
- 27 January 1, \_\_\_\_.
- 28 (10) The Contractors' State License Board: January 1, \_\_\_\_.
- 29 (11) The Structural Pest Control Board: January 1, \_\_\_\_.
- 30 (12) The Board of Registered Nursing: January 1, \_\_\_\_.
- 31 (13) The Board of Behavioral Sciences: January 1, \_\_\_\_.
- 32 (14) The State Athletic Commission: January 1, \_\_\_\_.
- 33 (15) The State Board of Guide Dogs for the Blind: January 1,
- 34 \_\_\_\_.
- 35 (16) The Court Reporters Board of California: January 1, \_\_\_\_.
- 36 (17) The Board of Vocational Nursing and Psychiatric
- 37 Technicians: January 1, \_\_\_\_.
- 38 (18) The Landscape Architects Technical Committee: January
- 39 1, \_\_\_\_.

- 1 (19) The Board for Geologists and Geophysicists: January 1,
- 2 \_\_\_\_.
- 3 (20) The Respiratory Care Board of California: January 1, \_\_\_\_.
- 4 (21) The Acupuncture Board: January 1, \_\_\_\_.
- 5 (22) The Board of Psychology: January 1, \_\_\_\_.
- 6 (23) The California Board of Podiatric Medicine: January 1,
- 7 \_\_\_\_.
- 8 (24) The Physical Therapy Board of California: January 1, \_\_\_\_.
- 9 (25) The Physician Assistant Committee, Medical Board of
- 10 California: January 1, \_\_\_\_.
- 11 (26) The Speech-Language Pathology and Audiology Board:
- 12 January 1, \_\_\_\_.
- 13 (27) The California Board of Occupational Therapy: January
- 14 1, \_\_\_\_.
- 15 (28) The Dental Hygiene Committee of California: January 1,
- 16 \_\_\_\_.
- 17 (b) Notwithstanding any other provision of law, the term of
- 18 office for the bureau chief of each of the following bureaus shall
- 19 terminate on the date listed, unless a later enacted statute, that is
- 20 enacted before the date listed for that bureau, deletes or extends
- 21 that date:
- 22 (1) Arbitration Review Program: January 1, \_\_\_\_.
- 23 (2) Bureau for Private Postsecondary Education: January 1,
- 24 \_\_\_\_.
- 25 (3) Bureau of Automotive Repair: January 1, \_\_\_\_.
- 26 (4) Bureau of Electronic and Appliance Repair: January 1, \_\_\_\_.
- 27 (5) Bureau of Home Furnishings and Thermal Insulation:
- 28 January 1, \_\_\_\_.
- 29 (6) Bureau of Naturopathic Medicine: January 1, \_\_\_\_.
- 30 (7) Bureau of Security and Investigative Services: January 1,
- 31 \_\_\_\_.
- 32 (8) Cemetery and Funeral Bureau: January 1, \_\_\_\_.
- 33 (9) Hearing Aid Dispensers Bureau: January 1, \_\_\_\_.
- 34 (10) Professional Fiduciaries Bureau: January 1, \_\_\_\_.
- 35 (11) Telephone Medical Advice Services Bureau: January 1,
- 36 \_\_\_\_.
- 37 (12) Division of Investigation: January 1, \_\_\_\_.
- 38 (c) Notwithstanding any other provision of law, the following
- 39 shall be subject to review under this chapter on the following dates:
- 40 (1) Interior design certification organizations: January 1, \_\_\_\_.

1 (2) State Board of Chiropractic Examiners pursuant to Section  
2 473.15: January 1, \_\_\_\_.

3 (3) Osteopathic Medical Board of California pursuant to Section  
4 473.15: January 1, \_\_\_\_.

5 (4) California Tax Education Council: January 1, \_\_\_\_.

6 (d) Nothing in this section or in Section 101.1 shall be construed  
7 to preclude, prohibit, or in any manner alter the requirement of  
8 Senate confirmation of a board member, chief officer, or other  
9 appointee that is subject to confirmation by the Senate as otherwise  
10 required by law.

11 (e) It is not the intent of the Legislature in enacting this section  
12 to amend the initiative measure that established the State Board  
13 of Chiropractic Examiners or the Osteopathic Medical Board of  
14 California.

15 SEC. 8. Section 473.15 of the Business and Professions Code  
16 is amended to read:

17 473.15. (a) ~~The Joint Committee on Boards, Commissions,~~  
18 ~~and Consumer Protection established pursuant to Section 473~~  
19 *appropriate policy committees of the Legislature* shall review the  
20 following boards established by initiative measures, as provided  
21 in this section:

22 (1) The State Board of Chiropractic Examiners established by  
23 an initiative measure approved by electors November 7, 1922.

24 (2) The Osteopathic Medical Board of California established  
25 by an initiative measure approved June 2, 1913, and acts  
26 amendatory thereto approved by electors November 7, 1922.

27 (b) The Osteopathic Medical Board of California shall prepare  
28 an analysis and submit a report as described in subdivisions (a) to  
29 (e), inclusive, of Section 473.2, to the ~~Joint Committee on Boards,~~  
30 ~~Commissions, and Consumer Protection~~ *appropriate policy*  
31 *committees of the Legislature* on or before September 1, 2010.

32 (c) The State Board of Chiropractic Examiners shall prepare an  
33 analysis and submit a report as described in subdivisions (a) to (e),  
34 inclusive, of Section 473.2, to the ~~Joint Committee on Boards,~~  
35 ~~Commissions, and Consumer Protection~~ *appropriate policy*  
36 *committees of the Legislature* on or before September 1, 2011.

37 (d) ~~The Joint Committee on Boards, Commissions, and~~  
38 ~~Consumer Protection~~ *appropriate policy committees of the*  
39 *Legislature* shall, during the interim recess of ~~2004~~ 2011 for the  
40 Osteopathic Medical Board of California, and during the interim

1 recess of 2011 for the State Board of Chiropractic Examiners, hold  
 2 public hearings to receive testimony from the Director of Consumer  
 3 Affairs, the board involved, the public, and the regulated industry.  
 4 In that hearing, each board shall be prepared to demonstrate a  
 5 compelling public need for the continued existence of the board  
 6 or regulatory program, and that its licensing function is the least  
 7 restrictive regulation consistent with the public health, safety, and  
 8 welfare.

9 ~~(e) The Joint Committee on Boards, Commissions, and~~  
 10 ~~Consumer Protection appropriate policy committees of the~~  
 11 ~~Legislature shall evaluate and make determinations pursuant to~~  
 12 ~~Section 473.4 and shall report its findings and recommendations~~  
 13 ~~to the department as provided in Section 473.5.~~

14 (f) In the exercise of its inherent power to make investigations  
 15 and ascertain facts to formulate public policy and determine the  
 16 necessity and expediency of contemplated legislation for the  
 17 protection of the public health, safety, and welfare, it is the intent  
 18 of the Legislature that the State Board of Chiropractic Examiners  
 19 and the Osteopathic Medical Board of California be reviewed  
 20 pursuant to this section.

21 (g) It is not the intent of the Legislature in ~~requiring a review~~  
 22 ~~under enacting~~ this section to amend the initiative measures that  
 23 established the State Board of Chiropractic Examiners or the  
 24 Osteopathic Medical Board of California.

25 SEC. 9. Section 473.16 of the Business and Professions Code  
 26 is repealed.

27 ~~473.16. The Joint Committee on Boards, Commissions, and~~  
 28 ~~Consumer Protection shall examine the composition of the Medical~~  
 29 ~~Board of California and its initial and biennial fees and report to~~  
 30 ~~the Governor and the Legislature its findings no later than July 1,~~  
 31 ~~2008.~~

32 SEC. 10. Section 473.2 of the Business and Professions Code  
 33 is amended to read:

34 473.2. (a) All boards to which this chapter applies or bureaus  
 35 listed in Section 473.12 shall, with the assistance of the Department  
 36 of Consumer Affairs, prepare an analysis and submit a report to  
 37 the ~~Joint Committee on Boards, Commissions, and Consumer~~  
 38 ~~Protection appropriate policy committees of the Legislature~~ no  
 39 later than 22 months before that ~~board~~ *board's membership or the*  
 40 *bureau chief's term shall become inoperative be terminated*

1 *pursuant to Section 473.12. The analysis and report shall include,*  
2 *at a minimum, all of the following:*

3 ~~(a) A comprehensive statement of the board’s mission, goals,~~  
4 ~~objectives and legal jurisdiction in protecting the health, safety,~~  
5 ~~and welfare of the public.~~

6 ~~(b) The board’s enforcement priorities, complaint and~~  
7 ~~enforcement data, budget expenditures with average and~~  
8 ~~median costs per case, and case aging data specific to post and~~  
9 ~~preaccusation cases at the Attorney General’s office.~~

10 ~~(c) The board’s~~

11 ~~(1) The number of complaints it received per year, the number~~  
12 ~~of complaints per year that proceeded to investigation, the number~~  
13 ~~of accusations filed per year, and the number and kind of~~  
14 ~~disciplinary actions taken, including, but not limited to, interim~~  
15 ~~suspension orders, revocations, probations, and suspensions.~~

16 ~~(2) The average amount of time per year that elapsed between~~  
17 ~~receipt of a complaint and the complaint being closed or referred~~  
18 ~~to investigation; the average amount of time per year elapsed~~  
19 ~~between the commencement of an investigation and the complaint~~  
20 ~~either being closed or an accusation being filed; the average~~  
21 ~~amount of time elapsed per year between the filing of an accusation~~  
22 ~~and a final decision, including appeals; and the average and~~  
23 ~~median costs per case.~~

24 ~~(3) The average amount of time per year between final~~  
25 ~~disposition of a complaint and notice to the complainant.~~

26 ~~(4) A copy of the enforcement priorities including criteria for~~  
27 ~~seeking an interim suspension order.~~

28 ~~(5) A brief description of the board’s or bureau’s fund~~  
29 ~~conditions, sources of revenues, and expenditure categories for~~  
30 ~~the last four fiscal years by program component.~~

31 ~~(d) The board’s description of its licensing process including~~  
32 ~~the time and costs~~

33 ~~(6) A brief description of the cost per year required to implement~~  
34 ~~and administer its licensing examination, ownership of the license~~  
35 ~~examination, the last assessment of the relevancy and validity of~~  
36 ~~the licensing examination, and the passage rate for each of the last~~  
37 ~~four years, and areas of examination.~~

38 ~~(e) The board’s initiation of legislative efforts, budget change~~  
39 ~~proposals, and other initiatives it has taken to improve its legislative~~  
40 ~~mandate.~~

1 (7) *A copy of sponsored legislation and a description of its*  
 2 *budget change proposals.*

3 (8) *A brief assessment of its licensing fees as to whether they*  
 4 *are sufficient, too high, or too low.*

5 (9) *A brief statement detailing how the board or bureau over*  
 6 *the prior four years has improved its enforcement, public*  
 7 *disclosure, accessibility to the public, including, but not limited*  
 8 *to, Web casts of its proceedings, and fiscal condition.*

9 (b) *If an annual report contains information that is required by*  
 10 *this section, a board or bureau may submit the annual report to*  
 11 *the committees and it shall post it on the board's or bureau's*  
 12 *Internet Web site.*

13 SEC. 11. Section 473.3 of the Business and Professions Code  
 14 is amended to read:

15 473.3. ~~(a) Prior to the termination, continuation, or~~  
 16 ~~reestablishment of the terms of office of the membership of any~~  
 17 ~~board or any of the board's functions, the Joint Committee on~~  
 18 ~~Boards, Commissions, and Consumer Protection shall the chief of~~  
 19 ~~any bureau described in Section 473.12, the appropriate policy~~  
 20 ~~committees of the Legislature, during the interim recess preceding~~  
 21 ~~the date upon which a board becomes inoperative board member's~~  
 22 ~~or bureau chief's term of office is to be terminated, may hold public~~  
 23 ~~hearings to receive and consider testimony from the Director of~~  
 24 ~~Consumer Affairs, the board or bureau involved, and the Attorney~~  
 25 ~~General, members of the public, and representatives of the~~  
 26 ~~regulated industry. In that hearing, each board shall have the burden~~  
 27 ~~of demonstrating a compelling public need for the continued~~  
 28 ~~existence of the board or regulatory program, and that its licensing~~  
 29 ~~function is the least restrictive regulation consistent with the public~~  
 30 ~~health, safety, and welfare regarding whether the board's or~~  
 31 ~~bureau's policies and practices, including enforcement, disclosure,~~  
 32 ~~licensing exam, and fee structure, are sufficient to protect~~  
 33 ~~consumers and are fair to licensees and prospective licensees,~~  
 34 ~~whether licensure of the profession is required to protect the public,~~  
 35 ~~and whether an enforcement monitor may be necessary to obtain~~  
 36 ~~further information on operations.~~

37 ~~(b) In addition to subdivision (a), in 2002 and every four years~~  
 38 ~~thereafter, the committee, in cooperation with the California~~  
 39 ~~Postsecondary Education Commission, shall hold a public hearing~~  
 40 ~~to receive testimony from the Director of Consumer Affairs, the~~

1 Bureau for Private Postsecondary and Vocational Education,  
2 private postsecondary educational institutions regulated by the  
3 bureau, and students of those institutions. In those hearings, the  
4 bureau shall have the burden of demonstrating a compelling public  
5 need for the continued existence of the bureau and its regulatory  
6 program, and that its function is the least restrictive regulation  
7 consistent with the public health, safety, and welfare.

8 (e) The committee, in cooperation with the California  
9 Postsecondary Education Commission, shall evaluate and review  
10 the effectiveness and efficiency of the Bureau for Private  
11 Postsecondary and Vocational Education, based on factors and  
12 minimum standards of performance that are specified in Section  
13 473.4. The committee shall report its findings and  
14 recommendations as specified in Section 473.5. The bureau shall  
15 prepare an analysis and submit a report to the committee as  
16 specified in Section 473.2.

17 (d) In addition to subdivision (a), in 2003 and every four years  
18 thereafter, the committee shall hold a public hearing to receive  
19 testimony from the Director of Consumer Affairs and the Bureau  
20 of Automotive Repair. In those hearings, the bureau shall have the  
21 burden of demonstrating a compelling public need for the continued  
22 existence of the bureau and its regulatory program, and that its  
23 function is the least restrictive regulation consistent with the public  
24 health, safety, and welfare.

25 (e) The committee shall evaluate and review the effectiveness  
26 and efficiency of the Bureau of Automotive Repair based on factors  
27 and minimum standards of performance that are specified in  
28 Section 473.4. The committee shall report its findings and  
29 recommendations as specified in Section 473.5. The bureau shall  
30 prepare an analysis and submit a report to the committee as  
31 specified in Section 473.2.

32 SEC. 12. Section 473.4 of the Business and Professions Code  
33 is amended to read:

34 473.4. (a) The Joint Committee on Boards, Commissions, and  
35 Consumer Protection shall *appropriate policy committees of the*  
36 *Legislature may* evaluate and determine whether a board or  
37 regulatory program has demonstrated a public need for the  
38 continued existence of the board or regulatory program and for  
39 the degree of regulation the board or regulatory program

1 implements based on the following factors and minimum standards  
2 of performance:

3 (1) Whether regulation by the board is necessary to protect the  
4 public health, safety, and welfare.

5 (2) Whether the basis or facts that necessitated the initial  
6 licensing or regulation of a practice or profession have changed.

7 (3) Whether other conditions have arisen that would warrant  
8 increased, decreased, or the same degree of regulation.

9 (4) If regulation of the profession or practice is necessary,  
10 whether existing statutes and regulations establish the least  
11 restrictive form of regulation consistent with the public interest,  
12 considering other available regulatory mechanisms, and whether  
13 the board rules enhance the public interest and are within the scope  
14 of legislative intent.

15 (5) Whether the board operates and enforces its regulatory  
16 responsibilities in the public interest and whether its regulatory  
17 mission is impeded or enhanced by existing statutes, regulations,  
18 policies, practices, or any other circumstances, including budgetary,  
19 resource, and personnel matters.

20 (6) Whether an analysis of board operations indicates that the  
21 board performs its statutory duties efficiently and effectively.

22 (7) Whether the composition of the board adequately represents  
23 the public interest and whether the board encourages public  
24 participation in its decisions rather than participation only by the  
25 industry and individuals it regulates.

26 (8) Whether the board and its laws or regulations stimulate or  
27 restrict competition, and the extent of the economic impact the  
28 board's regulatory practices have on the state's business and  
29 technological growth.

30 (9) Whether complaint, investigation, powers to intervene, and  
31 disciplinary procedures adequately protect the public and whether  
32 final dispositions of complaints, investigations, restraining orders,  
33 and disciplinary actions are in the public interest; or if it is, instead,  
34 self-serving to the profession, industry or individuals being  
35 regulated by the board.

36 (10) Whether the scope of practice of the regulated profession  
37 or occupation contributes to the highest utilization of personnel  
38 and whether entry requirements encourage affirmative action.

39 (11) Whether administrative and statutory changes are necessary  
40 to improve board operations to enhance the public interest.

1 ~~(b) The Joint Committee on Boards, Commissions, and~~  
2 ~~Consumer Protection shall consider alternatives to placing~~  
3 ~~responsibilities and jurisdiction of the board under the Department~~  
4 ~~of Consumer Affairs.~~

5 (e)

6 ~~(b) Nothing in this section precludes any board from submitting~~  
7 ~~other appropriate information to the Joint Committee on Boards,~~  
8 ~~Commissions, and Consumer Protection. *appropriate policy*~~  
9 ~~*committees of the Legislature.*~~

10 SEC. 13. Section 473.5 of the Business and Professions Code  
11 is repealed.

12 ~~473.5. The Joint Committee on Boards, Commissions, and~~  
13 ~~Consumer Protection shall report its findings and preliminary~~  
14 ~~recommendations to the department for its review, and, within 90~~  
15 ~~days of receiving the report, the department shall report its findings~~  
16 ~~and recommendations to the Joint Committee on Boards,~~  
17 ~~Commissions, and Consumer Protection during the next year of~~  
18 ~~the regular session that follows the hearings described in Section~~  
19 ~~473.3. The committee shall then meet to vote on final~~  
20 ~~recommendations. A final report shall be completed by the~~  
21 ~~committee and made available to the public and the Legislature.~~  
22 ~~The report shall include final recommendations of the department~~  
23 ~~and the committee and whether each board or function scheduled~~  
24 ~~for repeal shall be terminated, continued, or reestablished, and~~  
25 ~~whether its functions should be revised. If the committee or the~~  
26 ~~department deems it advisable, the report may include proposed~~  
27 ~~bills to carry out its recommendations.~~

28 SEC. 14. Section 473.6 of the Business and Professions Code  
29 is amended to read:

30 473.6. The chairpersons of the appropriate policy committees  
31 of the Legislature may refer to the ~~Joint Committee on Boards,~~  
32 ~~Commissions, and Consumer Protection for *interim study* review~~  
33 ~~of any legislative issues or proposals to create new licensure or~~  
34 ~~regulatory categories, change licensing requirements, modify scope~~  
35 ~~of practice, or create a new licensing board under the provisions~~  
36 ~~of this code or pursuant to Chapter 1.5 (commencing with Section~~  
37 ~~9148) of Part 1 of Division 2 of Title 2 of the Government Code.~~

38 SEC. 15. Section 473.7 is added to the Business and Professions  
39 Code, to read:

1 473.7. The appropriate policy committees of the Legislature  
2 may, through their oversight function, investigate the operations  
3 of any entity to which this chapter applies and hold public hearings  
4 on any matter subject to public hearing under Section 473.3.

5 SEC. 16. Section 9882 of the Business and Professions Code  
6 is amended to read:

7 9882. (a) There is in the Department of Consumer Affairs a  
8 Bureau of Automotive Repair under the supervision and control  
9 of the director. The duty of enforcing and administering this chapter  
10 is vested in the chief who is responsible to the director. The director  
11 may adopt and enforce those rules and regulations that he or she  
12 determines are reasonably necessary to carry out the purposes of  
13 this chapter and declaring the policy of the bureau, including a  
14 system for the issuance of citations for violations of this chapter  
15 as specified in Section 125.9. These rules and regulations shall be  
16 adopted pursuant to Chapter 3.5 (commencing with Section 11340)  
17 of Part 1 of Division 3 of Title 2 of the Government Code.

18 (b) In 2003 and every four years thereafter, ~~the Joint Committee~~  
19 ~~on Boards, Commissions, and Consumer Protection~~ *appropriate*  
20 *policy committees of the Legislature* shall hold a public hearing to  
21 receive *and consider* testimony from the Director of Consumer  
22 Affairs ~~and, the bureau. In those hearings, the bureau shall have~~  
23 ~~the burden of demonstrating a compelling public need for the~~  
24 ~~continued existence of the bureau and its regulatory program, and~~  
25 ~~that its function is the least restrictive regulation consistent with~~  
26 ~~the public health, safety, and welfare, the Attorney General,~~  
27 ~~members of the public, and representatives of this industry~~  
28 ~~regarding the bureau's policies and practices as specified in~~  
29 ~~Section 473.3. The committee shall appropriate policy committees~~  
30 ~~of the Legislature may~~ evaluate and review the effectiveness and  
31 efficiency of the bureau based on factors and minimum standards  
32 of performance that are specified in Section 473.4. ~~The committee~~  
33 ~~shall report its findings and recommendations as specified in~~  
34 ~~Section 473.5. The bureau shall prepare an analysis and submit a~~  
35 ~~report to the committee~~ *appropriate policy committees of the*  
36 *Legislature* as specified in Section 473.2.

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**CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES**

**BILL ANALYSIS**

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**BILL NUMBER:** SB 788                      **VERSION:** AMENDED APRIL 29 , 2009

**AUTHOR:** WYLAND                      **SPONSOR:** CALIFORNIA COALITION FOR  
COUNSELOR LICENSURE

**RECOMMENDED POSITION:** SUPPORT

**SUBJECT:** LICENSED PROFESSIONAL CLINICAL COUNSELORS

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**Existing Law:**

- 1) Defines unprofessional conduct for each of the license types authorized to perform psychotherapy.
- 2) Generally establishes the following requirements for licensure of psychotherapists:
  - A graduate degree from an accredited school in a related clinical field
  - Extensive hours of supervised experience gained over two years
  - Registration with the regulatory Board while gaining the supervised experience
  - Standard and Clinical Vignette licensing examinations
- 3) Defines professions authorized to perform psychotherapy as Licensed Clinical Social Workers (LCSW), Marriage and Family Therapists (MFT), Psychologists, and Physicians and Surgeons.
- 4) Requires professions authorized to perform psychotherapy to be licensed and overseen by a regulatory Board.
- 5) Requires the licensing and regulation of LCSWs, MFTs, and Licensed Educational Psychologists (LEP) by the Board of Behavioral Sciences (Board).
- 6) Requires the author or sponsor of legislation proposing a new category of licensed professional to develop a plan that includes specific information and data. The plan must be provided to the legislature with the initial legislation, and forwarded to the appropriate policy committees. The plan must include the following: (Government Code § 9148.4)
  - The source of revenue and funding.
  - The problem that the new category of licensed professional would address, including evidence of need for the state to address the problem.
  - Why the new category of licensed professional was selected to address the problem, the alternatives considered and why each alternative was not selected. Alternatives to be considered include:
    - No action taken.
    - A category of licensed professional to address the problem currently exists. Include any changes to the mandate of the existing category of licensed professional.
    - The levels of regulation or administration available to address the problem.
    - Addressing the problem by federal or local agencies.
    - The public benefit or harm that would result from establishing a new category of licensed professional, how a new category of licensed professional would achieve this benefit, and the standards of performance to review the professional practice.

- 7) Permits the chairpersons of the appropriate policy committees of the Legislature to refer to the Joint Committee on Boards, Commissions, and Consumer Protection (JCBCCP) for review of any legislative issues, plans, or proposals to create new regulatory categories. Requires evaluations prepared by the JCBCCP to be provided to the respective policy and fiscal committees. (B&P Code § 473.6, GC 9148.8)
- 8) Prohibits a healing arts licensing Board under the Department of Consumer Affairs to require an applicant for licensure to be registered by or otherwise meet the standards of a private voluntary association or professional society. (B&P Code § 850).

**This Bill:**

- 1) Deletes all previous content of the proposed Licensed Professional Clinical Counselor Act.
- 2) States the following legislative findings and declarations:
  - a) There is a growing need in this state for additional mental health professionals to provide counseling and other mental health services to California's citizens in a variety of settings.
  - b) That need continues to grow due to economic conditions and the need to provide counseling services resulting from natural disasters, and services to California's veterans.
  - c) There exists in the state a substantial number of mental health professionals who possess appropriate master's degree education, training, and experience to fulfill the need but who cannot avail themselves of licensure under the current mental health professional framework for licensure existing in the state.
  - d) The other 49 states provide, in varying ways, the opportunity for professional counselors with appropriate education and training to be licensed and to fulfill the need in those states.
  - e) It is the intent of the Legislature to provide a pathway for professional counselors in this state who possess appropriate education and training similar to other licensed mental health professionals to be licensed and to begin serving the substantial need for mental health services in California.
- 3) Prohibits a person from holding himself or herself out to the public by any title or description of mental health services not authorized by law or licensed by the Board of Behavioral Sciences.
- 4) States that nothing in this bill shall be construed to constrict, limit, or withdraw provisions of the Medical Practice Act, the Clinical Social Worker Practice Act, the Nursing Practice Act, the Psychology Licensing Law, or the Marriage and Family Therapy licensing laws.
- 5) Exempts from the provisions of this bill any priest, rabbi, or minister of the gospel of any religious denomination who performs mental health services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in this state, or who is licensed to practice medicine, who provides counseling services as part of his or her professional practice.
- 6) Exempts from the provisions of this bill an employee of a governmental entity or of a school, college, or university, or of an institution both nonprofit and charitable, if his or her practice is performed solely under the supervision of the entity, school, or organization by which he or she is employed, and if he or she performs those functions as part of the position for which he or she is employed.

**Comment:**

1) **Author's Intent.** According to the sponsor, the California Coalition for Counselor Licensure, licensure of professional counselors is needed in California for several reasons:

- To address the documented shortage of mental health workers
- To broaden accessibility to mental health services to meet an increasing need
- To provide qualified people the ability to serve when counselors are deployed to federal disaster areas
- To keep California competitive, as LPCC licensure exists in 49 other states

The sponsor believes there are benefits of licensure to counselors and consumers:

- Provides consumers with a wider range of therapists competent to work with diverse populations, issues, and programs
- Allows portability of credentials from state to state
- Third party payments can provide financial support to consumers for services provided by LPCCs.

2) **Prior Legislation.** In 2005 the sponsor previously introduced legislation that proposed to license professional counselors (AB 894, LaSuer, 2005). The Board took a position of “oppose unless amended” on the prior legislation due to concerns regarding the necessity for licensure, scope of practice, timelines, funding, and grandparenting provisions. That bill was held in Appropriations Committee.

In 2007 the sponsor introduced AB 1486 (Calderon). The Board took an initial support position on this bill and later revised its position to a “support if amended” at its May 28, 2008 meeting. The Board requested that the sponsor amend the bill to incorporate curriculum changes being proposed for MFTs in SB 1218 (the previous MFT curriculum bill vetoed by the Governor in 2008). AB 1486 was subsequently amended to include all the changes requested by the Board, however, the bill failed to pass out of Senate Appropriations Committee. The bill before the Committee today, SB 788, was virtually identical to AB 1486 before the most recent amendments (April 29, 2009).

3) **Recent Amendments.** This bill was amended in Senate Business, Professions and Economic Development Committee to delete the entire contents of the previous version of the bill and replace that language with Legislative intent. Stakeholders and Board staff have been in weekly discussions with the sponsors of SB 788 to address the concerns of the opposition.

4) **Support and Opposition**

*Support:* California Coalition for Counselor Licensure (CCCL, sponsor)

*Oppose:* None on file for amended version of bill.

5) **History**

2009

May 6 To Special Consent Calendar.

May 4 Read second time. To third reading.

Apr. 30 Withdrawn from committee. Placed on second reading file.

Apr. 29 From committee with author's amendments. Read second time.

Amended. Re-referred to Com. on PUB. S.

Apr. 28 From committee: Do pass, but first be re-referred to Com. on PUB.S.

(Ayes 10. Noes 0. Page 676.) Re-referred to Com. on PUB. S.

Apr. 13 Set for hearing April 27.

Apr. 1 From committee with author's amendments. Read second time.

Amended. Re-referred to Com. on B., P. & E.D.

Mar. 26 Hearing postponed by committee.  
Mar. 25 Set for hearing April 13.  
Mar. 19 To Coms. on B., P. & E.D. and PUB. S.  
Mar. 2 Read first time.  
Feb. 28 From print. May be acted upon on or after March 30.  
Feb. 27 Introduced. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE APRIL 29, 2009

AMENDED IN SENATE APRIL 1, 2009

**SENATE BILL**

**No. 788**

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**Introduced by Senators Wyland and Steinberg**

February 27, 2009

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~~An act to amend Sections 728, 805, and 4990 of, to add Chapter 16 (commencing with Section 4999.10) to Division 2 of, and to repeal Sections 4999.32, 4999.56, 4999.58, and 4999.101 of, the Business and Professions Code, relating to professional clinical counselors. An act to add Chapter 16 (commencing with Section 4999.10) to Division 2 of the Business and Professions Code, relating to mental health professionals.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 788, as amended, Wyland. ~~Licensed professional clinical counselors. Mental health professionals.~~

~~(1) Existing~~

~~Existing law provides for the licensure and regulation of marriage and family therapists, educational psychologists, and clinical social workers by the Board of Behavioral Sciences, in the Department of Consumer Affairs. Under existing law, the board consists of 11 members.~~

~~This bill would prohibit a person from holding himself or herself out to the public by any title or description of mental health services not authorized by law or licensed by that board, except as specified.~~

~~This bill would provide for the licensure, registration, and regulation of licensed professional clinical counselors and interns by the board and would add 4 additional members to the board, to be appointed by the Governor, as specified. The bill would enact various provisions~~

~~concerning the practice of licensed professional clinical counselors, interns, and counselor trainees, including, but not limited to, practice requirements, and enforcement specifications. The bill would authorize the board to begin accepting applications for intern registration on January 1, 2011, and for professional clinical counselor licensure on January 1, 2012, but would authorize the board to issue licenses to individuals meeting certain criteria who apply between January 1, 2011, and June 30, 2011. The bill would authorize the board to impose specified fees on licensed professional clinical counselors and interns which would be deposited in the Behavioral Sciences Fund to carry out the provisions of the bill. The bill would require that the startup costs of the program be funded by a loan from the Behavioral Sciences Fund, upon appropriation by the Legislature. The bill would provide that a violation of its provisions is a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason:~~

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

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

- 1     SECTION 1. *The Legislature hereby finds and declares all of*
- 2     *the following:*
- 3     (a) *There is a growing need in this state for additional mental*
- 4     *health professionals to provide counseling and other mental health*
- 5     *services to California's citizens in a variety of settings.*
- 6     (b) *That need continues to grow due to economic conditions*
- 7     *and the need to provide counseling services resulting from natural*
- 8     *disasters, and services to California's veterans.*
- 9     (c) *There exists in the state a substantial number of mental*
- 10    *health professionals who possess appropriate master's degree*
- 11    *education, training, and experience to fulfill the need but who*
- 12    *cannot avail themselves of licensure under the current mental*
- 13    *health professional framework for licensure existing in the state.*

1 (d) *The other 49 states provide, in varying ways, the opportunity*  
2 *for professional counselors with appropriate education and*  
3 *training to be licensed and to fulfill the need in those states.*

4 (e) *Therefore, it is the intent of the Legislature to provide a*  
5 *pathway for professional counselors in this state who possess*  
6 *appropriate education and training similar to other licensed mental*  
7 *health professionals to be licensed and to begin serving the*  
8 *substantial need for mental health services in California.*

9 SEC. 2. *Chapter 16 (commencing with Section 4999.10) is*  
10 *added to Division 2 of the Business and Professions Code, to read:*

11  
12 *CHAPTER 16. MENTAL HEALTH PROFESSIONALS*

13  
14 4999.10. (a) *No person shall hold himself or herself out to the*  
15 *public by any title or description of mental health services not*  
16 *authorized by law or licensed by the Board of Behavioral Sciences.*

17 (b) *Nothing in this section shall be construed to constrict, limit,*  
18 *or withdraw provisions of the Medical Practice Act, the Clinical*  
19 *Social Worker Practice Act, the Nursing Practice Act, the*  
20 *Psychology Licensing Law, or the Marriage and Family Therapy*  
21 *licensing laws.*

22 (c) *This section shall not apply to any priest, rabbi, or minister*  
23 *of the gospel of any religious denomination who performs mental*  
24 *health services as part of his or her pastoral or professional duties,*  
25 *or to any person who is admitted to practice law in this state, or*  
26 *who is licensed to practice medicine, who provides counseling*  
27 *services as part of his or her professional practice.*

28 (d) *This section shall not apply to an employee of a*  
29 *governmental entity or of a school, college, or university, or of an*  
30 *institution both nonprofit and charitable, if his or her practice is*  
31 *performed solely under the supervision of the entity, school, or*  
32 *organization by which he or she is employed, and if he or she*  
33 *performs those functions as part of the position for which he or*  
34 *she is employed.*

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**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Senate, April 1, 2009 (JR11)**

O

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Board Members  
**From:** Paul Riches  
Executive Officer  
**Date:** May 6, 2009  
**Telephone:** (916) 574-7840  
**Subject:** Experience Requirements for Marriage and Family Therapist (MFT) Licensure

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Background:

The Policy and Advocacy Committee has held several discussions regarding modifications to the experience requirements for marriage and family therapists. The Committee is recommending that the board sponsor legislation to make following changes to existing requirements:

**1. Double counting the first 150 hours providing family therapy.**

Current law requires that candidates complete 500 hours of experience treating couples, families and children. This allows candidates to gain the hours treating children exclusively and not gain experience providing therapy with more than one family member in the room at one time. Most candidates fulfill the current requirement by treating children. The incentive provided is similar to that for obtaining personal psychotherapy under current law.

**2. Combine existing limits on telephone crisis counseling and telemedicine into a single category with a maximum of 375 hours allowed.**

Current law treats experience providing "telephone crisis counseling" and "telemedicine" separately despite the activities appearing to overlap one another. Telephone crisis counseling is currently limited to 250 hours and telemedicine is currently limited to 125 hours. The attached draft combines them into a single category with a limit of 375 hours based on discussion at the January committee meeting.

**3. Change the supervision ratio for post-graduate experience to parallel that required of associate clinical social workers.**

Existing law requires IMFs to receive one unit of supervision (one hour of individual or two hours of group supervision) for each 10 hours of psychotherapy/counseling work experience. A typical MFT candidate must receive over 400 hours of supervision to be eligible for licensing examinations. However, a typical LCSW candidate receives around 150 hours of supervision. This disparity makes little sense given the overlapping scopes of practice and the limited availability of supervision. The attached draft changes to the post-graduate supervision requirements to parallel those required of social work candidates. Under that system, an IMF would need one unit of supervision for the first 10 hours of psychotherapy/counseling work experience in any week and one additional unit of supervision

for any additional hours of psychotherapy/counseling work experience in that same week. This would ONLY apply to psychotherapy/counseling work experience.

Supervision requirements for MFT Trainees would not be affected.

#### **4. Allow hours of experience to be gained in any category as a Trainee.**

Current law restricts the types of experience that can be gained as a Trainee to certain categories. The attached draft would allow a trainee to gain experience in any category. Specifically this would allow Trainees to gain experience for clinical documentation and psychological testing.

##### Current Requirements:

To become licensed as a marriage and family therapist (MFT) candidates must gain at least 3,000 (1,300 maximum before graduation/1,700 minimum after graduation) hours of supervised experience. This experience requirement has numerous categories of permissible experience, each with its own minimum requirement or a limit on the number of hours that may be obtained in that category. Current requirements relating to supervised experience are complex and detailed. Rather than attempt a full description here, I am attaching the student handbooks produced by the board to explain these requirements. Reading those handbooks is necessary to sort through these issues.

The primary issue is that current law does not **require** that each candidate for licensure gain experience in treating a family as a unit in therapy. Candidates are required to obtain 500 hours of supervised experience treating couples, families and children (item b above) but that requirement can be fully satisfied by treating children alone.

This issue was highlighted in the course of the MFT Education Committee meetings by both agency representatives who noted that many to most MFT Interns have little experience and less comfort in engaging a family as a unit in therapy. The experience of the board's MFT evaluators is consistent with the comments from agency representatives. A number of stakeholders have advocated that the board pursue changing the supervised experience requirements to include a mandatory minimum number of hours treating families.

In abbreviated form, the requirements are as follows:

- a. Individual Psychotherapy – No limit
- b. Couples, Family and Child Psychotherapy – 500 hours **minimum**
- c. Group Therapy or Counseling – 500 hours **maximum**
- d. Telephone Counseling – 250 hours **maximum**
- e. Telemedicine Counseling – 125 hours **maximum**
- f. Individual Supervision – 52 hours **minimum**
- g. Group Supervision – No limit
- h. Workshops and Training – 250 hours **maximum**
- i. Personal Psychotherapy – 300 hours **maximum**
- j. Psychological Testing & Documentation – 250 hours **maximum**

## §4980.43. PROFESSIONAL EXPERIENCE; INTERNS OR TRAINEES

(a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctor's degree.

(4) Not more than 1,300 hours of supervised experience obtained prior to completing a master's or doctor's degree. The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to graduation. This experience shall be composed as follows:

~~(A) Not more than 750 hours of counseling and direct supervisor contact.~~

~~(B) Not more than 250 hours of professional enrichment activities, excluding personal psychotherapy as described in paragraph (2) of subdivision (1).~~

~~(C) Not more than 100 hours of personal psychotherapy as described in paragraph (2) of subdivision (1). The applicant shall be credited for three hours of experience for each hour of personal psychotherapy.~~

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience gained more than six years prior to the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(7) Not more than a total of 1250 hours of experience for:

(A) Direct supervisor contact.

(B) Professional Enrichment Activities

(C) Client centered advocacy.

~~—Not more than a total of 1,000 hours of experience for direct supervisor contact and professional enrichment activities.~~

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of ~~postdegree~~ experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.

(10) Not more than 100 hours of personal psychotherapy. The applicant shall be credited for three hours of experience for each hour of personal psychotherapy. ~~Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.~~

**(11) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children.**

**(A) For the first 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited for two hours of experience for each hour of therapy provided.**

(12) Not more than ~~425~~ 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telemedicine in accordance with Section 2290.5.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

~~Each individual supervised after being granted a qualifying degree shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained.~~

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervisees and in segments lasting no less than one continuous hour.

(6) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation. The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars (\$500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

(l) For purposes of this chapter, "professional enrichment activities" includes the following:

(1) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor.

(2) Participation by the applicant in personal psychotherapy which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional.

## **State Licensure Comparison Chart October 2007**

The Association for Marital and Family Therapy Regulatory Boards (AMFTRB) is presenting a chart comparing the licensing requirements by states on the dimensions of education, direct client contact hours, direct hours that must be MFT, indirect/other hours, supervision, post graduation years of experience, exam, other requirements, specified master's degree credit hours, and practicum.

This chart should be used with **CAUTION**.

States are constantly reviewing and revising their regulations and rules regarding licensing.

The chart is a compilation of the best information that was contributed and available at the time, October 2007.

If you are interested in becoming licensed in a particular state, be certain to research the most current information for that state's requirements from the state's web site or by contacting the state's licensing board directly.

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### State Licensure Comparison Chart

(Compiled March 2007 – check individual state web sites for details and for any changes to licensure laws)

State	Education (regionally accredited institution unless otherwise indicated)	Direct Client Contact Hours	Direct Hours that must be MFT	Indirect Or Other Hours (if specified)	Supervision	Post Graduate Years of Experience	Exam	Other Requirements	Specified Master's degree Credit Hours (specific MFT coursework requirements available on state web pages)	Practicum
Alabama	COAMFTE Master's degree or equivalent	1000	250		200 (1 to 5 ratio) at least 100 hours must be individual	2 years experience post master's degree	MFT National Exam	Good Moral Character		500 hours
Alaska	Graduate degree in MFT or allied field	1500	1500		200 (100 individual and 100 group)	4 years	Oral or written exam administered by the board	Training in domestic violence		One year
Arizona	COAMFTE Master's degree or equivalent	1600	1000		200 hours	2 years	MFT National Exam			300 hours
Arkansas	COAMFTE Master's or equivalent	3 years with 1000 hours of client contact per years			Year 1=1000 hour with 100 supervision hours; Year 2=1000/50; Year 3 = 1000/25	3 years 30 post master's credit hours may be substituted for one year.	MFT National Exam	Oral exam after passing written exam. Approval of therapy tape. Criminal background check	60 hour Master's degree	500 hours
California	Master's degree in MFT or equivalent	1700	500	1300	1 to 10 ratio for the duration of supervised post master's experience (1 to 5 during graduate program)	2-6 years	California Exam	Additional Training-check website for specifics	48 hour Master's degree	500 hours
Colorado	COAMFTE Master's degree or equivalent	1500		500 (0 if a Ph.D)	100, 50 must be individual, 75/37.5 if a Ph.D.	2 years for Masters degree, 1 year Ph.D.-	MFT National Exam	Jurisprudence exam	45 hour Master's degree	300 hours
Connecticut		1000			100 hours 50 must be individual	1 year	MFT National Exam		45 hour Master's degree	500 hours completed in 1-2 years
Delaware	COAMFTE Master's or equivalent	1600	500		100 hours 60 must be individual	4 years	MFT National Exam			Not specified
District of	COAMFTE	1500	1500		300 (1 to 5 ratio) at	2 years	MFT National Exam	Good Moral	60 hour Master's	Not

Columbia	Master's degree or equivalent				least 100 must be individual			Character	degree	Specified
Florida	MFT Master's degree					2 years supervised experience	MFT National Exam	8 hour law & rules course, 2 hour prevention of medical errors course		Not Specified
Georgia	COAMFTE Master's or equivalent	2000	2000		200, 100 with an approved supervisor, 50 must be individual	2-5 years	MFT National Exam	Criminal Background check		1 year, 500 hours
Hawaii	MFT Master's degree	1000	1000		200 hours	2 years	MFT National Exam			1 year 300 hours
Idaho	COAMFTE CACREP Master's or equivalent	2000	1000		200 hours 100 hours must be individual	2 years	MFT National Exam		60 hour Master's degree	1 year 300 hours 150 MFT hours
Illinois	COAMFTE Master's degree or equivalent	1000	1000		200 (1 to 5 ratio) at least 100 must be individual	2 years	MFT National Exam	Good Moral Character	48 hour Master's degree	300 hours
Indiana	COAMFTE Master's degree or equivalent	1000	500		200 (1 to 5 ratio) at least 100 must be individual	3 years	MFT National Exam	Good Moral Character		500 hours
Iowa	COAMFTE Master's or equivalent	1000	1000		200 hours 100 must be individual, 1 hour per week must be face to face individual	2 years	MFT National Exam		45 hour Master's degree	300 hours
Kansas	COAMFTE Master's degree or equivalent	4000			1 to 15 ratio		MFT National Exam			500 hours
Kentucky	COAMFTE Master's degree or equivalent	1000	1000		200 hours	2 years	MFT National Exam	N/A		300 hours
Louisiana	COAMFTE Master's or equivalent, CACREP Master's with MFT coursework	3000, 2000 must be direct client contact		1000	200 hours 100 must be individual face to face (100 if graduate of COAMFTE program)	2 years	MFT National Exam	Good Moral Character	48 hour Master's degree	500, 250 must be with couples and families
Maine	COAMFTE or CACREP	3000	1000		200 hours, 100 must be individual	2 years	MFT National Exam		60 hour Master's degree	900, 360 must be

	Master's degree or equivalent				face to face					direct client contact
Maryland	MFT Master's or equivalent from an accredited university	1000			100 at least 50 must be face to face individual	2 years	MFT National Exam	N/A	60 hour Master's degree	300 hours
Massachusetts	COAMFTE Master's degree or equivalent	1000	500		200 at least 100 must be face to face individual	2 years	MFT National Exam	N/A	60 hour Master's degree	300 hours
Michigan	COAMFTE Master's degree or equivalent	1000	1000		200 (1 to 5 ratio) at least 100 hours individual	Not Specified	MFT National Exam	Good Moral Character		300 hours
Minnesota	COAMFTE Master's degree or equivalent	1000	500		200 at least 100 must be individual face to face	2 years	MFT National Exam	Good Moral Character		300 hours
Mississippi	COAMFTE Master's degree	1000			200 at least 100 must be individual face to face	2 years	MFT National exam	N/A		500 hours
Missouri	COAMFTE Master's degree or equivalent	1500	1500		200 face to face supervision hours	2 years (no more than 4 years)	MFT National Exam	N/A	45 hour Master's degree	500 hours
Montana	No license									
Nebraska (Licensed Mental Health provider)	COAMFTE Masters' degree or equivalent	1500		1500	2 face to face hours per 15 hours of direct client contact	2-5 years	MFT National Exam	N/A		300
Nevada	MFT Master's degree or equivalent	1500		1500 (check web site for specific requirements)	300 hours, 160 must be provided by an Approved supervisor other can be by secondary supervisor	Not specified	MFT National Exam	N/A	45 hour Master's degree	Not specified
New Hampshire	COAMFTE Master's degree or equivalent	1000	1000		200 hours face to face supervision	2 years	MFT National Exam	N/A		Not specified
New Jersey	COAMFTE Master's degree or equivalent	Full time practice for 5 years, at least 20 hours of client contact per week		11 hours per week for 5 years	5 years 2 of which must be in supervised MFT practice. 4 hours of supervision per week, 2 must be face to face (1 to 5	5 years	MFT National Exam	Good Moral Character		3 credit hour practicum

					ratio).					
New Mexico	MFT Master's degree from a regionally accredited university		1000		200 (100 must be individual face to face)	2 years	MFT National Exam		45 hour Master's degree	300
New York	Accredited MFT Master's degree or equivalent	1500			1 hour per week	Not Specified	Board Approved Exam	Good Moral Character, complete training in child abuse reporting	45 hour Master's degree	300 hours
North Carolina	MFT Master's degree or equivalent	1500 hours	1500		200 hours	3 years	MFT National Exam	Good Moral Character	45 hour Master's degree	500 hours
North Dakota	No Information									
Ohio	MFT master's degree or related masters with required coursework	1000	1000		200 (1 to 5 ratio) at least 100 hours individual	2 years	MFT National Exam	Good Moral Character	60 hour Master's degree	300 hours
Oklahoma	MFT Master's degree or equivalent	1000			150 face to face (75 may be group). Supervisor must observe live or on tape 2 times every 6 months	2 years	MFT National Exam; oral or written exam on psychopathology and law and regulations	Criminal background check		300 hours
Oregon	COAMFTE Master's degree or equivalent	2000	1000		At least 2 hours per month for every 45 client contact hours. 3 hours per month when 46 or more client contact hours.	3 years	National MFT exam	Law and rules examination	48 hour Master's degree	Not Specified
Pennsylvania	COAMFTE Master's degree or equivalent	1800		1800	2 hours for every 40 of the 3600	3 years	MFT National Exam	Good Moral Character	48 hour master's degree or 60 hours of graduate credit in a planned program	300 hours
Rhode Island	COAMFTE Master's degree or equivalent	2000			100 hours of supervision spread across 2 years	2 years	Board approved exam	Good Moral Character	60 hour Master's degree	12 semester hours of practicum and internship
South Carolina	MFT Master's degree or equivalent	1500			150 hours, 100 must be individual face to face	5 years of practice, 2 of the 5 years must be under the supervision of	Board approved exam		48 hour Master's degree	300 hours

						an MFT supervisor				
South Dakota	COAMFTE or CACREP Master's degree or equivalent	1700			200	3 years	MFT National Exam		48 hour Master's degree	1 year
Tennessee	MFT Master's degree or equivalent	1000			200	2 years	MFT National Exam, oral exam	Criminal Background check, good moral character		300 hours
Texas	MFT Master's degree or equivalent	1500	750		200, 100 must be face to face individual	2 years	MFT National Exam	Jurisprudence exam	45 hour Master's degree	12 months 9 credit hours
Utah	COAMFTE Master's degree or equivalent	4000 hours must include 1000 hours of mental health therapy	500		100 individual face to face hours	2 years	MFT National Exam			500 hours
Vermont	MFT Master's degree or equivalent	2 years experience under the supervision of a licensed MFT				2 years	MFT National Exam			
Virginia	CACREP or COAMFTE degree or equivalent	2000/w 4000 hours experience	1000		200 (1 to 5 ratio) at least 100 individual	2 years	Board Approved Exam	Good Moral Character	60 hour Master's degree	600 hours
Washington	COAMFTE Master's degree or equivalent	3000, 1000 must be direct contact with clients	500		200, 100 must be individual face to face	2 years	MFT National Exam	AIDS Education and Training		1 year 9 credit hours
West Virginia	No License									
Wisconsin	COAMFTE Master's degree of equivalent	1000 w/3000 hours experience			Not Specified	2 years	Board Approved Exam	N/A		Not Specified
Wyoming	MFT Master's degree or equivalent	3000			100 hours face to face supervision					

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# MFT Experience Calculator

(Revised June 2008)

	Trainee/Practicum	Intern/Post-Degree	Category Sub-Total
<b>Counseling Hours</b>			
Individual Counseling ( <i>no min/max</i> )	285.0	560.0	<b>845.0</b>
Couples, Family, and/or Children ( <i>min 500</i> )	155.0	380.0	<b>535.0</b>
Group Counseling ( <i>max 500</i> )	0.0	500.0	<b>500.0</b>
Telephone Counseling ( <i>max 250</i> )	0.0	0.0	<b>0.0</b>
Telemedicine Counseling ( <i>max 125</i> )	0.0	0.0	<b>0.0</b>
<b>Sub-Total</b>	<b>440.0</b>	<b>1440.0</b>	<b>1880.0</b>

<b>Non-Counseling Hours</b>			
Administrating and Evaluating Psychological Test, Writing progress notes and process notes ( <i>max 250</i> )	N/A	250.0	<b>250.0</b>
Workshops, Seminars, Training Sessions, and/or Conferences ( <i>max 250</i> )	100.0	150.0	<b>250.0</b>
<b>Sub-Total</b>	<b>100.0</b>	<b>400.0</b>	<b>500.0</b>

<b>Supervision</b>			
Individual Supervision Hours	50	2	<b>52.0</b>
Group Supervision Hours	85	285	<b>370.0</b>
<b>Sub-Total</b>	<b>135</b>	<b>287</b>	<b>422.0</b>

<b>Total Weeks of Supervision</b>	55	155	<b>210.0</b>
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<b>Counseling Experience Ratio Compliance</b>			
Total Units of Supervision	<b>92.5</b>	<b>144.5</b>	<b>237.0</b>
Max # of Counseling Hours Based on Sup.	<b>462.5</b>	<b>1445.0</b>	<b>1907.5</b>
Actual Amount of Credited Counseling Hrs	<b>440.0</b>	<b>1440.0</b>	<b>1880.0</b>

<b>Approximate Weeks of Supervision Needed</b>	<b>0</b>
<b>Approximate Hours of Experience Needed</b>	<b>0</b>

<b>Personal Psychotherapy Hours</b>	
Actual Personal Psychotherapy Hrs	100.0
Credited Hrs of Experience (max 300)	<b>300</b>

<b>Professional Development Time (max 1000)</b>	
(Prof Development = Supervision+Personal Psychotherapy+Workshops)	<b>972.0</b>

yellow background = a limit was reached

green text = good to go

red text = not sufficient

orange background = YOU HAVE GONE OVER YOUR MAXIMUM IN THIS CATEGORY, PLEASE ADJUST YOUR TOTALS TO COMPLY WITH THE LIMIT

<b>Trainee/Practicum Counseling and Supervision (max 750)</b>	
(Counseling Experience and Supervision earned while in degree program)	575.0

DISCLAIMER: THIS CALCULATOR IS PROVIDED SOLELY AS A RESOURCE TO ASSIST APPLICANTS IN APPROXIMATING COMPLETION OF THEIR SUPERVISED EXPERIENCE REQUIREMENTS. THIS CALCULATOR DOES NOT CERTIFY COMPLETION OF REQUIREMENTS. ONLY BOARD STAFF EVALUATES MFT APPLICATIONS TO DETERMINE APPLICANT COMPLIANCE WITH LICENSING REQUIREMENTS. THIS CALCULATOR DOES NOT GUARANTEE APPLICATION APPROVAL.

# LCSW Experience Calculator

(Revised June 2008)

Experience	
A. Clinical Psychosocial Diagnosis, Assessment and Treatment, INCLUDING Individual or Group Psychotherapy (min. 2000 hrs):	2100.0
B. Client-centered advocacy, consultation, evaluation, and research (max. 1200):	1185.0
<b>Total (A+B=C)</b>	<b>3285.0</b>

<b>Total Weeks of Supervision:</b>	125
<b>Total Hours of Individual Supervision:</b>	58
<b>Total Hours of Group Supervision:</b>	80

<b>Approximate Hours of Experience Needed:</b>	0
<b>Approximate Weeks of Supervision Needed:</b>	0
<b>Approximate Amount of Individual or Group Psychotherapy Needed:</b>	0

Individual or Group Psychotherapy	
A1. Individual or Group Psychotherapy* (min. 750 hrs):	765.0

yellow background = a limit was reached  
green text = good to go  
red text = not sufficient

\*If the ASW accumulates more than 10 hours of direct psychotherapy in a given week, he or she will need to obtain an additional hour of individual supervision or two (2) hours of group supervision to cover the direct face-to-face psychotherapy time over 10 hours for the week.

For example, Applicant B accumulates 16 hours of direct psychotherapy in a week. Usually, this applicant receives only one (1) hour of individual supervision, but for this week, the applicant needs to gain an additional hour of individual supervision or two (2) hours of group supervision to cover the extra 6 hours of direct psychotherapy time.

DISCLAIMER: THIS CALCULATOR IS PROVIDED SOLELY AS A RESOURCE TO ASSIST APPLICANTS IN APPROXIMATING COMPLETION OF THEIR SUPERVISED EXPERIENCE REQUIREMENTS. THIS CALCULATOR DOES NOT CERTIFY COMPLETION OF REQUIREMENTS. ONLY BOARD STAFF EVALUATES LCSW APPLICATIONS TO DETERMINE APPLICANT COMPLIANCE WITH LICENSING REQUIREMENTS. THIS CALCULATOR DOES NOT GUARANTEE APPLICATION APPROVAL.

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**To:** Board Members

**Date:** May 4, 2009

**From:** Tracy Rhine  
Legislation Analyst

**Telephone:** (916) 574-7847

**Subject:** Legislation Update

## BOARD-SPONSORED LEGISLATION

### **SB 33 (Correa) MFT Educational Requirements**

This bill would have made a number of changes relating to the education requirements of Marriage and Family Therapists (MFTs), including:

- Permits MFT Interns to gain a portion of the required supervision via teleconferencing;
- Allows applicants to count experience for performing “client centered advocacy” activities toward licensure as a MFT;
- Requires applicants for MFT licensure to submit W-2 forms and verification of volunteer employment for each setting in which the applicant gained experience;
- Increases the graduate degree’s total unit requirement from 48 to 60 semester units (72 to 90 quarter units);
- Increases the practicum by three semester units and 75 face-to-face counseling and client centered advocacy hours;
- Provides more flexibility in the degree program by requiring fewer specific hours or units for particular coursework, allowing for innovation in curriculum design; and,
- Deletes the requirement that an applicant licensed as an MFT for less than two years in another state to complete 250 hours of experience in California as an intern prior to applying for licensure.
- 

### **SB 819 (Committee on Business, Professions and Economic Development) - Board Omnibus Bill**

This proposal will incorporate all the following changes approved by the Board and included in SB 1779 last year:

- *Enforcement*  
Prohibits the board from publishing on the internet for more than five years the final

determination of a citation and fine of one thousand five hundred dollars (\$1,500) or less against a registrant or licensee.

- *Marriage and Family Therapist Act Title*  
Adds the following title to Chapter 13 of Division 2 of the Business and Professions Code: "This chapter shall be known, and may be cited, as the Marriage and Family Therapist Act."
- *Out-of-State Licensed Clinical Social Worker (LCSW) Eligibility*  
Makes a technical change to language relating to eligibility for out of state LCSW applicants that clarifies that an applicant must currently hold a valid license from another state at the time of application.
- *MFT Experience Requirements*  
Clarifies that no hours of experience gained more than six years prior to the date of application for MFT *examination eligibility* can be counted towards the experience requirements.
- *Unprofessional Conduct*  
Adds to the provisions of unprofessional conduct for all licensees the act of subverting or attempting to subvert any licensing examination or the administration of an examination.
  - Deletes the following language from the unprofessional conduct statutes:  
*Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances or any combination thereof.*
  - Adds to the unprofessional conduct statute for LEP's failure to comply with telemedicine statute.
- *Associate Clinical Social Worker (ASW) Supervision*  
Permits ASWs to gain up to 30 hours of direct supervisor contact via videoconferencing and allows group supervision to be provided in one-hour increments, as long as both increments (full two hours) are provided in the same week as the experience claimed.
- *Miscellaneous Provisions*  
Repeals code sections containing obsolete language

### **SB 821 (Committee on Business, Professions and Economic Development) - Board Omnibus Bill**

A second omnibus bill will be introduced by the Senate Business, Professions and Economic Development Committee that will include the following statutory changes approved by the Board at its November 18, 2009 meeting:

- *Supervision in Private Practice*  
Limits the number of MFT Interns and ASWs that may work under the supervision of a licensed professional in private practice to two total registrants, irrespective of registrant type, at one time.
- *ASW Employment in Private Practice*  
Prohibits an ASW issued a subsequent registration from being employed or volunteering in a private practice setting.

- *Leasing or Renting Space by an ASW*  
Prohibits 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.
- *Reinstatement or Modification of Penalty for Registrants*  
Adds a reference to clarify that registrants may petition for reinstatement or modification of penalty when his or her registration has been revoked or suspended or been placed on probation.
- *Unprofessional Conduct of a Supervisor*  
Clarifies that unprofessional conduct includes any conduct in the supervision of a registrant by any licensee that violates licensing law and regulations adopted by the board, irrespective of the field of practice of the supervisee and the supervisor.
- *Record Retention*  
Adds record retention provisions to Licensed Educational Psychologist (LEP) and LCSW licensing law that do the following:
  - Prohibits the board from denying an applicant admission to the written examination or delaying the examination solely upon receipt by the board of a complaint alleging acts that would constitute grounds for denying licensure.
  - Requires the board to allow an applicant that has passed the written examination to take the clinical vignette examination regardless of a complaint that is under investigation. This same provision would allow the board to withhold results of the examination pending completion of the investigation.
  - Allows the board to deny an applicant that previously failed either the written or clinical vignette examination permission to retest pending completion of an investigation of complaints against the applicant.
  - Provides that no applicant shall be eligible to participate in a clinical vignette examination if his or her passing score on the standard written examination occurred more than seven years ago.
- *Miscellaneous Provision*  
Deletes incorrect reference to an “annual” license renewal.

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**To:** Board Members

**Date:** May 4, 2009

**From:** Tracy Rhine  
Legislative Analyst

**Telephone:** (916) 574-7847

**Subject:** Rulemaking Update

## PENDING REGULATORY PROPOSALS

### Title 16, CCR Section 1887.2, Exceptions to Continuing Education Requirements

This regulation sets forth continuing education (CE) exception criteria for MFT and LCSW license renewals. This proposal would amend the language in order to clarify and better facilitate the request for exception from the CE requirement. **The board approved the originally proposed text at its meeting on May 31, 2007. This proposed regulation was incorporated into the rulemaking package relating to continuing education requirements for Licensed Educational Psychologist.**

### Title 16, CCR Sections 1887, 1887.2, 1887.3, and 1887.7, Minor Clean-Up of Continuing Education Regulations

This proposal would make minor clean-up amendments to continuing education regulations. **The Board approved the originally proposed text at its meeting on May 31, 2007. This proposed regulation will be incorporated into the rulemaking package relating to continuing education requirements for Licensed Educational Psychologist.**

### Title 16, CCR Sections 1815 and 1886.40, Fingerprint Submission Requirements

This proposal will require all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the Department of Justice (DOJ) criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ. **The Board approved the originally proposed text at its meeting on December 19, 2009. The Notice of Proposed Changes in Regulation was published in the California Regulatory Notice Register on January 2, 2009. The final rulemaking package was approved by the Board at its February 26, 2009 Board meeting. This package was submitted to the Office of Administrative Law for review on April 9, 2009.**

### Title 16, CCR Section 1888, Revision of Disciplinary Guidelines

This proposal will revise the Disciplinary Guidelines set forth by the Board and utilized in a disciplinary action against a licensee under the Administrative Procedures Act. **The Board approved the originally proposed text at its meeting on November 18, 2009. The**

**Notice of Proposed Changes in Regulation was published in the California Regulatory Notice Register on January 2, 2009. The final rulemaking package was approved by the Board at its February 26, 2009 Board meeting. This package was submitted to the Office of Administrative Law for review on April 22, 2009.**

*Title 16, CCR Section 1811, Revision of Advertising Regulations*

This proposal revises the regulatory provisions related to advertising by Board Licensees. **The Board approved the originally proposed text at its meeting on November 18, 2009. Staff is currently preparing the rulemaking package for Notice with the Office of Administrative Law.**

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**To:** Board Members

**Date:** May 6, 2009

**From:** Paul Riches

**Telephone:** (916) 574-7830

**Subject: Senate Bill 1441 (Chapter 548, Statutes of 2008)**

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Background:

Senate Bill 1441 (Chapter 548, Statutes of 2008) requires the development of standards to guide healing arts licensing boards (including the BBS) in handling addicted licensees. Specifically, the legislation establishes the *Substance Abuse Coordination Committee* which is composed of the Director of the Department of Consumer Affairs (DCA), executive officers of all healing arts boards in the DCA, the executive officers of the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. This committee is required to develop uniform standards that each healing arts board will be required to use in dealing with substance-abusing licensees by January 1, 2010. These standards will apply to all healing arts boards either through a formal recovery program or through their probation monitoring processes.

The committee has met once thus far and established a staff level working group to begin drafting standards for the committee to consider. A public meeting regarding draft standards in the first six areas was held on May 6 to provide feedback prior to the next committee meeting on May 18. I wanted to notify the board of the committee and its work and to have a discussion by the board.

I don't anticipate or expect to the board to address each or any of the required standards directly (although suggestions are always welcome). Rather this is an opportunity for the board to provide me with a sense of its thinking regarding how to handle substance abuse among our licensees to bring that thinking to the committee's deliberations.

Required Standards:

To give you a sense of the dimension of the committee's charge I have included the following listing of areas in which the committee must develop standards. I have also attached the text of SB 1441 for your review. The legislation requires "standards" to be adopted in the following areas:

- (1) clinical diagnostic evaluation of the licensee
- (2) temporary removal of the licensee from practice to enable the licensee to undergo:
  - clinical diagnostic evaluation,
  - any treatment recommended by the evaluator, and
  - criteria to resume practice.

- (3) notification of employers regarding the licensee's status and condition.
- (4) biological fluid testing, including:
- frequency of testing
  - randomness
  - notifying the licensee
  - number of hours between the provision of notice and the test
  - standards for specimen collectors
  - procedures used by specimen collectors
  - testing locations
  - whether the collection process must be observed by the collector
  - alternate testing arrangements when the licensee for local testing
  - requirements for the laboratory that analyzes the specimens
  - requirements for reporting testing results
- (5) group meeting attendance including:
- required qualifications for group meeting facilitators
  - frequency of required meeting attendance
  - methods of documenting and reporting attendance or nonattendance by licensees.
- (6) determination of treatment setting
- (7) Worksite monitoring including:
- qualifications of worksite monitors
  - methods of monitoring by worksite monitors
  - reporting by worksite monitors.
- (8) actions taken for positive biological fluid tests
- (9) actions taken when a licensee is confirmed to have ingested a banned substance.
- (10) determining actions for major violations and minor violations. (11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.
- (12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
- (13) If a board uses a private-sector vendor that provides diversion services:
- reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation
  - approval process for providers or contractors that provide diversion services, including, but not limited to:
    - specimen collectors
    - group meeting facilitators
    - worksite monitors
  - requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services
  - standards for a licensee's termination from the program and referral to enforcement.
- (14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

The legislation also requires the committee to consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

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## Senate Bill No. 1441

### CHAPTER 548

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.7, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, 3534.9, and 4371 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

[Approved by Governor September 28, 2008. Filed with  
Secretary of State September 28, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1441, Ridley-Thomas. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, the Osteopathic Medical Board of California, and the California State Board of Pharmacy to establish and administer diversion or recovery programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified. Existing law requires the California State Board of Pharmacy to contract with one or more qualified contractors to administer the pharmacists recovery program and requires the board to review the pharmacists recovery program on a quarterly basis, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified, and a designee of the State Department of Alcohol Drug Programs. The bill would require the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties, including, as specified, duties related to termination of a licensee from the diversion program, the review and evaluation of recommendations of the committee,

approving the designs of treatment programs, denying participation in the program, reviewing activities and performance of contractors, and determining completion of the program. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate under the direction of the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations. The bill would require the executive officer of the California State Board of Pharmacy to designate a program manager of the pharmacists recovery program, and would require the program manager to review the pharmacists recovery program quarterly and to work with the contractors, as specified. The bill would set forth provisions regarding entry of a registered nurse into the diversion program and the investigation and discipline of registered nurses who are in, or have been in, the diversion program, and would require registered nurses in the diversion program to sign an agreement of understanding regarding withdrawal or termination from the program, as specified.

The bill would specify that the diversion program responsibilities imposed on licensing boards under these provisions shall be considered current operating expenses of those boards.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient.

(b) Several health care licensing boards have “diversion programs” designed to identify substance-abusing licensees, direct them to treatment and monitoring, and return them to practice in a manner that will not endanger the public health and safety.

(c) Substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount.

(d) The diversion program of the Medical Board of California, created in 1981, has been subject to five external performance audits in its 27-year history and has failed all five audits, which uniformly concluded that the program has inadequately monitored substance-abusing physicians and has failed to promptly terminate from the program, and appropriately refer for discipline, physicians who do not comply with the terms and conditions of the program, thus placing patients at risk of harm.

(e) The medical board’s diversion program has failed to protect patients from substance-abusing physicians, and the medical board has properly decided to cease administering the program effective June 30, 2008.

(f) The administration of diversion programs created at other health care boards has been contracted to a series of private vendors, and none of those

vendors has ever been subject to a performance audit, such that it is not possible to determine whether those programs are effective in monitoring substance-abusing licensees and assisting them to recover from their addiction in the long term.

(g) Various health care licensing boards have inconsistent or nonexistent standards that guide the way they deal with substance-abusing licensees.

(h) Patients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees.

SEC. 2. It is the intent of the Legislature that:

(a) Pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code, that the Department of Consumer Affairs conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.

(b) The audit shall identify, by type of board licensee, the percentage of self-referred participants, board-referred participants, and board-ordered participants. The audit shall describe in detail the diversion services provided by the vendor, including all aspects of bodily fluids testing, including, but not limited to, frequency of testing, randomness, method of notice to participants, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, such as whether the collection process is observed by the collector, location of testing, and average timeframe from the date of the test to the date the result of the test becomes available; group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by program participants; standards used in determining whether inpatient or outpatient treatment is necessary; and, if applicable, worksite monitoring requirements and standards. The audit shall review the timeliness of diversion services provided by the vendor; the thoroughness of documentation of treatment, aftercare, and monitoring services received by participants; and the thoroughness of documentation of the effectiveness of the treatment and aftercare services received by participants. In determining the effectiveness and efficiency of the vendor, the audit shall evaluate the vendor's approval process for providers or contractors that provide diversion services, including specimen collectors, group meeting facilitators, and worksite monitors; the vendor's disapproval of providers or contractors that fail to provide effective or timely diversion services; and the vendor's promptness in notifying the boards when a participant fails to comply with the terms of his or her

diversion contract or the rules of the board's program. The audit shall also recommend whether the vendor should be more closely monitored by the department, including whether the vendor should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation of noncompliance with diversion program contracts and regarding its approval and disapproval of providers and contractors that provide diversion services.

(c) The vendor and its staff shall cooperate with the department and shall provide data, information, and case files as requested by the department to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards and the vendor to the department shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. It is the Legislature's intent that the audit be completed by June 30, 2010, and on subsequent years thereafter as determined by the department.

SEC. 3. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6. Uniform Standards Regarding Substance-Abusing Healing  
Arts Licensees

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic

evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors;

standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 4. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:

(a) "Board" means the Board of Dental Examiners of California.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 5. Section 1695.5 of the Business and Professions Code is amended to read:

1695.5. (a) The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.

(b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code,

or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licentiates shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 6. Section 1695.6 of the Business and Professions Code is amended to read:

1695.6. A committee created under this article operates under the direction of the program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to make recommendations. In making the recommendations, a committee shall consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry.

(e) To perform such other related duties, under the direction of the board or program manager, as the board may by regulation require.

SEC. 7. Section 1697 of the Business and Professions Code is amended to read:

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager and to bear all costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

SEC. 8. Section 1698 of the Business and Professions Code is amended to read:

1698. (a) After the committee and the program manager in their discretion have determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the

diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 11. Section 2366 of the Business and Professions Code is amended to read:

2366. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred.

(c) To receive and review information concerning participants in the program.

(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(f) To promote the program to the public and within the profession, including providing all current licentiates with written information concerning the program.

(g) To perform such other related duties, under the direction of the board or the program manager, as the board may by regulation require.

SEC. 12. Section 2367 of the Business and Professions Code is amended to read:

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

SEC. 13. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After the committee and the program manager, in their discretion, have determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

SEC. 14. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. Any diversion evaluation committee established by the board shall operate under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has

the primary responsibility to review and evaluate recommendations of the committee.

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) To evaluate physical therapists and physical therapist assistants who request participation in the program and to make recommendations. In making recommendations, the committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No board or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 16. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the board and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice physical therapy safely or competently.

(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a diversion evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) “Board” means the Board of Registered Nursing.

(b) “Committee” means a diversion evaluation committee created by this article.

(c) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 18. Section 2770.7 of the Business and Professions Code is amended to read:

2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse is accepted into the board’s diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licensee presents a threat to the public’s health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the

diversion program. A registered nurse who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 19. Section 2770.8 of the Business and Professions Code is amended to read:

2770.8. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment services to which registered nurses in a diversion program may be referred.

(c) To receive and review information concerning a registered nurse participating in the program.

(d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.

(e) To call meetings as necessary to consider the requests of registered nurses to participate in a diversion program, and to consider reports regarding registered nurses participating in a program.

(f) To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each registered nurse participating in the program, including treatment, supervision, and monitoring requirements.

SEC. 20. Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 21. Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the committee and the program manager in their discretion have determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

SEC. 22. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) "Board" means the Medical Board of California.

(b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) “Regulations” means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) “Routine visual screening” means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 23. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, “committee” means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 23. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

(a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 24. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

SEC. 25. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

SEC. 26. Section 4371 of the Business and Professions Code is amended to read:

4371. (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.

(b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.

(c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

SEC. 27. The responsibilities imposed on a licensing board by this act shall be considered a current operating expense of that board, and shall be paid from the fund generally designated to provide operating expenses for that board, subject to the appropriation provisions applicable to that fund.

**BAGLEY-KEENE OPEN MEETING ACT  
TOP TEN RULES  
(January 2009)**

**[NOTE: GC § = Government Code Section; AG = Opinions of the California Attorney General.]**

- 1. All meetings are public. (GC §11123.)**
- 2. Meetings must be noticed 10 calendar days in advance—including posting on the Internet. (GC §11125(a).)**
- 3. Agenda required—must include a description of specific items to be discussed (GC §§ 11125 & 11125.1).**
  - a. No item may be added to the agenda unless it meets criteria for an emergency. (GC §11125(b).)**
- 4. Meeting is “gathering” of a majority of the board or a majority of a committee of 3 or more persons where board business will be discussed. Includes telephone & e-mail communications. (GC § 11122.5; Stockton Newspapers Inc. v. Members of the Redevelopment Agency of the City of Stockton (1985) 171 Cal.App.3d 95.)**
- 5. Law applies to committees, subcommittees, and task forces that consist of 3 or more persons (includes all persons whether or not they are board members). (GC §11121)**
- 6. Public comment must be allowed on agenda items before or during discussion of the items and before a vote, unless: (GC §11125.7.)**
  - a. The public was provided an opportunity to comment at a previous committee meeting of the board. If the item has been substantially changed, another opportunity for comment must be provided.**
  - b. The subject matter is appropriate for closed session.**
- 7. Closed sessions (GC §11126.) At least one staff member must be present to record topics discussed and decisions made. (GC § 11126.1).**

**Closed session allowed:**

- a. Discuss and vote on disciplinary matters under the Administrative Procedure Act (APA). (subd. (c)(3).)**
- b. Prepare, approve or grade examinations. (subd. (c)(1).)**

- c. Pending litigation. (subd. (e)(1).)
- d. Appointment, employment, or dismissal of executive officer (EO) unless EO requests such action to be held in public. (subd. (a), (b).)

No closed session allowed for:

- a. Election of board officers. (68 AG 65.)
  - b. Discussion of controversial regulations or issues.
8. No secret ballots or votes except mail votes on APA enforcement matters. (68 AG 65; GC §11526.)
9. No proxy votes. (68 AG 65.)
10. Meetings by teleconferencing (GC §11123.)
- a. Suitable audio or video must be audible to those present at designated location(s). (subd. (b)(1)(B).)
  - b. Notice and agenda required. (subd. (b)(1)(A).)
  - c. Every location open to the public and at least one member of board physically present at the specified location. All members must attend at a public location. (subds. (b)(1) (C), and (F).)
  - e. Rollcall vote required. (subd. (b)(1)(D).)
  - f. Emergency meeting closed sessions not allowed. (subd. (b)(1)(E).)

Reference: January 2009 "Public Meetings" Memorandum & Attached Guide to the Bagley-Keene Open Meeting Act  
[http://www.dca.ca.gov/r\\_r/bagleykeene\\_meetingact.pdf](http://www.dca.ca.gov/r_r/bagleykeene_meetingact.pdf)

# ETHICAL DECISION MAKING

Questions	Mandatory Disqualification	Need Further Discussion
<p>Have you served as</p> <ul style="list-style-type: none"> <li>• investigator</li> <li>• prosecutor, or</li> <li>• advocate</li> </ul> <p>before or during the adjudicative proceeding?</p>	<b>Yes</b>	
<p>Are you biased or prejudiced for or against the person?</p> <p style="text-align: center;">or</p> <p>Do you have an interest (including a financial interest) in the proceeding?</p>	<b>Yes</b>	
<p>Have you</p> <ul style="list-style-type: none"> <li>• engaged in a prohibited ex parte communication before or during adjudicative proceeding (may result in disqualification)?</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• complained to you about investigation currently in progress and said how great he or she is</li> </ul> <p>√ “Ex parte” communication: direct or indirect communication with you by one of the parties or its representative without notice and opportunity for all parties to participate in the communication (e.g. applicant or licensee (or someone acting on that person’s behalf)</p>		<b>Yes</b>
<p>Do you or your spouse or a close family member (such as an uncle or cousin) have personal knowledge of disputed evidentiary facts concerning the proceeding?</p>		<b>Yes</b>
<p>Do you doubt your capacity to be impartial?</p>		<b>Yes</b>
<p>Do you, for any reason, believe that your recusal would further the interests of justice?</p>		<b>Yes</b>

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